

STATE OF HAWAII
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS
OCCUPATIONAL SAFETY AND HEALTH DIVISION

December 19, 2007

To: All OSHCOs & EHSs

From: *for* Darwin L.D. Ching, Director *Callen Y. Ta'Clair*
Department of Labor and Industrial Relations

Subject: Rules of agency practice and procedure concerning OSHA access to employee medical records

The attached provides guidance on the application of Chapter 12-55, Rules of DOSH Practice and Procedure Concerning DOSH Access to Employee Medical Records.

The HIOSH Health Branch Manager is the Medical Records Officer for the Division.

This GOSH replaces CPL 2-2.46, §12-55-22(f), Authorization and Procedures for Reviewing Specific Medical Records to Verify Compliance with Chapter 12-52, April 18, 1989.

Please remove CPL 2-2.46 from you Part II GOSH and replace it with this GOSH and annotate the index accordingly.

This GOSH is effective upon receipt.

Source: OSHA Instruction CPL 02-02-072, August 22, 2007





DIRECTIVE NUMBER: CPL: 02-02-072

Effective Date: 8/22/07

SUBJECT: Rules of agency practice and procedure concerning OSHA access to employee medical records

ABSTRACT

- Purpose:** This directive provides guidance to OSHA personnel concerning application of the rules of agency practice and procedure set forth at 29 CFR 1913.10 when accessing personally identifiable employee medical records. Guidance is also provided concerning Assistant Secretary authorization to conduct limited review of specific employee medical information when OSHA standards require such information and there is a need to gain access for the purpose of determining compliance.
- Scope:** This instruction applies OSHA-wide.
- References:** 29 CFR 1913.10, Rules of agency practice and procedure concerning OSHA access to employee medical records;
29 CFR 1910.1020, Access to employee exposure and medical records.
- Cancellations:** This instruction cancels CPL 02-02-030 (Nov. 14, 1980), CPL 02-02-032 (Jan. 19, 1981), CPL 02-02-033 (Feb. 8, 1982), CPL 02-02-046 (Jan. 5, 1989).
- State Impact:** This instruction describes a Federal Program Change for which State adoption is not required. States are encouraged to adopt comparable policies and procedures concerning access to employee medical records.
- Action Offices:** National, Regional and Area Offices
- Originating Office:** Directorate of Enforcement Programs

Contact: Office of Health Enforcement
200 Constitution Avenue, Room N3119
Washington, DC 20210
(202) 693-2190

By and Under the Authority of

Edwin G. Foulke, Jr.
Assistant Secretary

TABLE OF CONTENTS

I. Purpose..... 1

II. Scope..... 1

III. Cancellations..... 1

IV. References 1

V. Action. 1

VI. Federal Program Change 1

VII. Background..... 1

VIII Terms and Definitions 3

IX. OSHA Personnel: Roles and Responsibilities.....5

X. Access to Information for Which a Medical Access Order (MAO) is Required.....6

XI. Access to Information for Which an MAO is Not Required.....10

XII Individual Employee Consent.....19

XIII. Miscellaneous Procedures for OSHA Access to Medical Information.....20

XIV. Security and Confidentiality of Medical Records.....22

XV. Citation Guidelines.....26

XVI. Training Requirements.....26

APPENDIX A - Typical Process for Obtaining a Written MAO (flowchart)

APPENDIX B 1 - Sample Authorization Letter for Release of Employee Medical Record Information to Designated Representative

APPENDIX B 2 - Sample Request for a Written Access Order

APPENDIX C - Examples of Specific Medical Tests that may reveal Work Related Absorption and/or Exposure to a Toxic Substance or Harmful Physical Agent

- I. **Purpose.** This directive provides guidance to OSHA personnel concerning application of the rules of agency practice and procedure set forth at 29 CFR 1913.10 when accessing personally identifiable employee medical records. This directive also addresses Assistant Secretary authorization for appropriately qualified OSHA personnel to conduct limited review of specific employee medical information when OSHA standards require such information and there is a need to gain access for the purpose of determining compliance.

- II. **Scope.** This instruction applies OSHA-wide.

- III. **Cancellations.** This instruction cancels CPL 02-02-030 (November 14, 1980), CPL 02-02-032 (January 19, 1981), CPL 02-02-033 (February 8, 1982), CPL 02-02-046 (January 5, 1989).

- IV. **References.**
 - A. 29 CFR 1913.10, Rules of agency practice and procedure concerning OSHA access to employee medical records.
 - B. 29 CFR 1910.1020, Access to employee exposure and medical records.

- V. **Action.** OSHA Regional Administrators and Area Directors should use the guidelines in this instruction to ensure uniform access and review of personally identifiable employee medical records. The Directorate of Cooperative and State Programs will provide support necessary to assist the CPMs in this effort. The Directorate of Enforcement Programs will provide support necessary to assist the Regional Administrators and Area Directors in this effort.

- VI. **Federal Program Change.** This instruction describes a Federal Program Change for which State adoption is not required. However, States are required by OSHA Instruction STP 2-1.99 (August 15, 1980) to adopt 29 CFR 1910.1020, Access to Employee Exposure and Medical Records and 29 CFR 1913.10, Rules of Agency Practice and Procedure Concerning OSHA Access to Employee Medical Records. An effective State program must appropriately utilize its authority for access to medical records, and need effective procedures such as these to assure that the privacy of those records is strictly maintained. Therefore, although adoption of this instruction is not required, States are expected to have procedures covering this issue that are at least as effective as those of Federal OSHA and are encouraged to adopt policies and procedures comparable to those in this directive.

- VII. **Background.**
 - A. In the last several years, Americans have expressed a heightened concern over the privacy of their personal information. Among different sets of personal information, medical information is among the most sensitive. In recent years, rules requiring the protection of health privacy have been enacted by both the

Federal government and the States. Still, an individual's right to privacy regarding their health information is not absolute. It does not, for instance, prevent reporting of public health information on communicable diseases or stop law enforcement from gaining medical information.

