OCCUPATIONAL SAFETY AND
HEALTH REVIEW COMMISSION

29 CFR Part 2400

Regulations Implementing the Privacy
Act

AGENCY: Occupational Safety and Health
Review Commission.

ACTION: Final rule.

SUMMARY: The Occupational Safety and
Health Review Commission (OSHRC) is
amending its regulations implementing the
Privacy Act of 1974. The amendments to the Privacy Act
regulations, which were last revised in 2006, are intended to both modernize
the regulations and make them simpler to understand.


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SUPPLEMENTARY INFORMATION:

I. Revisions to Part 2400

OSHRC’s regulations implementing the
Privacy Act, 29 CFR part 2400, were
promulgated on January 19, 1979, 44 FR
3968, and revised on April 30, 1993, 58
FR 26065, and September 29, 2006, 71
FR 57421. OSHRC is revising these regulations to both modernize and
streamline them in the convenience of
the reader. OSHRC has reproduced the
regulations and their revisions in their
entirety.

Throughout part 2400, OSHRC is
revising language primarily to (1) clarify
whether the word “days” refers to working days or calendar days and to
eliminate numbers written as words; (2)
delete exclusive use of male
pronouns and, where possible,
minimize the use of gender-specific
pronouns; (3) use the phrase “personal
records” where appropriate to refer to
records that are about an individual; (4)
streamline or clarify sentences without
changing substantive requirements; and (5)
account for deleted or renumbered
provisions referenced in this part.

Additional amendments to part 2400 are
discussed below in regulatory sequence.

In 29 CFR 2400.1 (Purpose and
scope), OSHRC is making several amendments to clarify what part 2400
covers. In 2006, OSHRC amended this provision to state that “[t]his part is
applicable only to records that are
maintained by the Occupational Safety
and Health Review Commission . . . except for records that are disclosed to
consumer reporting agencies under
section 3711(e) of title 31, United States
Code.” The statutory requirement, 5
U.S.C. 552a(m), simply states that a
consumer reporting agency to which
records are disclosed is not considered
a government contractor. To clarify that
point, OSHRC is deleting the clause that
determines that consumer reporting agencies are disclosing records to
consumer reporting agencies under
which a record is disclosed under
31 U.S.C. 3711(e).”

OSHRC is also revising the last two
sentences of 29 CFR 2400.1 to read as
follows: “This part does not affect
discovery in adversary proceedings
before the Commission. Discovery is
governed by the Commission’s Rules of
Procedures in 29 CFR part 2200, subpart
D.” This is the same language that is
used in 29 CFR 2400.1, the purpose and
scope provision of the agency’s FOIA
regulations.

In 29 CFR 2400.2 (Description of
agency), OSHRC is revising this section to make it identical to 29 CFR 2201.2,
the agency’s comparable FOIA
provision.

In 29 CFR 2400.3 (Delegation of
authority), OSHRC is adding the
following requirement: “As necessary,
the Privacy Officer shall coordinate this
delegated responsibility with the Senior
Agency Official for Privacy” (SAOP).

According to OMB, “[t]he SAOP shall
have a central role in overseeing,
coordinating, and facilitating the
agency’s privacy compliance efforts. In
this role, the SAOP shall ensure that the
agency complies with applicable
privacy requirements in law, regulation,
and policy.” Role and Designation of
Senior Agency Officials for Privacy,
OMB Memorandum 16–24 (Sept. 15,
2016). In order for the SAOP to
adequately fulfill these requirements, it
is necessary for the Privacy Officer to
coordinate with the SAOP on Privacy
Act issues.

OSHRC is deleting paragraph (b) of
29 CFR 2400.4 (Delegation of
authority), as well as 29 CFR 2400.4
(Collection and disclosure of personal
information), because these sections are
unnecessary under 5 U.S.C. 552a(ff), the statutory
provision requiring agencies that maintain systems of records to
promulgate rules that establish
procedures to implement certain aspects
of the Privacy Act. Moreover, the
requirements being deleted are either
already specified in the Privacy Act, 5
U.S.C. 552a(b), (c), and (e), or are more
appropriately addressed in the agency’s
system-of-records notices, 5 U.S.C.
552a(e).

