



Exempt Action Final Regulation Agency Background Document

Agency name	Virginia Department of Labor and Industry
Virginia Administrative Code (VAC) citation	16 VAC 25-90-1910.1020
Regulation title	Access to Employee Exposure and Medical Records
Action title	Access to Employee Exposure and Medical Records
Final agency action date	April 16, 2009
Document preparation date	April 22, 2009

When a regulatory action is exempt from executive branch review pursuant to § 2.2-4002 or § 2.2-4006 of the Virginia Administrative Process Act (APA), the agency is encouraged to provide information to the public on the Regulatory Town Hall using this form.

Note: While posting this form on the Town Hall is optional, the agency must comply with requirements of the Virginia Register Act, the *Virginia Register Form, Style, and Procedure Manual*, and Executive Orders 36 (06) and 58 (99).

Summary

Please provide a brief summary of all regulatory changes, including the rationale behind such changes. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

In 1990, when the Safety and Health Codes Board (“the Board”) initially considered adoption of this OSHA identical change, it was reticent to adopt the revised standard for the following reasons: the federal revision no longer required first aid records to be retained by the employer; the retention of all records versus just those records specific to establishing baseline levels or detecting occupational illness; and that only chest x-rays were to be kept in original form and no records would be required to be kept of employees of less than one year’s duration.

The advances of medical technology and digital records retention over the last 18 years have rendered many of the implicit record storage concerns moot. There is also the substantial experience of federal OSHA in those states of direct federal enforcement of 29 CFR 1910.1020 to show that the effects of these 1990 changes have not been problematic.

Federal OSHA also noted in its initial regulatory preamble to this change that.... “it deemed it necessary to modify the regulation so as to strike a better balance between providing employees with information necessary to maintain the benefits established by the regulation and at the same time protect legitimate trade secrets.” [53 FR 38158]

Department staff noted the numerous additional requirements in the current federal standard when staff prepared a side-by-side comparison of the text of both the Virginia unique standard and that of the federal standard. The side-by-side comparison of the two standards highlighted federal OSHA’s significant effort to solve the regulatory dilemma caused by seeking to accommodate the competing interests between the need for chemical identity disclosure for medical treatment of a patient’s health problems, which may be a result of chemical exposure, and significantly stronger trade secret protection for the employer that, once lost, cannot be fully recaptured.

Under this regulatory review opportunity, the Board approved the Department’s recommendation to repeal this state unique regulation which the Department determined does not meet the “as effective as” requirement under the State Plan Agreement with federal OSHA, and to adopt the current OSHA standard at 29 CFR 1910.1020. This action adopting the current federal regulation will have the added benefit of providing greater regulatory consistency of occupational safety and health standards with adjacent jurisdictions for those employers who work across state lines.

Statement of final agency action

Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.

On April 16, 2009, the Safety and Health Codes Board approved the adoption of federal OSHA’s final rule for Access to Employee Exposure and Medical Records, 29 CFR 1910.1020, with an effective date of July 15, 2009, and in turn, repealed its Virginia unique version of the regulation, Access to Employee Exposure and Medical Records, 16 VAC 25-80-10.

Family impact

Assess the impact of this regulatory action on the institution of the family and family stability.

Repeal of the Virginia unique regulation, 16 VAC 25-80-10 and adoption of this federal-identical final rule, 29 CFR 1910.1020, will have no impact on the institution of the family and family stability.

Periodic review

If this final regulation is not the result of a periodic review of the regulation, please delete this entire section. If this final regulation is the result of a periodic review, please (1) summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and (2) indicate whether the regulation meets the criteria set out in Executive Order 36, e.g., is necessary for the protection of public health, safety, and welfare, and is clearly written and easily understandable.

Commenter	Comment	Agency response

This action regarding the Virginia unique standard for Access to Employee Exposure and Medical Records, 16 VAC 25-80, is the result of the required periodic review of the regulation. No public comments were received on this regulation during the public comment period for this periodic review which was held from January 5, 2009 to January 26, 2009.

The Safety and Health Codes Board voted unanimously to repeal this Virginia unique regulation, 16 VAC 25-80, Access to Employee Exposure and Medical Records, and voted in favor of replacing it with an identical version of federal 29 CFR 1910.1020, Access to Employee Exposure and Medical Records. Following a comparison by the Department of 16VAC 25-80 with 29 CFR 1910.1020, there were a number of differences throughout the documents, with two main areas of significant differences where the previous Virginia regulation was lacking in comparison with the current federal OSHA counterpart.

The advances in medical imaging technology and the advent of digital medical records retention over the last two decades rendered moot many of the former record storage concerns expressed years ago by the Board. There is also the substantial experience of federal OSHA in those states of direct federal enforcement under 29 CFR 1910.1020 during this interval to show that the effects of these changes have not been an issue or problematic. Additionally, the new standard provides significantly greater trade secret protections than available under 16 VAC 25-80.

The newly adopted federal-identical standard, 16 VAC 25-90-1910.1020, meets the criteria set out in Executive Order 36 in that it is necessary for the protection of public health, safety and welfare, and it is clearly written and easily understandable. It also fulfills the “as effective as” requirement for occupational safety and health standards for the VOSH Program under the State Plan agreement between the Commonwealth and federal OSHA.