- B. In order to carry out its statutory obligations, it is necessary for OSHA to review certain medical information of employees. Section 8 of the OSH Act recognizes OSHA's right of access to medical records, and records access is mandated by various OSHA standards and regulations, including among others 29 CFR 1910.1020(e)(3) (access to employee exposure and medical records). In some instances, it may be necessary for OSHA personnel to examine employee medical information in a personally identifiable form. The provisions set forth at 29 CFR 1913.10 are internal procedures that govern the circumstances under which OSHA seeks access to personally identifiable employee medical information, and how the information is protected once it is in the agency's possession. Since the rules of agency practice and procedure apply only to OSHA personnel, the agency uses an administrative subpoena when requiring employers, or other persons, to produce information.
- C. OSHA issued the rules of agency practice and procedure at 29 CFR 1913.10 to balance the privacy right of the individual with OSHA's need to gather information for the purpose of carrying out its statutory obligation to protect the safety and health of employees. The rules of agency practice and procedure are intended to preclude potential misuse of employee medical information, while at the same time enabling medical records information to play a constructive role in agency efforts to prevent occupational injury and illness.
- D. Employee medical records often provide the critical information needed to determine whether an employee's safety and health has been adversely affected by conditions in the workplace. For example, OSHA access to employee medical records may be necessary during inspections to determine whether an employer is complying with OSHA standards, or to verify whether an employer has taken steps to abate existing violations. Access to employee medical information may also be helpful to the agency during certain non-enforcement inspections/audits to evaluate the effectiveness of safety and health programs at workplaces such as, but not limited to, OSHA consultation visits and OSHA Voluntary Protection Program (VPP) sites. Additionally, OSHA may use employee medical records when gathering information during the development of new occupational safety and health standards and regulations.
- E. Except as provided in 29 CFR 1913.10(b)(3) through (b)(6), the rules of agency practice and procedure apply to all requests by OSHA personnel to obtain access to records to examine or copy personally identifiable employee medical information, whether or not access is mandated by 29 CFR 1910.1020. Among

the various types of information excluded from coverage under 29 CFR 1913.10(b)(3) through (b)(6) is certain recordkeeping and medical information required by OSHA standards. Also, 29 CFR 1913.10(b)(6) provides that the policies and procedures in 29 CFR 1913.10 do not apply where a written directive by the Assistant Secretary authorizes appropriately qualified personnel to conduct limited review of specific medical information mandated by an occupational safety and health standard, or of specific biological monitoring test results. In the past, OSHA has issued several directives based on the provisions of 29 CFR 1913.10(b)(6) authorizing personnel to access and review information to verify employer compliance with the requirements in 29 CFR Part 1904, as well as with requirements of certain OSHA standards that mandate medical opinions and specific information associated with medical surveillance programs. This instruction revises and consolidates the procedures included in the three previous directives into one OSHA instruction.

VIII. Terms and Definitions.

- A.** **Access** as defined by 29 CFR 1910.1020 means the right and opportunity to examine and copy.
- B.** **Administrative Subpoena** means a written order issued by OSHA to require an employer, or any other person, to produce listed records, documents, testimony and/or other supporting evidence relevant to an inspection or investigation under the OSH Act. If the person served with a subpoena refuses to honor (or only partially honors) the order, the subpoena is subject to judicial review and enforcement by the U.S. District Court. OSHA's policies and procedures for issuing administrative subpoenas are set forth at OSHA Instruction ADM 01-00-002 of 8/19/91.
- C.** **Appropriately Qualified Personnel.** For purposes of 29 CFR 1913.10(b)(6), "appropriately qualified personnel" means an individual with the training or experience necessary to evaluate and determine compliance with the specific standards, regulations or other OSH Act requirements addressed by the Assistant Secretary written authorization established in this Instruction.
- D.** **Electronic Medical Information** means health data or information created, converted or maintained in an electronic format. This includes, but is not limited to, information on desktop or portable computer files, CD-ROM, compact disk, computer tape and diskette, electronic mail, automated data processing and web-based Intranet and Internet applications.
- E.** **Employee Medical Record** is defined at 29 CFR 1910.1020 as 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:

1. Medical and employment questionnaires or histories (including job description and occupational exposures).
2. The results of medical examinations (pre-employment, pre-assignment, periodic, or episodic) and laboratory tests (including chest and other X-ray examinations taken for the purposes of establishing a baseline or detecting occupational illness, and all biological monitoring not defined as an “employee exposure record”).
3. Medical opinions, diagnoses, progress notes, and recommendations.
4. First aid records.
5. Descriptions of treatments and prescriptions, and
6. Employee medical complaints.

“Employee medical record” does not include medical information in the form of:

- a. Physical specimens (e.g., blood or urine samples) which are routinely discarded as a part of normal medical practice.
- 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.).
- c. Records created solely in preparation for litigation which are privileged from discovery under the applicable rules of procedure or evidence.
- d. 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.

F. Personally Identifiable Employee Medical Information as defined by 29 CFR 1913.10(b)(2) means employee medical information accompanied by either direct identifiers (name, address, Social Security number, payroll number, etc.) or by information which could reasonably be used in the particular circumstances indirectly to identify specific employees (e.g., exact age, height, weight, race, sex, date of initial employment, job title, etc.).

G. Principal Investigator (PI) means the OSHA employee designated on a medical access order who is responsible for ensuring that OSHA examination and use of medical information is conducted in accordance with the provisions of the medical access order (MAO) and 29 CFR 1913.10.

H. Professionally Trained. For purposes of 29 CFR 1913.10(c)(3), the term “professionally trained” means the level of training necessary to accomplish the task for which the records are sought. For example, completion of relevant courses provided by the OSHA Training Institute will be considered as meeting

the qualification. Because 29 CFR 1913.10 delineates this as an internal OSHA requirement, a description of professional qualifications is not required to be included in the medical access order.

- I. **Written Access Order** is an authorization by the Assistant Secretary for Occupational Safety and Health, upon the recommendation of the OSHA Medical Records Officer, for specified OSHA staff to examine or copy personally identifiable employee medical information contained in a record held by an employer or other record holder. For purposes of this directive and OSHA standards, the term “written access order” is referred to as “medical access order.”

IX. OSHA Personnel: Roles and Responsibilities.

A. Assistant Secretary of Labor for Occupational Safety and Health.

The Assistant Secretary of Labor for Occupational Safety and Health (Assistant Secretary) is responsible for the overall administration and implementation of the policies and procedures set forth at 29 CFR 1913.10. This responsibility includes making final determinations regarding (1) OSHA access to personally identifiable employee medical information and (2) interagency transfer or public disclosure of personally identifiable employee medical information.

The Assistant Secretary has designated the Director of OSHA’s Office of Occupational Medicine (OOM) as the OSHA Medical Records Officer.

B. Medical Records Officer (MRO).

The MRO reports directly to the Assistant Secretary on matters relating to the policies and procedures established in 29 CFR 1913.10. The MRO is responsible for:

1. Making recommendations to the Assistant Secretary for the approval or denial of medical access orders.
2. Assuring that medical access orders meet the requirements of 29 CFR 1913.10.
3. Responding to employee, collective bargaining agent, and employer objections concerning medical access orders.
4. Controlling the use of direct personal identifiers.
5. Controlling internal agency use and security of personally identifiable employee medical information.
6. Assuring that the results of agency analyses of personally identifiable

medical information are, where appropriate, communicated to employees.

7. Conducting an annual review of all centrally-held information to determine which information is no longer needed for the purposes for which it was obtained.
8. Preparing an annual report on OSHA's experience with application of the requirements in 29 CFR 1913.10, and
9. Assuring that advance notice is given of intended interagency transfer or public disclosures.