OSHRC is deleting paragraphs (a) and
(b) of 29 CFR 2400.5 (Notification) and
moving paragraph (c)—which addresses
notification of persons or other agencies
who have received Privacy Act records
that have subsequently been amended—
to a new section that concerns
procedures for statements of
disagreement and notification of
amendment (new 29 CFR 2400.8). Also,
OSHRC is incorporating the
requirements set forth in paragraph
(a)(1), which pertain to written requests
for notification on whether a system
contains records about the requester,
into the section that concerns
procedures for requesting records
(current 29 CFR 2400.6, new 29 CFR
2400.4).

OSHRC is revising current 29 CFR
2400.6 to specify that the procedures
included in this section apply to
requests for notification of a system of
records’ content, as well as requests for
access to records. OSHRC also is
including an additional method for
requesting notification of or access to
records—submitting requests to the
FOIA Disclosure Officer in accordance
with the procedures set forth at 29 CFR
2201.5(a)—to provide an alternative
for mail or in-person visits. As to the
paragraph concerning “verification of
identity,” OSHRC is revising to simplify
the verification requirements and to
eliminate verification by a notarized
statement, which is unnecessary given
that verification can be accomplished by
declaration in accordance with 28
U.S.C. 1746. Finally, to better reflect the
contents of this section, OSHRC is
revising the section heading as follows:
“Procedures for requesting notification
of and access to personal records.”

OSHRC is revising current 29 CFR
2400.7 to divide the requirements in
paragraph (a) into two separate
paragraphs. New paragraph (a) focuses
on the Privacy Officer’s responsibilities,
once a Privacy Act request concerning
medical records is received, and new
paragraph (b) focuses on the
requirements that must be satisfied
before records are forwarded to a
designated physician.

OSHRC is revising paragraph (a) of
current 29 CFR 2400.8 to clarify that
requests to amend records should be
requested in the same manner as
requests for notification of and access to
records. Although no substantive
changes are being made to paragraph
(b), it is being revised to clarify the
Privacy Officer’s responsibilities,
including explicitly specifying that the
requester must be notified in writing
how an amendment request has been
resolved. Finally, OSHRC is revising the
section heading as follows: “Procedures
for amending personal records.”

OSHRC is revising paragraph (a) of
current 29 CFR 2400.9 to clarify that the

65221 Federal Register / Vol. 85, No. 200 / Thursday, October 15, 2020 / Rules and Regulations
denial of “a request to provide notification of a record, or to access or amend a record”—in other words, request denials under new §§2400.4, 2400.5 and 2400.6—can be appealed to the Chairman. OSHRC also is revising paragraph (b) to require that the requester be notified, within the initial 30 working-day period for making a final decision, if the Chairman has extended the time period for good cause. In addition, OSHRC is moving paragraph (d) to a new section that concerns procedures for statements of disagreement and notification of amendment (new 29 CFR 2400.8).

OSHRC is adding new 29 CFR 2400.8, which has the heading, “Procedures for statements of disagreement and notification of amendment.” The requirements for this new provision are presently included in paragraph (c) of 29 CFR 2400.5 and paragraph (d) of 29 CFR 2400.9. OSHRC is revising these paragraphs for clarification purposes, none of which change the substantive requirements.

The deletion of current 29 CFR 2400.4 and 29 CFR 2400.5, and the addition of new 29 CFR 2400.8, results in current §§2400.6, 2400.7, 2400.8, and 2400.9 being re-designated as §§2400.4, 2400.5, 2400.6, and 2400.7, and current §2400.10 being re-designated as §2400.9.

II. Statutory and Executive Order Reviews

Executive Orders 12866 and 13132, and the Unfunded Mandates Reform Act of 1995: OSHRC is an independent regulatory agency and, as such, is not subject to the requirements of E.O. 12866, E.O. 13132, or the Unfunded Mandates Reform Act, 2 U.S.C. 1501 et seq.