~~16VAC25-80-10. Access to employee exposure and medical records; in general (29 CFR 1910.20).~~

~~Note: The following standard is unique for the enforcement of occupational safety and health within the Commonwealth of Virginia under the jurisdiction of the VOSH Program. The federal OSHA standard counterpart listed at 1910.1020 does not apply; it does not carry the force of law and is not printed in this volume.~~

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

~~(b) Scope and application.~~

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

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

~~(3) This chapter applies to all employee exposure and medical records, and analyses thereof, made or maintained in any manner, including on an in-house or contractual (e.g., fee for service) basis. Each employer shall assure that the preservation and access requirements of this section are complied with regardless of the manner in which records are made or maintained.~~

~~(e) Definitions.~~

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

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

~~(3) "Designated representative" means any individual or organization to whom an employee gives written authorization to exercise a right of access. For the purposes of access to employee exposure records and analyses using exposure or medical records, a recognized or certified~~

~~collective bargaining agent shall be treated automatically as a designated representative without regard to written employee authorization.~~

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

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

~~(i) environmental (workplace) monitoring or measuring, including personal, area, grab, wipe, or other form of sampling, as well as related collection and analytical methodologies, calculations, and other background data relevant to interpretation of the results obtained;~~

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

~~(iii) material safety data sheets; or~~

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

~~(6) (i) "Employee medical record" means a record concerning the health status of an employee which is made or maintained by a physician, nurse, or other health care personnel, or technician, including:~~

~~(A) medical and employment questionnaires or histories (including job description and occupational exposures);~~

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

~~(C) medical opinions, diagnoses, progress notes, and recommendations;~~

~~(D) descriptions of treatments and prescriptions, and~~

~~(E) employee medical complaints.~~

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

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

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

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

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

~~(8) "Exposure" or "exposed" means that an employee is subjected to a toxic substance or harmful physical agent in the course of employment through any route of entry (inhalation, ingestion, skin contact or absorption, etc.), and includes past exposure and potential (e.g., accidental or~~

~~possible) exposure, but does not include situations where the employer can demonstrate that the toxic substance or harmful physical agent is not used, handled, stored, generated, or present in the workplace in any manner different from typical non-occupational situations.~~

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

~~(10) "Specific written consent"~~

~~(i) Means a written authorization containing the following:~~

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

~~(B) the date of the written authorization,~~

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

~~(D) the name of the designated representative (individual or organization) that is authorized to receive the released information,~~

~~(E) a general description of the medical information that is authorized to be released,~~

~~(F) a general description of the purpose for the release of the medical information, and~~

~~(G) a date or condition upon which the written authorization will expire (if less than one year).~~

~~(ii) A written authorization does not operate to authorize the release of medical information not in existence on the date of written authorization, unless this is expressly authorized, and does not operate for more than one year from the date of written authorization.~~

~~(iii) A written authorization may be revoked in writing prospectively at any time.~~

~~(11) "Toxic substance or harmful physical agent" means any chemical substance, biological agent (bacteria, virus, fungus, etc.), or physical stress (noise, heat, cold, vibration, repetitive motion, ionizing and non-ionizing radiation, hypo or hyperbaric pressure, etc.) which:~~

~~(i) is regulated by a Federal law or rule due to a hazard to health,~~

~~(ii) is listed in the latest printed edition of the National Institute for Occupational Safety and Health (NIOSH) Registry of Toxic Effects of Chemical Substances (RTECS) (See Appendix B),~~

~~(iii) has yielded positive evidence of an acute or chronic health hazard in human, animal, or other biological testing conducted by, or known to, the employer, or~~

~~(iv) has a material safety data sheet available to the employer indicating that the material may pose a hazard to human health.~~

~~(d) Preservation of records.~~

~~(1) Unless a specific occupational safety and health standard provides a different period of time, each employer shall assure the preservation and retention of records as follows:~~

~~(i) Employee medical records. Each employee medical record shall be preserved and maintained for at least the duration of employment plus 30 years, except that health insurance claims records maintained separately from the employer's medical program and its records need not be retained for any specified period;~~

~~(ii) Employee exposure records. Each employee exposure record shall be preserved and maintained for at least 30 years, except that:~~

~~(A) background data to environmental (workplace) monitoring or measuring, such as laboratory reports and worksheets, need only be retained for one year so long as the sampling results, the collection methodology (sampling plan), a description of the analytical and mathematical methods used, and a summary of other background data relevant to interpretation of the results obtained, are retained for at least 30 years; and~~

~~(B) material safety data sheets and (c)(5)(iv) records concerning the identity of a substance or agent need not be retained for any specified period as long as some record of the identity (chemical name if known) of the substance or agent, where it was used, and when it was used is retained for at least 30 years; and~~

~~(iii) Analyses using exposure of medical records. Each analysis using exposure or medical records shall be preserved and maintained for at least 30 years.~~

~~(2) Nothing in this chapter is intended to mandate the form, manner, or process by which an employer preserves a record so long as the information contained in the record is preserved and retrievable, except that X-ray films shall be preserved in their original state.~~

~~(e) Access to records.~~

~~(1) General.~~

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

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

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

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

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

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

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

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

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

~~(2) Employee and designated representative access.~~

~~(i) Employee exposure records. Each employer shall, upon request, assure the access of each employee and designated representative to employee exposure records relevant to the employee.~~

~~For the purpose of this chapter, exposure records relevant to the employee consist of:~~

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

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

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

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

~~(ii) Employee medical records.~~

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

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

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

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

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

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

~~(D) Whenever an employee requests access to his or her employee medical records, and a physician representing the employer believes that direct employee access to information contained in the records regarding a specific diagnosis of a terminal illness or a psychiatric condition could be detrimental to the employee's health, the employer may inform the employee that access will only be provided to a designated representative of the employee having specific written consent, and deny the employee's request for direct access to this information only.~~