C. Principal OSHA Investigator.

The Principal OSHA Investigator (PI) shall be the OSHA employee who is made primarily responsible for assuring that the examination and use of personally identifiable employee medical information is performed in the manner prescribed by a medical access order and the requirements of 29 CFR 1913.10.

The PI shall be:

1. An experienced safety or health compliance officer (CSHO), and;
2. Professionally trained in medicine, public health, or allied fields (e.g., epidemiology, toxicology, industrial hygiene, biostatistics, environmental health, etc.).

When an OSHA inspection is being conducted by a Safety Inspector who does not possess the required professional training stated in section IX.C.2 above, a Team Leader/Assistant Area Director/Area Director or another compliance officer possessing the required training should assist in the investigation and should function as the PI in order to ensure that the examination and use of medical information is performed in the manner prescribed by a written access order.

X. Access to Information for Which a Medical Access Order (MAO) is Required.

29 CFR 1913.10(a) states: "OSHA access to employee medical records will in certain circumstances be important to the agency's performance of its statutory functions. Medical records, however, contain personal details concerning the lives of employees." The regulation also specifies that due to the substantial personal privacy interest involved, OSHA access rights will be exercised only after the agency has made a careful determination of the need for the information; that its examination and use will be limited to only the information needed to accomplish the purpose for which access was sought; that strict procedures for maintenance of confidentiality will be observed; and that the records will be retained by OSHA only for so long as needed to accomplish the purpose for access.

Except as provided in 29 CFR 1913.10(b)(3) through (b)(6), the rules of agency practice and procedure set forth at 29 CFR 1913.10 apply to all requests by OSHA personnel to access personally identifiable employee medical information. OSHA access to personally identifiable employee medical records is governed by the procedures set forth in a written MAO signed by the OSHA Assistant Secretary. The MAO includes provisions for certain OSHA staff to examine or copy specific medical information contained in a record held by an employer or other record holder, as well as how the information is protected once in the agency's possession. **An MAO is required even if an employer voluntarily releases personally identifiable employee medical information to OSHA.**

A. When a Written MAO is Required.

An MAO must be obtained when accessing all personally identifiable employee medical information, unless specifically excluded by the provisions set forth in 29 CFR 1913.10 or this Instruction. For example, a written MAO is required in order to review medical opinions not mandated by an existing OSHA standard.

The determination as to whether a written MAO must be obtained to access medical information should focus on the type of information being sought. Thus, the procedures and requirements for seeking a written MAO and accessing medical information are the same for compliance inspections and investigations, audits and surveillance which are not strictly compliance-oriented (e.g., OSHA VPP evaluations and OSHA consultation visits).

Note: Specific instructions for accessing medical information during VPP evaluations are covered in CSP 03-01-002 - TED 8.4 - Voluntary Protection Programs (VPP): Policies and Procedures Manual.

B. Contents of an MAO.

An access order must meet the requirements set forth in 29 CFR 1913.10(d)(2) before it will be approved by OSHA's Medical Records Officer and signed by the Assistant Secretary. An MAO may be approved when:

1. The information to be examined or copied is relevant to a statutory purpose and there is a need to gain access to the information;
2. The information to be examined or copied is limited to only that information needed to accomplish the purpose for access; and
3. The personnel authorized to review and analyze the information are limited to those who have a need for access and have appropriate professional qualification.

C. Procedures for Obtaining a Written MAO.

The following procedures are also outlined in a flowchart contained in Appendix A of this Instruction.

1. The Compliance Officer should discuss findings with the Team Leader (Team Leader/Supervisory Industrial Hygienist/Assistant Area Director) or Area Director prior to obtaining a medical access order and after all the following steps are taken:
 - a. Review records relevant to the inspection or consultation visit such as: OSHA 300, 301 or equivalent (exposure records, first aid logs, etc.);
 - b. Determine that there is need for further investigation possibly involving personally identifiable medical information.
2. The Area Office should discuss findings with the Regional Office and the Office of Occupational Medicine to determine:
 - a. The need for additional medical review;
 - b. Route of action to take to obtain records;
 - c. Which records may need to be reviewed.
3. If it is determined that an MAO is required,
 - a. Area Office (or Regional Office) must prepare and submit a Medical Access Order (MAO) Request Form to the OSHA Office of Occupational Medicine (Medical Records Officer). This form can be downloaded electronically on the OSHA intranet web page at <http://www.osha.gov/SLTC/medicalaccessorder/mao.pdf>
 - b. Provide a copy of the MAO to the employer and/or health care provider.
 - c. Direct the employer to promptly post a copy of the MAO which does not identify specific employees by direct personal identifiers, as well as post the accompanying cover letter.

D. Administrative Subpoena.

In the past, OSHA has not treated an MAO as equivalent to an administrative subpoena. While 29 CFR 1913.10(d)(1) provides that an MAO may constitute, or be accompanied by, an administrative subpoena, OSHA's consistent practice has been to rely on administrative subpoenas to compel production of medical records by employers. Medical access orders set forth internal OSHA procedure for assuring that appropriate confidentiality of medical records is observed by OSHA personnel. As a result, except when reasonably certain that access will be permitted, an administrative subpoena should be presented to the employer

concurrently with an MAO.

If a subpoena has not already been issued, and the employer refuses access to the information listed on the MAO, seek an administrative subpoena pursuant to the procedures set forth in OSHA Instruction ADM 01-00-002 of 8/19/91.

E. Access and Review.

1. Acquire records specified in the MAO or subpoena:
 - a. Sanitize all identifiers from records and/or store personally identifiable employee medical records in a secure place;
 - b. Review personally identifiable employee medical records only with individuals identified on the MAO;
 - c. Evaluate abnormal findings discovered in the employee medical records, if any.
2. If there is a need to obtain and review additional employee medical records not covered in the initial MAO, the Area Office must discuss this with OOM and go through the procedure above to gain access.
3. If there is no need to review additional employee medical records, close the medical records review as follows:
 - a. Destroy remaining personally identifiable record copies, or
 - b. Return original records to employer/employee/original record holder.

Note: For enforcement purposes, records may be maintained until the case/inspection has become a final order and any appeal period has expired. Proper destruction of records includes, but is not limited to using an office paper shredder to shred documents. Medical records should not be discarded in regular waste containers without first utilizing a method of destruction that will render the information illegible.

F. Access to Medical Information Maintained by Third Parties.

In most cases, employee medical records are recorded and/or maintained for the employer by in-house personnel. However, in some cases, employers may contract with third parties to record and maintain employee medical information. Each employer is responsible for assuring compliance with the preservation and access requirements set forth in 29 CFR 1910.1020 regardless of the manner in which the records are made or maintained. See, 29 CFR 1910.1020(b)(3). When accessing personally identifiable employee medical information from employer contracted third party record holders, follow the same procedures set forth in this Instruction for obtaining an MAO.