Regulatory Flexibility Act: The Chairman of OSHRC certifies under the Regulatory Flexibility Act, 5 U.S.C. 605(b), that these rules will not have a significant economic impact on a substantial number of small entities. The only provision in part 2400 that could economically impact a small entity pertains to how OSHRC charges its Privacy Act fees, and that provision is not being revised. Moreover, when fees are assessed, the amounts are generally minimal; and it is not anticipated that the amendments to other provisions within part 2400 will have much affect (if any) on the number of entities responsible for paying Privacy Act fees or the amounts of those fees. Finally, the Privacy Act’s protections apply to “individuals,” which typically would not include “small entities.” For these reasons, a regulatory flexibility analysis is not required.

Paperwork Reduction Act of 1995: OSHRC has determined that the Paperwork Reduction Act, 44 U.S.C. 3501 et seq., does not apply because these rules do not contain any information collection requirements that require the approval of OMB.

Congressional Review Act: These revisions do not constitute a “rule” as defined by the Congressional Review Act, 5 U.S.C. 804(3)(C), because they involve changes to agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties.

List of Subjects in 29 CFR Part 2400

Privacy.

James J. Sullivan, Jr., Chairman.

For the reasons set forth in the preamble, OSHRC revises 29 CFR part 2400 to read as follows:

PART 2400—REGULATIONS IMPLEMENTING THE PRIVACY ACT

Sec.

2400.1 Purpose and scope.

2400.2 Description of agency.

2400.3 Delegation of authority.

2400.4 Procedures for requesting notification of and access to personal records.

2400.5 Special procedures for requesting medical records.

2400.6 Procedures for amending personal records.

2400.7 Procedures for appealing.

2400.8 Procedures for statements of disagreement and notification of amendment.

2400.9 Schedule of fees.

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

§ 2400.1 Purpose and scope.

This part provides procedures to implement the Privacy Act of 1974, 5 U.S.C. 552a. It is applicable only to records that are maintained by the Occupational Safety and Health Review Commission (OSHRC or the Commission), which includes all systems of records operated by an entity on behalf of OSHRC, pursuant to a contract, to accomplish an agency function. For purposes of this part, such contractors do not include any consumer reporting agency to which a record is disclosed under 31 U.S.C. 3711(e). This part does not affect discovery in adversary proceedings before the Commission. Discovery is governed by the Commission’s Rules of Procedures in 29 CFR part 2200, subpart D.

§ 2400.2 Description of agency.

OSHRC adjudicates contested enforcement actions under the Occupational Safety and Health Act of 1970, 29 U.S.C. 651–678. The Commission decides cases after the parties are given an opportunity for a hearing. All hearings are open to the public and are conducted at a place convenient to the parties by an Administrative Law Judge. Any Commissioner may direct that a decision of a Judge be reviewed by the full Commission. The President designates one of the Commissioners as Chairman, who is responsible on behalf of the Commission for the administrative operations of the Commission.

§ 2400.3 Delegation of authority.

The Chairman shall designate an OSHRC employee as the Privacy Officer and shall delegate to the Privacy Officer the authority to ensure agency-wide compliance with this part. As necessary, the Privacy Officer shall coordinate this delegated responsibility with the Senior Agency Official for Privacy.

§ 2400.4 Procedures for requesting notification of and access to personal records.

The purpose of this section is to provide procedures by which an individual may request notification about whether a system of records contains a record about that individual (“a personal record”), or may gain access to such a record included in a system of records.

(a) Submission of requests—(1) Manner. An individual seeking information regarding the content of a system of records or access to a personal record in a system of records should submit a written request either in person or by mail to the Privacy Officer, OSHRC, One Lafayette Centre, 1120 20th Street NW, Ninth Floor, Washington, DC 20036–3457. A request may also be submitted to the FOIA Disclosure Officer in accordance with the procedures set forth at 29 CFR 2201.5(a). Such a request, however, must be identified as a “Privacy Act Request.” The FOIA Disclosure Officer will forward any request identified in this manner to the Privacy Officer for processing.

(2) Notification requests. A request for notification about whether a system of records contains a personal record must specify which system of records, as described in the agency’s system-of-records notices published in Federal Register, is the subject of the request.