~~Where a designated representative with specific written consent requests access to information so withheld, the employer shall assure the access of the designated representative to this information, even when it is known that the designated representative will give the information to the employee.~~

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

~~(iii) Analyses using exposure or medical records:~~

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

~~(B) Whenever access is requested to an analysis which reports the contents of employee medical records by either direct identifier (name, address, social security number, payroll number, etc.) or by information which could reasonably be used under the circumstances indirectly to identify specific employees (exact age, height, weight, race, sex, date of initial employment, job title, etc.), the employer shall assure that personal identifiers are removed before access is provided. If the employer can demonstrate that removal of personal identifiers from an analysis is not feasible, access to the personally identifiable portions of the analysis need not be provided.~~

~~(3) OSHA access.~~

~~(i) Each employer shall, upon request, assure the immediate access of representatives of the Commissioner of the Department of Labor and Industry to employee exposure and medical records and to analyses using exposure or medical records. Rules of agency practice and procedure governing OSHA access to employee medical records are contained in 29 CFR 1913.10.~~

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

~~(f) Trade secrets.~~

~~(1) Except as provided in paragraph (f)(2) of this section, nothing in this section precludes an employer from deleting from records requested by an employee or designated representative any trade secret data which discloses manufacturing processes, or discloses the percentage of a chemical substance in a mixture, as long as the employee or designated representative is notified~~

~~that information has been deleted. Whenever deletion of trade secret information substantially impairs evaluation of the place where or the time when exposure to a toxic substance or harmful physical agent occurred, the employer shall provide alternative information which is sufficient to permit the employee to identify where and when exposure occurred.~~

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

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

~~(g) Employee information.~~

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

~~(i) the existence, location, and availability of any records covered by this section;~~

~~(ii) the person responsible for maintaining and providing access to records; and~~

~~(iii) each employee's rights of access to these records.~~

~~(2) Each employer shall make readily available to employees a copy of this chapter and its appendices, and shall distribute to employees any informational materials concerning this chapter which are made available to the employer by the Commissioner of the Department of Labor and Industry.~~

~~(h) Transfer of records.~~

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

~~(2) Whenever an employer is ceasing to do business and there is no successor employer to receive and maintain the records subject to this chapter, the employer shall notify affected employees of their rights of access to records at least 3 months prior to the cessation of the employer's business.~~

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

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

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

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

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

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

~~APPENDIX A. Sample authorization letter for the release of employee medical record information to designated representative.~~

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

~~_____~~

~~_____~~

~~(Describe generally the information desired to be released).~~

~~I give my permission for this medical information to be used 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 intent to be released as a result of this letter.)~~

~~_____~~

~~_____~~

~~_____~~

=====

=====

=====

Full name of Employee of Legal Representative

=====

Signature of Employee or Legal Representative

=====

Date of Signature

=====

~~APPENDIX B. Availability of NIOSH Registry of Toxic Effects of Chemical Substances (RTECS)¹~~

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

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

~~"The annual publication of a list of known toxic substances is a NIOSH mandate under the Occupational Safety and Health Act of 1970. It is intended to provide basic information on the~~

~~known toxic and biological effects of chemical substances for the use of employers, employees, physicians, industrial hygienists, toxicologists, researchers, and, in general, anyone concerned with the proper and safe handling of chemicals. In turn, this information may contribute to a better understanding of potential occupational hazards by everyone involved and ultimately may help to bring about a more healthful workplace environment." (p. iii)~~

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

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

~~"In this edition of the Registry, the editors intend to identify 'all known toxic substances' which may exist in the environment and to provide pertinent data on the toxic effects from known doses~~

~~entering an organism by any route described. Data may be used for the evaluation of chemical hazards in the environment, whether they be in the workplace, recreation area, or living quarters." (p. xiii)~~

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

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

~~1 On April 24, 1980, the Director of the Federal Register approved for incorporation by reference into 29 CFR 1910, the 1978 edition of the National Institute for Occupational Safety~~

~~and Health Registry of Toxic Effects of Chemical Substances (the Registry). See CFR
1910.20(c)(11)(ii)~~

16 VAC 25-90-1910.1020, Access to Employee Exposure and Medical Records

As Adopted by the
Safety and Health Codes Board

Date: April 16, 2009



VIRGINIA OCCUPATIONAL SAFETY AND HEALTH PROGRAM

VIRGINIA DEPARTMENT OF LABOR AND INDUSTRY

Effective Date: July 15, 2009

16 VAC 25-90-1910.1020, Access to Employee Exposure and Medical Records

When the regulations, as set forth in the final rule for Access to Employee Exposure and Medical Records, §1910.1020, are applied to the Commissioner of the Department of Labor and Industry and/or to Virginia employers, the following federal terms shall be considered to read as below:

Federal Terms

VOSH Equivalent

29 CFR

VOSH Standard

Assistant Secretary

Commissioner of Labor and Industry

Agency

Department

Access to employee exposure and medical records. - 1910.1020

 [Regulations \(Standards - 29 CFR\) - Table of Contents](#)

- **Part Number:** 1910
- **Part Title:** Occupational Safety and Health Standards
- **Subpart:** Z
- **Subpart Title:** Toxic and Hazardous Substances
- **Standard Number:** 1910.1020
- **Title:** Access to employee exposure and medical records.