Under some circumstances, OSHA may need to access personally identifiable employee medical information maintained by private third parties with no contractual relationship with a specific employer. For example, it may be necessary for OSHA to access medical records maintained by an employee's personal physician or health care provider. In such situations, OSHA has the right to access medical records based on its authority in Section 8 of the OSH Act. OSHA may compel private third party record holders to produce information through an administrative subpoena, or obtain the information through individual employee consent. When accessing personally identifiable medical information from private third party record holders, follow the same procedures set forth in this directive for obtaining an MAO. However, since private third party record holders would not be considered the individual's employer, certain provisions of 29 CFR 1910.1020, such as access to records by employee representatives, would not apply.

XI. Access to Information for Which an MAO is Not Required.

General Guidelines.

There are several categories under which OSHA personnel may access employee medical records without a written medical access order. 29 CFR 1913.10(d)(4) outlines two special situations under which an MAO need not be obtained in order to examine or copy personally identifiable employee medical information. These are 1) when specific written employee consent is obtained and 2) during physician consultations. In addition, there are two general categories under which limited access for on-site-review of personally identifiable medical information is authorized. These are 1) when exemption for on-site review is provided by 29 CFR 1913.10 and 2) when the Assistant Secretary provides authorization to conduct limited review of specific medical information.

NOTE: Even if not subject to the provisions of 29 CFR 1913.10 and/or not requiring access by means of an MAO, all medically related information reported in personally identifiable form must be handled with discretion and care. See 29 CFR 1913.10(b)(7).

A. Access to Examine or Copy Records.

1. Specific Employee Written Consent.

Access to records is permitted when specific written consent of an employee is obtained pursuant to 29 CFR 1910.1020(e)(2)(ii), and the agency or an agency employee is listed on the consent form as the designated representative to receive the information. OSHA personnel may copy and take medical information off-site when granted written permission by the employee. A separate request for a medical access order need not be made. Procedures are outlined in Section XII of this Instruction for the handling of employee medical information obtained

following employee written consent.

2. Physician consultations.

Pursuant to 29 CFR 1913.10(d)(4)(ii), an MAO is not required when an OSHA staff or contract physician consults with an employer's physician. Examination of the medical records is to be limited to on-site review, however, during these consultations, notes may be taken by the OSHA physician. Under these circumstances, no records are to be taken off-site in the absence of an MAO or individual employee consent. Also, no notes taken by the OSHA physician concerning personally identifiable employee medical information should leave the OSHA physician's control without the permission of the OSHA Medical Records Officer.

B. Exemptions from coverage as provided by 29 CFR 1913.10.

In general, 29 CFR 1913.10 provides that OSHA personnel should obtain an MAO when accessing personally identifiable employee medical information. However, under certain circumstances, the regulation states that OSHA's access to information may be accomplished without obtaining an MAO.

1. Exemptions provided by 29 CFR 1913.10(b)(3)-(6).

An MAO is not required when accessing the following information:

- a. Information that is not in personally identifiable form;
- b. Information when an occupational safety and health standard or regulation authorizes OSHA access (e.g., access to audiometric test results as required by OSHA's Occupational Noise Exposure standard at 29 CFR 1910.95(m)(4));
- c. Records required by 29 CFR Part 1904;
- d. Death Certificates;
- e. Employee exposure records, including biological monitoring records treated by 29 CFR 1910.1020(c)(5) or by specific occupational safety and health standards as exposure records;
- f. Medical records obtained in the course of litigation;
- g. Medical records examined by compliance officers and consultants for the sole purpose of verifying employer compliance with medical surveillance recordkeeping requirements of an OSHA standard, or with 29 CFR 1910.1020; and
- h. Information obtained by Assistant Secretary written authorization.

NOTE: The rules regarding access to death certificates, autopsy/coroners' reports, and/or other medical records of deceased employees (e.g., while conducting fatality inspections) may be subject to privacy laws or regulations within individual states. Whenever access is denied to requested medical information concerning deceased employees, OSHA personnel should contact the Medical

Records Officer and/or Regional Solicitors for guidance.

C. Directive Authorizing Limited Review of Specific Medical Information.

This directive establishes Assistant Secretary written authorization for OSHA personnel to conduct limited review of the specific information described below for the purpose of determining compliance with OSHA standards. 29 CFR 1913.10(b)(6) excludes from the rules of agency practice and procedure information “where a written directive by the Assistant Secretary authorizes appropriately qualified personnel to conduct limited review of specific medical information mandated by an occupational safety and health standard, or of specific biological monitoring test results.” Historically, written directives concerning Assistant Secretary authorization have addressed review of (1) medical opinions mandated by OSHA standards (2) information required by a medical surveillance program, and (3) certain information used to verify compliance with Part 1904. This instruction continues this policy.

OSHA personnel *do not* need an MAO when accessing the information for which there is Assistant Secretary written authorization. Instead, OSHA personnel should follow the procedures set forth in this section of the Instruction. Before obtaining access to any of the information authorized by the Assistant Secretary in this section, it must be initially determined that there is a need to gain access. Access to the authorized information addressed in this section shall, if practicable, involve on-site review. When necessary, a minimum of personally identifiable information should be recorded for OSHA purposes and taken off-site.

The Assistant Secretary written authorization set forth in this section is not intended in any way to limit OSHA access to information authorized elsewhere by standard, regulation or directive. However, this section of the instruction does not authorize compliance personnel to conduct a broad investigation of medical records to identify the possible reasons for, or extent of, noncompliance. The Assistant Secretary authorization established by this section of the instruction is intended to provide compliance personnel with the ability to access certain information without having to obtain, and follow the procedures in, an MAO. When OSHA personnel determine a need to review medical records outside the scope of the written authorization set forth in this section of the instruction, access shall be accomplished by means of a written medical access order, or by means of one of the specific exceptions listed in 29 CFR 1913.10.

Whenever personally identifiable employee medical information is obtained pursuant to the Assistant Secretary written authorization described in this section and taken off-site, a PI shall be specifically named. The PI shall be primarily responsible for assuring that the examination and use of this information is handled in accordance with the requirements set forth in 29 CFR 1913.10(h) – (m).

1. Review of Medical Opinions.

OSHA compliance personnel do not need an MAO to review medical opinions mandated by specific OSHA standards, solely for the purpose of determining employer compliance with recordkeeping requirements (i.e., to determine whether the medical opinion exists). See, 29 CFR 1910.1020(e)(3) and 1913.10(b)(4). There may also be additional compliance needs for accessing medical opinions mandated by an OSHA standard. For example, it may be necessary to review medical opinions mandated by a specific standard to evaluate whether an employer is in compliance with the requirements of that standard (e.g., to determine whether an employer failed to take corrective action recommended by a physician, such as medical removal or respiratory protection).