(3) Access requests. A request for access to a personal record shall
describe the nature of the record sought, the approximate dates covered by the record, and the system of records in which the record is thought to be included as described in the agency’s system-of-records notices published in the Federal Register. The request should also indicate whether the requester wishes to review the record in person or obtain a copy by mail. If the information supplied is insufficient to locate or identify the record, the requester shall be notified promptly and, if necessary, informed of the additional information required.

(b) Period for response. After receiving a request, the Privacy Officer shall respond to it no later than 10 working days from the request’s receipt.

(c) Verification of identity. The following standards for verifying an individual’s identity are applicable to any individual who requests a personal record under this part:

(1) An individual seeking access to a record in person shall, if possible, present a government-issued identification that includes a photo, such as a passport or a driver’s license.

(2) An individual seeking access to a record by mail shall, if possible, provide a signature, address, date of birth, place of birth, and a photocopy of a government-issued identification that includes a photo, such as a passport or a driver’s license.

(3) An individual seeking access to a record either by mail or in person who cannot provide the necessary documentation of identification specified in paragraphs (c)(1) and (2) of this section may provide a declaration in accordance with 28 U.S.C. 1746, swearing or affirming to his or her identity and to the fact that he or she understands the penalties for false statements pursuant to 18 U.S.C. 1001.

(d) Verification of guardianship. The parent or guardian of a minor or an individual judicially determined to be incompetent and seeking to act on behalf of such minor or incompetent shall, in addition to establishing his or her own identity, establish the identity of the minor or other individual he or she represents as required in paragraph (c) of this section and establish his or her own parentage or guardianship of the subject of the record by furnishing either a copy of a birth certificate showing parentage or a court order establishing the guardianship.

(e) Accompanying persons. An individual seeking to review a personal record in person may be accompanied by another individual of his or her own choosing. Both the individual seeking access and the accompanying individual shall be required to sign a form provided by OSHRC indicating that OSHRC is authorized to discuss the contents of the subject record in the presence of both individuals.

(f) When compliance is possible. (1) The Privacy Officer shall inform the requester of the determination to grant the request and shall make the personal record available to the individual in the manner requested, that is, either by forwarding a copy of the information to the requester or by making it available for review, unless:

(i) It is impracticable to provide the requester with a copy, in which case the requester shall be notified of this and informed of the procedures set forth in paragraph (c) of this section, or

(ii) The Privacy Officer has reason to believe that the cost of a copy is considerably more expensive than anticipated by the requester, in which case the Privacy Officer shall notify the requester of the estimated cost, and ascertain whether the requester still wishes to be provided with a copy of the information.

(2) Where a personal record is to be reviewed by the requester in person, the Privacy Officer shall inform the requester in writing of:

(i) The date on which the record shall become available for review, the location at which it may be reviewed, and the hours for inspection;

(ii) The requirements for verifying identity as set forth in paragraphs (c) and (d);

(iii) The requester’s right to be accompanied by another individual to review the record as set forth in paragraph (e) of this section; and

(iv) The requester’s right to have another individual review the record.

(3) If the requester seeks to inspect the personal record without receiving a copy, the requester shall not leave OSHRC premises with the record and shall sign a statement identifying the specific record or category of records that has been reviewed.

(g) When compliance is not possible. The denial of a written request to review a personal record shall be sent to the requester in writing and signed by the Privacy Officer. This response shall be provided when the requested record does not exist, does not contain personal information relating to the requester, or is exempt. The response shall include a statement regarding the determining factors of denial, and the requester’s rights to administrative appeal and, thereafter, judicial review in a district court of the United States.

§ 2400.5 Special procedures for requesting medical records.

(a) Upon an individual’s request for access to any medical record about the requester, including any psychological record, the Privacy Officer shall make a preliminary determination on whether access to such record(s) could have an adverse effect upon the requester. If the Privacy Officer determines that access could have an adverse effect on the requester, OSHRC shall notify the requester in writing and advise that the record(s) at issue can be made available only to a physician of the requester’s designation.

(b) OSHRC shall forward such record(s) to the physician designated by the requester once the following requirements are met:

(1) The requester has informed OSHRC of the designated physician’s identity;

(2) OSHRC has verified the identity of the physician; and

(3) The physician has agreed to review the record(s) with the requester to both explain the meaning of the record(s) and offer counseling designed to temper any adverse reaction.