- **Appendix:** A , B

1910.1020(a)

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

[1910.1020\(b\)](#)

"Scope and application."

1910.1020(b)(1)

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

1910.1020(b)(2)

This section applies to all employee exposure and medical records, and analyses thereof, of such employees, whether or not the records are mandated by specific occupational safety and health standards.

1910.1020(b)(3)

This section applies to all employee exposure and medical records, and analyses thereof, made or maintained in any manner, including on an in-house or contractual (e.g., fee-for-service) basis. Each employer shall assure that the preservation and access requirements of this section are complied with regardless of the manner in which records are made or maintained.

[1910.1020\(c\)](#)

"Definitions."

1910.1020(c)(1)

"Access" means the right and opportunity to examine and copy.

1910.1020(c)(2)

"Analysis using exposure or medical records" means any compilation of data or any statistical study based at least in part on information collected from individual employee exposure or medical records or information collected from health insurance claims records, provided that

either the analysis has been reported to the employer or no further work is currently being done by the person responsible for preparing the analysis.

1910.1020(c)(3)

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

1910.1020(c)(4)

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

1910.1020(c)(5)

"Employee exposure record" means a record containing any of the following kinds of information:

1910.1020(c)(5)(i)

Environmental (workplace) monitoring or measuring of a toxic substance or harmful physical agent, including personal, area, grab, wipe, or other form of sampling, as well as related collection and analytical methodologies, calculations, and other background data relevant to interpretation of the results obtained;

1910.1020(c)(5)(ii)

Biological monitoring results which directly assess the absorption of a toxic substance or harmful physical agent by body systems (e.g., the level of a chemical in the blood, urine, breath, hair, fingernails, etc.) but not including results which assess the biological effect of a substance or agent or which assess an employee's use of alcohol or drugs;

1910.1020(c)(5)(iii)

Material safety data sheets indicating that the material may pose a hazard to human health; or

1910.1020(c)(5)(iv)

In the absence of the above, a chemical inventory or any other record which reveals where and when used and the identity (e.g., chemical, common, or trade name) of a toxic substance or harmful physical agent.

1910.1020(c)(6) **1910.1020(c)(6)(i)**

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

1910.1020(c)(6)(i)(A)

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

1910.1020(c)(6)(i)(B)

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 purpose of establishing a base-line or detecting occupational illnesses and all biological monitoring not defined as an "employee exposure record"),

1910.1020(c)(6)(i)(C)

Medical opinions, diagnoses, progress notes, and recommendations,

1910.1020(c)(6)(i)(D)

First aid records,

1910.1020(c)(6)(i)(E)

Descriptions of treatments and prescriptions, and

1910.1020(c)(6)(i)(F)

Employee medical complaints.

1910.1020(c)(6)(ii)

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

1910.1020(c)(6)(ii)(A)

Physical specimens (e.g., blood or urine samples) which are routinely discarded as a part of normal medical practice, or

1910.1020(c)(6)(ii)(B)

Records concerning health insurance claims if maintained separately from the employer's

medical program and its records, and not accessible to the employer by employee name or other direct personal identifier (e.g., social security number, payroll number, etc.), or

[1910.1020\(c\)\(6\)\(ii\)\(C\)](#)

Records created solely in preparation for litigation which are privileged from discovery under the applicable rules of procedure or evidence; or

[1910.1020\(c\)\(6\)\(ii\)\(D\)](#)

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.

[1910.1020\(c\)\(7\)](#)

"Employer" means a current employer, a former employer, or a successor employer.

[1910.1020\(c\)\(8\)](#)

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

[1910.1020\(c\)\(9\)](#)

"Health Professional" means a physician, occupational health nurse, industrial hygienist, toxicologist, or epidemiologist, providing medical or other occupational health services to exposed employees.

[1910.1020\(c\)\(10\)](#)

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

[1910.1020\(c\)\(11\)](#)

"Specific chemical identity" means a chemical name, Chemical Abstracts Service (CAS) Registry Number, or any other information that reveals the precise chemical designation of the substance.

[1910.1020\(c\)\(12\)](#) [1910.1020\(c\)\(12\)\(i\)](#)

"Specific written consent" means a written authorization containing the following:

[1910.1020\(c\)\(12\)\(i\)\(A\)](#)

The name and signature of the employee authorizing the release of medical information,

[1910.1020\(c\)\(12\)\(i\)\(B\)](#)

The date of the written authorization,

[1910.1020\(c\)\(12\)\(i\)\(C\)](#)

The name of the individual or organization that is authorized to release the medical information,

[1910.1020\(c\)\(12\)\(i\)\(D\)](#)

The name of the designated representative (individual or organization) that is authorized to receive the released information,

[1910.1020\(c\)\(12\)\(i\)\(E\)](#)

A general description of the medical information that is authorized to be released,

[1910.1020\(c\)\(12\)\(i\)\(F\)](#)

A general description of the purpose for the release of the medical information, and

[1910.1020\(c\)\(12\)\(i\)\(G\)](#)

A date or condition upon which the written authorization will expire (if less than one year).

[1910.1020\(c\)\(12\)\(ii\)](#)

A written authorization does not operate to authorize the release of medical information not in existence on the date of written authorization, unless the release of future information is expressly authorized, and does not operate for more than one year from the date of written authorization.

[1910.1020\(c\)\(12\)\(iii\)](#)

A written authorization may be revoked in writing prospectively at any time.