This section of the instruction authorizes qualified compliance personnel to examine without an MAO the content of, and if appropriate, copy physician-written medical opinions mandated by OSHA standards (ex. Lead, Cadmium, Bloodborne Pathogens, Respiratory Protection). The “medical opinion” authorized for access by this section of the instruction is limited to that information the employer is required to retain pursuant to the provisions set forth in OSHA standards. An MAO would be necessary for review of medical opinions that include information beyond the scope of what is required by an OSHA standard. Medical opinions do not generally contain and are not the same as medical diagnoses.

Access to medical opinion information, without an MAO, authorized in this section shall be restricted to situations where qualified OSHA personnel have determined that a review of such information is necessary to verify compliance with OSHA standards. Review of medical opinions is restricted to only information needed to verify compliance.

2. Review of Specific Medical Information Required by a Medical Surveillance Program.

a. General Information.

In order to verify employer compliance with requirements for medical surveillance records, OSHA compliance personnel are provided access without an MAO to employee medical information which is part of a medical surveillance program mandated by a specific OSHA standard (i.e., in order to determine that the medical information exists). See, 29 CFR 1910.1020(e)(3) and 29 CFR 1913.10(b)(4).

It may also be necessary to review medical surveillance records mandated by a specific standard to evaluate whether an employer is in compliance with the requirements of that standard (e.g., to determine whether an employer has instituted control measures that prevent employee absorption of toxic substances or harmful physical agents). Medical surveillance records include 1) biological monitoring results, 2) specific diagnostic test results, and 3) physicians' written opinions required to be maintained by a standard. This section of the instruction authorizes appropriately qualified personnel to examine without an MAO the content of information contained in 1) biological monitoring results, and 2) specific diagnostic test results. Some examples of the diagnostic tests which may be related to workplace medical surveillance are listed in Appendix C of this instruction. Section XI.C.1. of this instruction addresses the Assistant Secretary authorized review of physicians' medical opinions.

b. Review of Biological Monitoring Results.

OSHA personnel are permitted access without an MAO to biological monitoring results which directly assess the absorption of a toxic substance or harmful physical agent by body systems (e.g., blood lead levels; cadmium levels in urine, etc.). These results are defined in 29 CFR 1910.1020(c)(5) as exposure records, not medical records, and therefore, an MAO is not required for OSHA access. An MAO is not necessary for OSHA personnel to review and copy these results.

This Assistant Secretary authorization applies where the tests are part of medical surveillance programs mandated by an OSHA standard, or where a laboratory test is not mandated by an OSHA standard but is:

- 1) A recognized indicator of an employee's past and/or potential exposure to a toxic substance or harmful physical agent which is known to be present or is likely to be present (e.g., hippuric acid found in the urine due to exposure to toluene); or
- 2) A recognized indicator of an adverse health effect of that substance or agent (e.g., pulmonary function testing of employees exposed to silica).

c. Review of Specific Diagnostic Test Results.

There may also be compliance needs for reviewing the content of, and if appropriate, copying employee medical records that pertain to diagnostic tests which measure or reflect the adverse effects of

exposure to toxic substances or harmful physical agents, and which are considered medical records under 29 CFR 1910.1020(c)(6).

Diagnostic test results differ from biological monitoring results in that diagnostic test results provide information which identifies a specific disease or a specific health effect of a substance or agent. As an example, an employee medical file may contain biological monitoring results from blood and urine analysis for cadmium exposure as well as diagnostic test results which identify renal tubular dysfunction or cancer resulting from the employee's exposure to cadmium. Access to this type of medical information (i.e. the diagnostic test results) in personally identifiable form shall be conducted by MAO, or by one of the specific exemptions listed in 29 CFR 1913.10.

d. Process for review of medical surveillance records

- 1) When accessing the specific medical information required by a medical surveillance program authorized by this section, the compliance officer should make a determination that:
 - a) An employee is subjected to a toxic substance or harmful physical agent in the course of employment through any route of entry (e.g., inhalation, ingestion, skin contact or absorption, etc.). This determination of the employee's exposure includes both past and potential exposure.
 - b) The laboratory test is a recognized indicator of this employee's past and/or potential exposure to a toxic substance or harmful physical agent, or a recognized indicator of an adverse health effect of such an exposure. This can be derived from a variety of sources, including recognized textbooks in the field of industrial hygiene, medicine and toxicology; Federal publications; and technical journals.
- 2) This section does not authorize the compliance officer to examine medical records for the purpose of identifying trends of illness which are not directly related to the recognized adverse effects of specific substances or agents addressed by the tests listed in Appendix C of this instruction.
- 3) Because instruments may be calibrated differently among several laboratories, the normal range for test results may vary. When evaluating test results, compliance personnel and consultants

should use the normal range for the laboratory conducting the test. If the normal range is not available or is not provided with the test results, OSHA personnel should use the normal values established in accepted medical texts. If the compliance officer wishes clarification on medical reports, the reporting laboratory and/or OSHA Office of Occupational Medicine should be contacted for assistance.

- 4) Follow procedures outlined in Section XIII.C. of this document for identifying abnormalities.
- 5) Compliance officers have the responsibility to maintain the confidentiality of all medical information and records.
 - a) The compliance officer shall not discuss any of the information found in the records which is or could be identified with specific individuals, with any employee or employee representatives, except the physician or health care personnel in charge of, or who has access to, employee medical records. This restriction applies even in situations where such medical information may be known to those (or other) individuals.
 - b) However, the compliance officer is authorized to reveal the following information to an employee whose medical record has been looked at:
 - i) The laboratory test examined;
 - ii) The rationale for examining that test;
 - iii) The normal range used and where these ranges were derived; and
 - iv) The numerical test result if known by the compliance officer.

NOTE: The compliance officer should not attempt any further discussion with the employee of the meaning of the results, conclusions, interpretations, diagnoses, etc. These judgments can only be made in view of the total medical record and only by an examining physician. If the employee wants clarification, he/she should be referred to a physician for any discussion of test results.

D. Procedures for Review of Specific Medical Information to Verify Compliance with 29 CFR 1904.

1. General Information.

29 CFR 1913.10(b)(3) states that the rules of agency practice and procedure do not apply to the injury and illness records required by 29 CFR 1904. The agency interprets this to mean that OSHA personnel do not need an MAO to access the following:

- a. OSHA Form 300, *Log of Work-Related Injuries and Illnesses*.
- b. OSHA Form 300-A, *Summary of Work-Related Injuries and Illnesses*.
- c. OSHA Form 301, *Injury and Illness Incident Report*, or equivalent.
- d. Certain related information, such as first aid logs or first report of injury, that is no more detailed than the type of information contained in OSHA Form 301.
- e. Sharps Injury Log.

In some situations, it may be necessary for compliance personnel to gain access to certain additional medical information to verify compliance with the recordkeeping requirements of 29 CFR 1904. This information (written medical opinions, progress notes, prescriptions, recommendations) would be the type of information that contains more detail than that required on OSHA Form 301. OSHA personnel may need to examine this medical information in a personally identifiable form in order to determine whether all workplace injuries and illnesses are properly recorded under Part 1904.