(c) If, within 60 calendar days of OSHRC’s written request for a designation, the requester has failed to respond or designate a physician, or the physician fails to agree to the release conditions, then OSHRC shall hold the record(s) in abeyance and advise the requester that this action may be construed as a technical denial. OSHRC shall also advise the requester of his or her rights to administrative appeal and, thereafter, judicial review in a district court of the United States.

§ 2400.6 Procedures for amending personal records.

(a) Submission of requests for amendment. Upon review of an individual’s personal record, that individual may submit a request to amend such record. This request shall be submitted in writing to the Privacy Officer, in accordance with §2400.4(a)(1)’s procedures, and shall include a statement of the amendment requested and the reasons for such amendment, e.g., relevance, accuracy, timeliness or completeness of the record.

(b) Action to be taken by the Privacy Officer. Upon receiving an amendment request, the Privacy Officer shall promptly:

(1) Acknowledge in writing within 10 working days the receipt of the request;

(2) Make such inquiry as is necessary to determine whether the amendment is appropriate; and

(3) Resolve the request by either:
§ 2400.7 Procedures for appealing.
(a) Submission of appeal. (1) If a request to provide notification of a personal record, or to access or amend a personal record, is denied either in whole or in part, or if no determination is made within the period prescribed by this part, then the requester may appeal for the denial, and advising the requester of his or her right to appeal in writing when this action is complete; or (ii) Notifying the requester in writing of a determination not to amend the personal record, including the reasons for the denial, and advising the requester of his or her right to appeal in accordance with § 2400.7.

§ 2400.8 Procedures for statements of disagreement and notification of amendment.
(a) Submission of statement of disagreement. If a final decision concerning an amendment request does not satisfy the requester, then the requester may provide a statement of disagreement that is of reasonable length and sets forth a position regarding the disputed information. This statement of disagreement shall be accepted by OSHRC and included in the relevant personal record. If deemed appropriate, OSHRC may also include a concise statement in the record of its reasons for not making a requested amendment.

(b) Notification of amendment and statement of disagreement. (1) OSHRC shall inform any person or other agency about an amendment to a personal record, or notation made to the record under paragraph (a) of this section, if that record has been disclosed to the person or agency, the amendment or notation was made pursuant to this part, and an accounting of the disclosure was made pursuant to 5 U.S.C. 552a(c).

§ 2400.9 Schedule of fees.
(a) Policy. The purpose of this section is to establish fair and equitable fees to permit reproduction of personal records for concerned individuals.
(b) Reproduction. (1) For the fees associated with reproduction of personal records, refer to appendix A to part 2201, Schedule of Fees.

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 4022

Benefits Payable in Terminated Single-Employer Plans; Interest Assumptions for Paying Benefits

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This final rule amends the Pension Benefit Guaranty Corporation’s regulation on Benefits Payable in Terminated Single-Employer Plans to prescribe certain interest assumptions under the regulation for plans with valuation dates in November 2020. These interest assumptions are used for paying certain benefits under terminating single-employer plans covered by the pension insurance system administered by PBGC.

DATES: Effective November 1, 2020.

FOR FURTHER INFORMATION CONTACT: Gregory Katz (katz.gregory@pbgc.gov), Attorney, Regulatory Affairs Division, Pension Benefit Guaranty Corporation, 1200 K Street NW, Washington, DC 20005, (202) 229–3829. (TTY users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to (202) 229–3829.)


PBGC uses the interest assumptions in appendix B to part 4022 (“Lump Sum Interest Rates for PBGC Payments”) to determine whether a benefit is payable as a lump sum and to determine the amount to pay. Because some private-sector pension plans use these interest rates to determine lump sum amounts payable to plan participants (if the resulting lump sum is larger than the amount required under section 417(e)(3) of the Internal Revenue Code and section 205(g)(3) of ERISA), these rates are also provided in appendix C to part 4022 (“Lump Sum Interest Rates for Private-Sector Payments”).

This final rule updates appendices B and C of the benefit payments regulation to provide the rates for November 2020 measurement dates. The November 2020 lump sum interest assumptions will be 0.00