[1910.1020\(c\)\(13\)](#)

"Toxic substance or harmful physical agent" means any chemical substance, biological agent (bacteria, virus, fungus, etc.), or physical stress (noise, heat, cold, vibration, repetitive motion, ionizing and non-ionizing radiation, hypo - or hyperbaric pressure, etc.) which:

1910.1020(c)(13)(i)

Is listed in the latest printed edition of the National Institute for Occupational Safety and Health (NIOSH) Registry of Toxic Effects of Chemical Substances (RTECS) which is incorporated by reference as specified in Sec. 1910.6; or

1910.1020(c)(13)(ii)

Has yielded positive evidence of an acute or chronic health hazard in testing conducted by, or known to, the employer; or

1910.1020(c)(13)(iii)

Is the subject of a material safety data sheet kept by or known to the employer indicating that the material may pose a hazard to human health.

1910.1020(c)(14)

"Trade secret" means any confidential formula, pattern, process, device, or information or compilation of information that is used in an employer's business and that gives the employer an opportunity to obtain an advantage over competitors who do not know or use it.

1910.1020(d)

"Preservation of records."

1910.1020(d)(1)

Unless a specific occupational safety and health standard provides a different period of time, each employer shall assure the preservation and retention of records as follows:

1910.1020(d)(1)(i)

"Employee medical records." The medical record for each employee shall be preserved and maintained for at least the duration of employment plus thirty (30) years, except that the following types of records need not be retained for any specified period:

1910.1020(d)(1)(i)(A)

Health insurance claims records maintained separately from the employer's medical program and its records,

1910.1020(d)(1)(i)(B)

First aid records (not including medical histories) of one-time treatment and subsequent observation of minor scratches, cuts, burns, splinters, and the like which do not involve medical treatment, loss of consciousness, restriction of work or motion, or transfer to another job, if made on-site by a non-physician and if maintained separately from the employer's medical program and its records, and

1910.1020(d)(1)(i)(C)

The medical records of employees who have worked for less than (1) year for the employer need not be retained beyond the term of employment if they are provided to the employee upon the termination of employment.

1910.1020(d)(1)(ii)

"Employee exposure records." Each employee exposure record shall be preserved and maintained for at least thirty (30) years, except that:

1910.1020(d)(1)(ii)(A)

Background data to environmental (workplace) monitoring or measuring, such as laboratory reports and worksheets, need only be retained for one (1) year so long as the sampling results, the collection methodology (sampling plan), a description of the analytical and mathematical methods used, and a summary of other background data relevant to interpretation of the results obtained, are retained for at least thirty (30) years; and

1910.1020(d)(1)(ii)(B)

Material safety data sheets and paragraph (c)(5)(iv) records concerning the identity of a substance or agent need not be retained for any specified period as long as some record of the identity (chemical name if known) of the substance or agent, where it was used, and when it was used is retained for at least thirty (30) years(1); and

Footnote(1) Material safety data sheets must be kept for those chemicals currently in use that are effected by the Hazard Communication Standard in accordance with 29 CFR 1910.1200(g).

1910.1020(d)(1)(ii)(C)

Biological monitoring results designated as exposure records by specific occupational safety and health standards shall be preserved and maintained as required by the specific standard.

1910.1020(d)(1)(iii)

"Analyses using exposure or medical records." Each analysis using exposure or medical records shall be preserved and maintained for at least thirty (30) years.

[1910.1020\(d\)\(2\)](#)

Nothing in this section is intended to mandate the form, manner, or process by which an employer preserves a record so long as the information contained in the record is preserved and retrievable, except that chest X-ray films shall be preserved in their original state.

[1910.1020\(e\)](#)

"Access to records" -

[1910.1020\(e\)\(1\)](#)

"General."

[1910.1020\(e\)\(1\)\(i\)](#)

Whenever an employee or designated representative requests access to a record, the employer shall assure that access is provided in a reasonable time, place, and manner. If the employer cannot reasonably provide access to the record within fifteen (15) working days, the employer shall within the fifteen (15) working days apprise the employee or designated representative requesting the record of the reason for the delay and the earliest date when the record can be made available.

[1910.1020\(e\)\(1\)\(ii\)](#)

The employer may require of the requester only such information as should be readily known to the requester and which may be necessary to locate or identify the records being requested (e.g. dates and locations where the employee worked during the time period in question).

[1910.1020\(e\)\(1\)\(iii\)](#)

Whenever an employee or designated representative requests a copy of a record, the employer shall assure that either:

[1910.1020\(e\)\(1\)\(iii\)\(A\)](#)

A copy of the record is provided without cost to the employee or representative,

[1910.1020\(e\)\(1\)\(iii\)\(B\)](#)

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

[1910.1020\(e\)\(1\)\(iii\)\(C\)](#)

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

[1910.1020\(e\)\(1\)\(iv\)](#)

In the case of an original X-ray, the employer may restrict access to on-site examination or make other suitable arrangements for the temporary loan of the X-ray.

[1910.1020\(e\)\(1\)\(v\)](#)

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

[1910.1020\(e\)\(1\)\(v\)\(A\)](#)

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

[1910.1020\(e\)\(1\)\(v\)\(B\)](#)

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

[1910.1020\(e\)\(1\)\(vi\)](#)

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

[1910.1020\(e\)\(2\)](#)

"Employee and designated representative access" -

[1910.1020\(e\)\(2\)\(i\)](#)

"Employee exposure records."