This section authorizes appropriately qualified personnel to examine without an MAO the contents of and, if appropriate, copy the employee medical information listed below when needed to verify compliance with 29 CFR 1904 recordkeeping requirements including:

- a. Daily reports of new injury or illness cases;
- b. State workers' compensation forms;
- c. First aid records;
- d. Nurse/Physician/clinic logs;
- e. Company accident reports; insurers' accident reports;
- f. Sanitized medical records available to employer officials outside the medical office;
- g. Return to work slips;
- h. Records related to medical removal.

Access to the information authorized by this section should be restricted to situations where qualified OSHA personnel have determined that a review of such information is necessary to verify employer compliance with 29 CFR 1904 recordkeeping requirements. When the medical information authorized to be reviewed by this section indicates that injuries and/or illnesses are occurring that are not being recorded, OSHA will investigate the employer's rationale not to record. In order to conduct a complete investigation of all relevant information, it may be necessary to examine additional employee medical records. Access to personally identifiable employee medical information outside the scope of the written authorization established in this section should be conducted as outlined in 29 CFR 1913.10 and the provisions of this directive.

2. Limited removal of records.

Access to the records authorized by this section shall, if practicable, involve on-site review. If possible, remove direct personal identifiers from the medical information on-site and code the medical information and the list of direct identifiers with a unique identifying number for each employee. A minimum of personally identifiable information should be recorded for enforcement purposes and taken off-site.

3. Limited review of more sensitive records.

Records reviewed to assess 29 CFR 1904 compliance should be screened in reverse order of sensitivity (the least sensitive first) to determine needs for further review. The order of review is normally as follows:

- a. OSHA 300, OSHA 301, or equivalent.
- b. State workers' compensation forms.
- c. First aid records, first report of injury, licensed healthcare professional logs, company accident reports, and insurer's accident reports, whose information is no more detailed than that of the OSHA 301 or equivalent.
- d. Any additional, sanitized medical information describing injuries and illnesses resulting from workplace injuries available to employer officials outside of the medical office.
- e. Supporting records that also contain more detailed medical information, such as medical opinions, progress notes, prescriptions, and recommendations.

4. Limited access to employee medical file.

Personally identifiable employee medical information should be requested

in as specific terms as possible to avoid unnecessary reviews of complete employee medical files. The limited review described above in Section F of this instruction is simply for situations where OSHA needs to verify compliance with 29 CFR 1904 (i.e., whether employers are keeping the records required to be maintained). This authorization does not extend to more extensive audits of the employee medical records themselves. Extensive injury and illness audits requiring review of complete medical records in personally identifiable form generally requires an MAO.

5. Limited unnecessary documentation of authorized backup records.

Documentation of potential 29 CFR 1904 noncompliance through backup records where review is authorized by this section should be confined to:

- a. Employee name;
- b. Nature and location of record;
- c. Nature of observed recordkeeping deficiency.

XII. Individual Employee Consent.

- A.** Pursuant to 29 CFR 1910.1020(e)(2)(ii), OSHA may obtain access to employee medical information through specific written consent of the individual who is the subject of the medical record. Under such circumstances, an MAO is not required if OSHA or an OSHA employee is listed on the release form as the designated representative to receive the medical information.

29 CFR 1913.10(d)(4)(i) provides that whenever personally identifiable employee medical information is obtained through specific written consent and taken off-site, offices shall:

1. Promptly name a Principal OSHA Investigator to ensure protection of this information.
2. Notify the Medical Records Officer (29 CFR 1913.10(c)(2)) of the Principal OSHA Investigator's identity.
3. Ensure that the personally identifiable medical information obtained is subject to the use and security requirements of 29 CFR 1913.10.

- B.** In situations where compliance officers seek employee written consent for the release of medical record information, the following steps should be taken:

1. Determine that there is a need to gain access to the medical records.

2. Specify what laboratory tests, examination results or other specific medical record will be looked at for each employee, based upon known or suspected occupational exposures and the known or suspected toxicity of such exposures.
 3. Have available the range of normal values for each laboratory test to be examined (based on actual laboratory normal values or accepted normal values from a standard text).
 4. Prepare an authorization letter which contains all of the information outlined in 29 CFR 1910.1020(c)(12)(i) to be used when obtaining an employee's written consent.
 5. Obtain the approval of the Assistant Area Director/Supervisory Industrial Hygienist/Team Leader or Area Director.
 6. Explain to affected employee(s):
 - a. OSHA's need for access to his or her medical record;
 - b. OSHA's administrative procedures for assuring that the records are kept confidential;
 - c. The employee's right to refuse OSHA's request for written consent; and
 - d. That no adverse action will be taken against the employee if he or she does refuse to give written consent.
- C. Whenever employees object to OSHA access to their medical information, requests for a medical access order shall include the specific objections.

XIII. Miscellaneous Procedures for OSHA Access to Medical Information.

A. Restriction of Off-site Review.

Access to personally identifiable employee medical information, whether via employee consent or MAO, should be done on-site, if practicable. A minimum of such information should be recorded and/or taken off-site.

B. Restriction of Use.

OSHA employees and contractors are only authorized to use personally identifiable employee medical information for the purpose for which it was obtained, unless the specific written consent of an employee is obtained as to a secondary purpose, or the procedures in 29 CFR 1913.10(d) through (g) are followed.

C. Identifying Abnormalities.

When evaluating test results, compliance personnel should use, if available, the normal range for the laboratory conducting the test. If the normal range for the laboratory conducting the test is not provided or is not available, OSHA personnel should use the normal values established in acceptable medical texts. When an abnormality is identified, the compliance officer should investigate the abnormality through the following mechanisms:

1. Consult with the employer, examining physician or health care personnel in charge of, or who has access to, employee medical records. If, based on this consultation, the compliance officer determines that no further investigation is necessary, documentation in the files should be made of:
 - a. Whose records and which tests were examined;
 - b. The rationale for examining these tests;
 - c. All abnormalities found (without personally identifiable information); and
 - d. What procedures were followed.

NOTE: Personally identifiable information shall be removed from all other field notes concerning these test results once a decision has been made that no further action is necessary.

2. If the procedure in subparagraph 1 above is not followed, or if it was followed but no satisfactory response was given, contact the Regional Office, and the Regional Office, in turn, will either obtain the services of a medical consultant or contact the Director of the Office of Occupational Medicine.

D. Notifying Employees of Abnormal Results.

1. When abnormalities have been satisfactorily explained by the employer's physician, the compliance officer should determine whether the physician notified the employee of the results.
2. When the services of a contract or National Office physician have been used, the compliance officer should ensure that the physician notifies the employee of any abnormalities found.
3. All OSHA personnel who are authorized to review and maintain medical records have the responsibility to maintain the confidentiality of all medical information and records. Please refer to Section XIV of this instruction which outlines confidentiality procedures.

E. Access to HIV, HBV and Other Bloodborne Pathogens Infection Records.

OSHA's authority to access medical records includes a right of access to HIV, HBV and other bloodborne pathogens infection results of a source individual (e.g., a patient) without specific consent of the tested source individual. OSHA also has authority to access the HIV, HBV and other bloodborne pathogens infection results of an employee who has been tested. However, those results will not normally be included in the employee's medical record at the workplace because the healthcare professional, who evaluates the employee after an exposure incident, does not include diagnoses in the written report provided to the employer and employee.

29 CFR. §1910.1030(f)(5)(iii). The information would normally have to be obtained from the employee or the employee's healthcare professional. In the case of HIV test results from post-exposure evaluations, OSHA may request access to identify work-related seroconversion and to assure that tested employees are provided appropriate post-exposure evaluation, care, and counseling. In order to obtain these results, a medical access order must be obtained.

F. Access to Employee Alcohol or Drug Testing Information.

OSHA's access to complete medical records includes access to alcohol or drug test results that are maintained as part of the employer's medical program and its records. In certain circumstances (e.g., accident investigations), alcohol and/or drug test results that are maintained as part of an employer's medical program may be pertinent to OSHA's investigation. However, alcohol and drug test results from voluntary employee assistance programs (e.g., alcohol, drug abuse or personal counseling programs) that are maintained separately from the employer's medical program are exempted from the definition of "*employee medical records*" in 29 CFR 1910.1020. As such, OSHA access to these types of alcohol and drug test records is not compulsory.

XIV. Security and Confidentiality of Medical Records.

A. Confidentiality. OSHA compliance officers have the responsibility to maintain the confidentiality of all medical information and records.

1. The compliance officer shall not discuss any of the information found in the records which is associated with specific individuals, with any employer or employee representatives except the physician or health care personnel in charge of, or who has access to, employee medical records. This restriction applies even in situations where such medical information may be known to those specific (or other) individuals.

However, the compliance officer may reveal the following information to

an employee whose medical record has been reviewed:

- a. The laboratory test examined;
- b. The rationale for examining that test;
- c. The normal ranges used and the sources of these ranges; and
- d. The numerical test result if known by the compliance officer.

NOTE: The compliance officer should not attempt any further discussion with the employee of the meaning of the results, conclusions, interpretations, diagnoses, etc., as such judgments can be made only in view of the total medical record and only by a physician. If the employee wants clarification, he/she shall be referred to a physician for any discussion of test results.

B. Removal of Direct Personal Identifiers [29 CFR 1913.10(g)].

As required by 1913.10(g), all direct personal identifiers shall be removed whenever employee medical information obtained pursuant to a medical access order is taken off-site, unless otherwise directed by the OSHA MRO:

1. Code all medical information by assigning a unique identifying number to each employee.
2. Separate all direct personal identifiers from the medical information.
3. Keep coded medical information secure and treat it as though it is still in a directly identifiable form.
4. Deliver a list of direct personal identifiers with their corresponding numerical codes to the OSHA MRO.
5. The MRO must limit the use and distribution of the list of coded identifiers to those with a need to know the contents.

C. Interagency Transfer and Public Disclosure.

Personally identifiable employee medical information obtained pursuant to this instruction shall not be transferred to another agency or office outside of OSHA (other than to the Office of the Solicitor of Labor) or disclosed to the public except when required by law or approved by the Assistant Secretary.

D. Medical Records Maintained in Electronic Form.

In some instances, employers and other record holders may maintain personally identifiable employee medical information in electronic form. A “record” means any item, collection or grouping of information regardless of the form or process by which it is maintained (e.g., paper document, microfilm, X-ray film or automated data processing). (See, 29 CFR 1910.1020). Medical records maintained in electronic form may also include such media as magnetic tape, computer disks, and online computer storage. Generally, when accessing and/or copying personally identifiable medical information in electronic form, OSHA

personnel shall follow all of the requirements set forth at 29 CFR 1913.10.

Consistent with the access and privacy requirements listed in 29 CFR 1913.10, when personally identifiable employee medical information in electronic form is taken off-site, the Principal OSHA Investigator (PI) is primarily responsible for ensuring that such information is properly used and kept secured. In particular, the PI is responsible for preventing any careless, accidental, unintentional disclosure, modification, or destruction of personally identifiable employee medical information in electronic form.

The PI is also responsible for controlling the flow of data into, through, and from agency computer operations. The transfer and/or duplication of information in electronic form (i.e., compact disk, computer floppy disk) should be kept to the minimum necessary to accomplish the purpose for which it was obtained. The PI shall ensure that distribution and review of medical information in electronic form is limited to only those employees and contractors with a need for access. The OSHA Medical Records Officer and Principal OSHA Investigator shall each maintain a log of all uses and transfers of personally identifiable employee medical information in electronic form.

Electronic files containing personally identifiable employee medical information shall only be downloaded to a computer hard drive or laptop that is secured (e.g., password protected). Electronic files containing personally identifiable employee medical information shall not be transferred to authorized personnel through e-mail attachment. If an employer or other record holder(s) provides access to medical information through e-mail attachment, the PI shall download the attachment to a secured hard drive or laptop and permanently delete the e-mail. The PI should consult OSHA Information Technology (IT) office for instructions on how to permanently delete the e-mail.

Personally identifiable employee medical information in electronic form shall be secured when not in use. Medical information in electronic form should only be maintained or stored where facilities and conditions are designed to prevent unauthorized access.

Like paper documents, personally identifiable employee medical information in electronic form shall be maintained only for so long as needed to accomplish the purpose for access. When no longer needed, the Principal OSHA Investigator shall ensure that all personally identifiable, employee medical information maintained on electronic files or disks has been deleted, destroyed, or returned to the original record holder. The disposal of personally identifiable employee medical information in electronic form shall be accomplished in such a manner as to make the data unobtainable by unauthorized personnel. Additionally, all unneeded medical information stored on reusable media, such as magnetic tapes

and disks, shall be erased prior to media reuse. Finally, the PI shall indicate on the log used to track the use and transfer of medical information, the date and time when each electronic file copy has been deleted, destroyed or returned.

When accessed by OSHA personnel, information in electronic form is subject to all laws, regulations, and DOL policies and procedures, including (but not limited to) the privacy and confidentiality protection provisions in the Privacy Act of 1974 (including DOL implementing regulations at 29 CFR Part 71 and DLMS 5-200). As of the issuance date of this Instruction, specific DOL policies and management responsibilities addressing the protection of personally identifiable information and other sensitive data in electronic form are set forth in DLMS-9, Information Management.