[1910.1020\(e\)\(2\)\(i\)\(A\)](#)

Except as limited by paragraph (f) of this section, each employer shall, upon request, assure the access to each employee and designated representative to employee exposure records relevant to the employee. For the purpose of this section, an exposure record relevant to the

employee consists of:

1910.1020(e)(2)(i)(A)(1)

A record which measures or monitors the amount of a toxic substance or harmful physical agent to which the employee is or has been exposed;

1910.1020(e)(2)(i)(A)(2)

In the absence of such directly relevant records, such records of other employees with past or present job duties or working conditions related to or similar to those of the employee to the extent necessary to reasonably indicate the amount and nature of the toxic substances or harmful physical agents to which the employee is or has been subjected, and

1910.1020(e)(2)(i)(A)(3)

Exposure records to the extent necessary to reasonably indicate the amount and nature of the toxic substances or harmful physical agents at workplaces or under working conditions to which the employee is being assigned or transferred.

1910.1020(e)(2)(i)(B)

Requests by designated representatives for unconsented access to employee exposure records shall be in writing and shall specify with reasonable particularity:

1910.1020(e)(2)(i)(B)(1)

The record requested to be disclosed; and

1910.1020(e)(2)(i)(B)(2)

The occupational health need for gaining access to these records.

1910.1020(e)(2)(ii)

"Employee medical records."

1910.1020(e)(2)(ii)(A)

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

1910.1020(e)(2)(ii)(B)

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

1910.1020(e)(2)(ii)(C)

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

1910.1020(e)(2)(ii)(C)(1)

Consult with the physician for the purposes of reviewing and discussing the records requested,

1910.1020(e)(2)(ii)(C)(2)

Accept a summary of material facts and opinions in lieu of the records requested, or

1910.1020(e)(2)(ii)(C)(3)

Accept release of the requested records only to a physician or other designated representative.

1910.1020(e)(2)(ii)(D)

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

1910.1020(e)(2)(ii)(E)

A physician, nurse, or other responsible health care personnel maintaining employee medical records may delete from requested medical records the identity of a family member, personal friend, or fellow employee who has provided confidential information concerning an employee's health status.

1910.1020(e)(2)(iii)

Analyses using exposure or medical records.

1910.1020(e)(2)(iii)(A)

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

1910.1020(e)(2)(iii)(B)

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

1910.1020(e)(3)

"OSHA access."

1910.1020(e)(3)(i)

Each employer shall, upon request, and without derogation of any rights under the Constitution or the Occupational Safety and Health Act of 1970, 29 U.S.C. 651 "et seq.," that the employer chooses to exercise, assure the prompt access of representatives of the Assistant Secretary of Labor for Occupational Safety and Health to employee exposure and medical records and to analyses using exposure or medical records. Rules of agency practice and procedure governing OSHA access to employee medical records are contained in 29 CFR 1913.10.

1910.1020(e)(3)(ii)

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

1910.1020(f)

"Trade secrets."

1910.1020(f)(1)

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

1910.1020(f)(2)

The employer may withhold the specific chemical identity, including the chemical name and other specific identification of a toxic substance from a disclosable record provided that:

1910.1020(f)(2)(i)

The claim that the information withheld is a trade secret can be supported;

1910.1020(f)(2)(ii)

All other available information on the properties and effects of the toxic substance is disclosed;

1910.1020(f)(2)(iii)

The employer informs the requesting party that the specific chemical identity is being withheld as a trade secret; and

1910.1020(f)(2)(iv)

The specific chemical identity is made available to health professionals, employees and designated representatives in accordance with the specific applicable provisions of this paragraph.

1910.1020(f)(3)

Where a treating physician or nurse determines that a medical emergency exists and the specific chemical identity of a toxic substance is necessary for emergency or first-aid

treatment, the employer shall immediately disclose the specific chemical identity of a trade secret chemical to the treating physician or nurse, regardless of the existence of a written statement of need or a confidentiality agreement. The employer may require a written statement of need and confidentiality agreement, in accordance with the provisions of paragraphs (f)(4) and (f)(5), as soon as circumstances permit.

1910.1020(f)(4)

In non-emergency situations, an employer shall, upon request, disclose a specific chemical identity, otherwise permitted to be withheld under paragraph (f)(2) of this section, to a health professional, employee, or designated representative if:

1910.1020(f)(4)(i)

The request is in writing;

1910.1020(f)(4)(ii)

The request describes with reasonable detail one or more of the following occupational health needs for the information:

1910.1020(f)(4)(ii)(A)

To assess the hazards of the chemicals to which employees will be exposed;

1910.1020(f)(4)(ii)(B)

To conduct or assess sampling of the workplace atmosphere to determine employee exposure levels;

1910.1020(f)(4)(ii)(C)

To conduct pre-assignment or periodic medical surveillance of exposed employees;

1910.1020(f)(4)(ii)(D)

To provide medical treatment to exposed employees;

1910.1020(f)(4)(ii)(E)

To select or assess appropriate personal protective equipment for exposed employees;

1910.1020(f)(4)(ii)(F)

To design or assess engineering controls or other protective measures for exposed employees; and

1910.1020(f)(4)(ii)(G)

To conduct studies to determine the health effects of exposure.