E. The HIPAA Privacy Regulation.

The Health Insurance Portability and Accountability Act of 1996 (HIPAA) privacy regulation (45 CFR 160 and 164) generally requires that covered entities such as health care providers handling individually identifiable health information assure the confidentiality of such records. The fundamental requirement of the regulation is that a covered entity may not use or disclose protected health information (PHI) without the written authorization of the individual to whom the records relate. However, the regulation specifically provides exemptions for disclosures by covered entities of health information without individual authorization to “public health authorities” and to “health oversight agencies.” *See*, 45 CFR 164.512(b) and (d). The preamble to the HIPAA privacy regulation specifically mentions OSHA as an example of both. 65 FR 82492, 82526. A separate set of exemptions generally allows covered entities to disclose PHI as required by law and as necessary for law enforcement and judicial and administrative purposes. *See*, 45 CFR 164.512(a), (e) and (f). As a result, it is clear that most if not all OSHA requirements for access to employee medical records are unaffected by the HIPAA privacy regulation; employers have no basis to object that the privacy regulation prevents them from providing records to OSHA, or to those with a right of access under OSHA regulations, on the ground that authorization of individual employees is required.

The privacy regulation does not govern the treatment of PHI once OSHA (which does not meet the definition of a covered entity under the regulation) receives it. Therefore, internal agency policies regarding use and disclosure of medical information remain intact. Questions regarding the interaction of the HIPAA privacy regulation with OSHA requirements should be directed to the Office of Occupational Medicine, which will consult with the Office of the Solicitor as needed.

XV. Citation Guidelines.

OSHA compliance personnel should verify employer compliance with medical recordkeeping requirements by interviewing employer and employee representatives, employees, and where appropriate, physicians.

In addition, compliance personnel may want to verify compliance by reviewing the records.

When medical records are used to verify compliance:

1. Documentation of noncompliance will include only the employee's name and violation, not the specific medical information.
2. Documentation of compliance will consist of a statement attesting to a check of some of the records and compliance with the specific recordkeeping requirements.
3. No analysis is to be made of the medical content of the file. If copying or review of the medical file is necessary, follow the procedures in 29 CFR 1913.10 (e.g., appoint a PI and obtain an MAO where applicable).
4. Citations for deficiencies in meeting 29 CFR 1910.1020 requirements should be considered based on criteria outlined in the Field Inspection Reference Manual.

XVI. Training Requirements.

The Regional Administrator/Area Office Director is responsible for ensuring that all OSHA field personnel have been adequately trained on internal OSHA policies required for conducting inspections. Whenever an MAO is necessary for the review of personally identifiable employee medical records in an inspection initiated by a compliance safety and health officer who does not meet the training requirements, as required by 29 CFR 1913.10, the Area Director shall assign the responsibilities of the PI to an adequately trained staff member.

Appendix A- Typical Process for Obtaining a Written Medical Access Order

Compliance Safety and Health Officer (CSHO)

- Identifies potential need to review employee medical records based on observations
- Consults with the Supervisor/Area Director regarding findings and to determine if an identifiable and supportable need exists to obtain access to personally identifiable employee medical information
- After authority is granted*, contacts OOM to discuss the need for an MAO
- Fills out the request form for the MAO which may be completed online, or sent by fax, e-mail, or U.S. mail

Note: The CSHO may consult with the OOM at any point during the inspection to discuss findings.



Area Director, Supervisor/Team Leader and Regional Office

- Appoints a PI or responsible individual who is qualified to conduct the inspection
- Review MAO requests for adequacy and need
- Determines if there is a need to notify the Regional Solicitor on the matter



Medical Records Officer (MRO)

- Determines that there is an identifiable and supportable need to obtain access to personally identifiable employee medical information
- Drafts and approves the MAO and accompanying letters
- Forwards the MAO and accompanying letters to the Office of the Solicitor

Note: Normally, the Director of OOM is selected as the MRO.



Solicitor

- Reviews the MAO to determine that it is legally supportable and meets the requirements of the standard(s)
- Reviews company's history of enforcement activities
- Forwards the MAO and accompanying letter to the Assistant Secretary



Assistant Secretary

- Approves the MAO, and returns the MAO to the MRO



Medical Records Officer (MRO)

- Upon Solicitor review and Assistant Secretary approval, forwards the MAO to the PI

***Who provides authority to the CSHO will depend on the Area Office and Region. If the Regional Administrator and/or Area Director are involved in reviewing the need for a MAO, the MRO encourages that a teleconference be held between OOM, the Regional Administrator, Area Office Director, and CSHO supervisor to facilitate review.**

APPENDIX B-1 – Sample Authorization Letter for Release of Employee Medical Record Information to Designated Representative

I, _____, (full name of employee/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 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-2 – Sample Request for a Written Access Order

- I. Cover Memorandum. A brief cover memorandum shall be written from the Regional Administrator to the MRO bringing the request to his/her attention. The cover memorandum and accompanying enclosures shall be marked "confidential."

- II. Sample Written Access Order. Pursuant to the Occupational Safety and Health Act of 1970 (see 29 CFR 1910.20(e)(3)) you are hereby required to make certain employee medical records available for examination and copying by authorized Occupational Safety and Health Administration (OSHA) officials. You must provide access to the medical information listed below on all employees listed in Attachment A of this Access Order.

You are hereby required to make available _____
The Assistant Secretary for Occupational Safety and Health has determined that it is necessary for Agency personnel to examine this employee medical information to ensure safe and healthful working conditions for employees at the _____ (name of company).

The statutory purpose for seeking Agency access to this information is to determine

The Assistant Secretary has also determined that it is necessary to examine this medical information in a personally identifiable form because the Agency has reason to believe that the specific employees covered by this order are those employees most likely to be experiencing occupational health problems from workplace exposure to _____-(name toxic substance or harmful physical agent).

Appendix C – Examples of Specific Medical Test Results that may Reveal Work Related Absorption and/or Exposure to a Toxic Substance or Harmful Physical Agent:

1. Audiograms
2. Blood Urea Nitrogen (BUN)
3. Complete blood count with differential and description of peripheral smear
4. Creatine phosphokinase (CPK)
5. Erythrocyte and plasma cholinesterase assays
6. Erythrocyte sedimentation rate
7. Lactic dehydrogenase (LDH)
8. Metabolites found in blood when a specific exposure is identified or postulated
9. Metabolites found in urine when a specific exposure is identified or postulated
10. Platelet count
11. Pulmonary function
12. Radiologists' interpretations of employee X-rays
13. Serum bilirubin
14. Serum calcium
15. Serum cholesterol
16. Serum creatinine
17. Serum electrolytes
18. Serum glutamic-oxaloacetic transaminase (SGOT) or Aspartate aminotransferase (AST)
19. Serum glutamic-pyruvic transaminase (SGPT) or Alanine aminotransferase (ALT)
20. Serum phosphorus
21. Serum triglycerides
22. Urinalysis, including test for hematuria, glucosuria, proteinuria, ketonuria, and microscopic examination of urine
23. Urine and sputum cytology reports
24. Zinc protoporphyrin test