1910.1020(f)(4)(iii)

The request explains in detail why the disclosure of the specific chemical identity is essential and that, in lieu thereof, the disclosure of the following information would not enable the health professional, employee or designated representative to provide the occupational health services described in paragraph (f)(4)(ii) of this section;

1910.1020(f)(4)(iii)(A)

The properties and effects of the chemical;

1910.1020(f)(4)(iii)(B)

Measures for controlling workers' exposure to the chemical;

1910.1020(f)(4)(iii)(C)

Methods of monitoring and analyzing worker exposure to the chemical; and

1910.1020(f)(4)(iii)(D)

Methods of diagnosing and treating harmful exposures to the chemical;

1910.1020(f)(4)(iv)

The request includes a description of the procedures to be used to maintain the confidentiality of the disclosed information; and

1910.1020(f)(4)(v)

The health professional, employee, or designated representative and the employer or contractor of the services of the health professional or designated representative agree in a written confidentiality agreement that the health professional, employee or designated representative will not use the trade secret information for any purpose other than the health need(s) asserted and agree not to release the information under any circumstances other than to OSHA, as provided in paragraph (f)(7) of this section, except as authorized by the terms of the agreement or by the employer.

1910.1020(f)(5)

The confidentiality agreement authorized by paragraph (f)(4)(iv) of this section:

1910.1020(f)(5)(i)

May restrict the use of the information to the health purposes indicated in the written statement of need;

1910.1020(f)(5)(ii)

May provide for appropriate legal remedies in the event of a breach of the agreement, including stipulation of a reasonable pre-estimate of likely damages; and,

1910.1020(f)(5)(iii)

May not include requirements for the posting of a penalty bond.

1910.1020(f)(6)

Nothing in this section is meant to preclude the parties from pursuing non-contractual remedies to the extent permitted by law.

1910.1020(f)(7)

If the health professional, employee or designated representative receiving the trade secret information decides that there is a need to disclose it to OSHA, the employer who provided the information shall be informed by the health professional prior to, or at the same time as, such disclosure.

1910.1020(f)(8)

If the employer denies a written request for disclosure of a specific chemical identity, the denial must:

1910.1020(f)(8)(i)

Be provided to the health professional, employee or designated representative within thirty days of the request;

1910.1020(f)(8)(ii)

Be in writing;

1910.1020(f)(8)(iii)

Include evidence to support the claim that the specific chemical identity is a trade secret;

1910.1020(f)(8)(iv)

State the specific reasons why the request is being denied; and,

1910.1020(f)(8)(v)

Explain in detail how alternative information may satisfy the specific medical or occupational health need without revealing the specific chemical identity.

1910.1020(f)(9)

The health professional, employee, or designated representative whose request for information is denied under paragraph (f)(4) of this section may refer the request and the written denial of the request to OSHA for consideration.

1910.1020(f)(10)

When a health professional, employee, or designated representative refers a denial to OSHA under paragraph (f)(9) of this section, OSHA shall consider the evidence to determine if:

1910.1020(f)(10)(i)

The employer has supported the claim that the specific chemical identity is a trade secret;

1910.1020(f)(10)(ii)

The health professional employee, or designated representative has supported the claim that there is a medical or occupational health need for the information; and

1910.1020(f)(10)(iii)

The health professional, employee or designated representative has demonstrated adequate means to protect the confidentiality.

1910.1020(f)(11) 1910.1020(f)(11)(i)

If OSHA determines that the specific chemical identity requested under paragraph (f)(4) of this section is not a "bona fide" trade secret, or that it is a trade secret but the requesting health professional, employee or designated representatives has a legitimate medical or occupational health need for the information, has executed a written confidentiality agreement, and has shown adequate means for complying with the terms of such agreement, the employer will be subject to citation by OSHA.

1910.1020(f)(11)(ii)

If an employer demonstrates to OSHA that the execution of a confidentiality agreement would not provide sufficient protection against the potential harm from the unauthorized disclosure of a trade secret specific chemical identity, the Assistant Secretary may issue such orders or impose such additional limitations or conditions upon the disclosure of the requested chemical information as may be appropriate to assure that the occupational health needs are met without an undue risk of harm to the employer.

1910.1020(f)(12)

Notwithstanding the existence of a trade secret claim, an employer shall, upon request, disclose to the Assistant Secretary any information which this section requires the employer to make available. Where there is a trade secret claim, such claim shall be made no later

than at the time the information is provided to the Assistant Secretary so that suitable determinations of trade secret status can be made and the necessary protections can be implemented.

1910.1020(f)(13)

Nothing in this paragraph shall be construed as requiring the disclosure under any circumstances of process or percentage of mixture information which is a trade secret.

1910.1020(g)

"Employee information."

1910.1020(g)(1)

Upon an employee's first entering into employment, and at least annually thereafter, each employer shall inform current employees covered by this section of the following:

1910.1020(g)(1)(i)

The existence, location, and availability of any records covered by this section;

1910.1020(g)(1)(ii)

The person responsible for maintaining and providing access to records; and

1910.1020(g)(1)(iii)

Each employee's rights of access to these records.

1910.1020(g)(2)

Each employer shall keep a copy of this section and its appendices, and make copies readily available, upon request, to employees. The employer shall also distribute to current employees any informational materials concerning this section which are made available to the employer by the Assistant Secretary of Labor for Occupational Safety and Health.

1910.1020(h)

"Transfer of records."

1910.1020(h)(1)

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

1910.1020(h)(2)

Whenever an employer is ceasing to do business and there is no successor employer to receive and maintain the records subject to this standard, the employer shall notify affected current employees of their rights of access to records at least three (3) months prior to the cessation of the employer's business.

1910.1020(h)(3)

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

1910.1020(h)(3)(i)

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

1910.1020(h)(3)(ii)

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

1910.1020(h)(4)

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

1910.1020(i)

"Appendices." The information contained in appendices A and B to this section is not intended, by itself, to create any additional obligations not otherwise imposed by this section nor detract from any existing obligation.

[61 FR 5507, Feb. 13, 1996; 61 FR 9227, March 7, 1996; 61 FR 31427, June 20, 1996; 71 FR 16673, April 3, 2006]

Sample authorization letter for the release of employee medical record information to a designated representative (Non-mandatory) - 1910.1020 App A

 [Regulations \(Standards - 29 CFR\) - Table of Contents](#)

- **Part Number:** 1910
- **Part Title:** Occupational Safety and Health Standards
- **Subpart:** Z
- **Subpart Title:** Toxic and Hazardous Substances
- **Standard Number:** 1910.1020 App A
- **Title:** Sample authorization letter for the release of employee medical record information to a designated representative (Non-mandatory)

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

 (Describe generally the information desired to be released).

I give my permission for this medical information to be used 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

[61 FR 31427, June 20, 1996]

Availability of NIOSH registry of toxic effects of chemical substances (RTECS)(Non-mandatory) - 1910.1020 App B

 [Regulations \(Standards - 29 CFR\) - Table of Contents](#)

● Part Number:	1910
● Part Title:	Occupational Safety and Health Standards
● Subpart:	Z
● Subpart Title:	Toxic and Hazardous Substances
● Standard Number:	1910.1020 App B
● Title:	Availability of NIOSH registry of toxic effects of chemical substances (RTECS)(Non-mandatory)

The final standard, 29 CFR 1910.1020, applies to all employee exposure and medical records, and analyses thereof, of employees exposed to toxic substances or harmful physical agents (paragraph (b)(2)). The term "toxic substance or harmful physical agent" is defined by paragraph (c)(13) to encompass chemical substances, biological agents, and physical stresses for which there is evidence of harmful health effects. The regulation uses the latest printed edition of the National Institute for Occupational Safety and Health (NIOSH) Registry of Toxic Effects of Chemical Substances (RTECS) as one of the chief sources of information as to whether evidence of harmful health effects exists. If a substance is listed in the latest printed RTECS, the regulation applies to exposure and medical records (and analyses of these records) relevant to employees exposed to the substance.

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

The introduction to the 1980 printed edition describes the RTECS as follows:

"The 1980 edition of the Registry of Toxic Effects of Chemical Substances, formerly known as the Toxic Substances list, is the ninth revision prepared in compliance with the requirements of Section 20(a)(6) of the Occupational Safety and Health Act of 1970 (Public Law 91-596). The original list was completed on June 28, 1971, and has been updated annually in book format. Beginning in October 1977, quarterly revisions have been provided in microfiche. This edition of the Registry contains 168,096 listings of chemical substances; 45,156 are names of different chemicals with their associated toxicity data and 122,940 are synonyms. This edition includes approximately 5,900 new chemical compounds that did not appear in the 1979 Registry.(p. xi)

"The Registry's purposes are many, and it serves a variety of users. It is a single source document for basic toxicity information and for other data, such as chemical identifiers and information necessary for the preparation of safety directives and hazard evaluations for chemical substances. The various types of toxic effects linked to literature citations provide researchers and occupational health scientists with an introduction to the toxicological literature, making their own review of the toxic hazards of a given substance easier. By presenting data on the lowest reported doses that produce effects by several routes of entry in various species, the Registry furnishes valuable information to those responsible for preparing safety data sheets for chemical substances in the workplace. Chemical and production engineers can use the Registry to identify the hazards which may be associated with chemical intermediates in the development of final products, and thus can more readily select substitutes or alternate processes which may be less hazardous. Some organizations, including health agencies and chemical companies, have included the NIOSH Registry accession numbers with the listing of chemicals in their files to reference toxicity information associated with those chemicals. By including foreign language chemical names, a start has been made toward providing rapid identification of substances produced in other countries.(p xi)

"In this edition of the Registry, the editors intend to identify "all known toxic substances" which may exist in the

environment and to provide pertinent data on the toxic effects from known doses entering an organism by any route described.(p xi)

"It must be reemphasized that the entry of a substance in the Registry does not automatically mean that it must be avoided. A listing does mean, however, that the substance has the documented potential of being harmful if misused, and care must be exercised to prevent tragic consequences. Thus the Registry lists many substances that are common in everyday life and are in nearly every household in the United States. One can name a variety of such dangerous substances: prescription and non-prescription drugs; food additives; pesticide concentrates, sprays, and dusts; fungicides; herbicides, paints; glazes, dyes; bleaches and other household cleaning agents; alkalis; and various solvents and diluents. The list is extensive because chemicals have become an integral part of our existence."

The RTECS printed edition may be purchased from the Superintendent of Documents, U.S. Government Printing Office (GPO), Washington, DC 20402 (202-783-3238).

Some employers may desire to subscribe to the quarterly update to the RTECS which is published in a microfiche edition. An annual subscription to the quarterly microfiche may be purchased from the GPO (Order the "Microfiche Edition, Registry of Toxic Effects of Chemical Substances"). Both the printed edition and the microfiche edition of RTECS are available for review at many university and public libraries throughout the country. The latest RTECS editions may also be examined at the OSHA Technical Data Center, Room N2439 - Rear, United States Department of Labor, 200 Constitution Avenue, N.W., Washington, DC 20210 (202-523-9700), or at any OSHA Regional or Area Office (See, major city telephone directories under United States Government - Labor Department).