

**BONNEVILLE POWER ADMINISTRATION
HUMAN CAPITAL MANAGEMENT
Portland, Oregon**

PERSONNEL LETTER 293-2 (Revised)

DATE: January 22, 2009

SUBJECT: Occupational Medical Records

PURPOSE

This Personnel Letter -

- Establishes the Bonneville Power Administration's (BPA's) policy on the maintenance, retention, and transmittal of occupational medical records pertaining to employees, consistent with 5 CFR 293, Employee Medical File System Records and DOE-33.
- Clarifies the definitions under Section I.
- Supersedes Personnel Letter 293-2 dated January 2, 2008.

POLICY SUMMARY

The Bonneville Power Administration (BPA) adheres to the appropriate creation, development, maintenance, processing, use, dissemination and safeguarding of all employee medical records. To ensure the security and confidentiality of records, only the Employee Medical File System (EMFS) Manager and those the EMFS Manager has designated may have direct access to the Employee Medical Files.

BPA has established controls to prevent careless and unintentional disclosure or destruction of personnel data. When appropriate, BPA will ensure that the Human Capital Management staff is responsible and accountable for disposing of personnel records as required by the Office of Personnel Management.

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I. DEFINITIONS

Drug-Testing Records

These records are created when an employee is tested for use of illegal drugs under an agency plan implementing Executive Order 12564 or for the use of alcohol under Department of Transportation regulations in 49 CFR, Part 40. The records include results of tests, indications that an employee has/has not reported for testing, copies of notices to the employee of proposed action when a confirmed positive test result is made, and related documents, and are a component of the Employee Medical File System. However, these records must be kept separate from the Employee Medical Folder. BPA Drug and Alcohol Testing Program records do not include employee assistance and counseling records that are created when an employee formally enters and participates in the Employee Assistance Program for alcohol and/or drug abuse.

Employee

Has the meaning in 5 USC 2105 and does not include student volunteers or contractor employees.

Employee Medical File System (EMFS) Manager

The individual in Human Capital Management who is assigned responsibility for the management of the BPA-wide EMFS.

Employee Medical Folder (EMF)

A separate electronic file folder that contains all medical records designated for retention that is maintained by BPA for active employees, and is forwarded to other employing agencies or the National Personnel Records Center (NPRC) in accordance with regulatory requirements. Audiometric records are part of the EMFS, but are maintained by the Safety Office in support of BPA's hearing conservation program. These records are to be included in the EMF upon separation of an employee from BPA.

Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule

The Privacy Rule implements the privacy requirements of the Administrative Simplification subtitle of the HIPAA. This rule regulates the use and disclosure of individual's health information by health plans, health care clearinghouses and health care providers, referred to as covered entities. The Privacy Rule requires explicit consent from patients, except in a limited number of circumstances, before a covered entity can release protected health information. This rule applies directly to BPA's health care units because they are health care providers. However, it does not restrict BPA in its role as an employer from receiving or requesting medical information in order to make employment related determinations.

Medical Records Custodian (MRC)

An individual, designated by the EMFS Manager, whose duties and responsibilities require direct access to portions of the EMF.

Occupational Illness/Injury Record

Any documentation that records an on-the-job occupational illness/injury under the Federal Employees Compensation Act (FECA). When a claim is filed with the Office of Workers' Compensation Programs (OWCP), the official file is retained by the Department of Labor (DOL). Copies of documents retained by BPA are maintained in an agency working file and are not part of the EMF. A notice of injury not filed with OWCP is to be placed in the employee's EMF and retained in accordance with OPM regulations governing disposal of the EMF.

Occupational Medical and Related Records

A chronological, cumulative record, regardless of the form or process by which it is maintained about the health status of an employee that is related to employment. This includes personal and occupational health histories, exposure records, medical surveillance records, and records about occupational illnesses, injuries, and diseases. Related records include the opinions and written evaluations generated in the course of diagnosis and treatment by, but not limited to, licensed health care professionals, allied health care providers and industrial hygienists

Routine Use

The term "routine use" means, with respect to disclosure of information, that the record is only used for the purposes it was collected.

Safety/OHSA Long-Term Record

Medical records as defined in OSHA regulations (29 CFR 1910 and 1960). These records are designated for retention for the duration of employment plus 30 years and reports related to occupational illness, accident, injury, or exposure, required to be completed under OSHA regulations (see 20 CFR 10), whether or not a Federal Employee Compensation Act (FECA) file is created.

II. USE OF OCCUPATIONAL MEDICAL RECORDS

Occupational Medical Records are maintained and used by the BPA to accomplish the following:

- A. Provide data necessary for proper medical evaluations, diagnosis, treatment and care.
- B. Provide an accurate medical history, including job and/or hazard exposure documentation and health monitoring in relation to health status and claims of the individual.
- C. Provide a method for evaluating quality of health care rendered and job-health protection, including engineering protection provided, protective equipment, workplace monitoring, and medical examinations monitoring required by the Occupational Safety and Health Administration (OSHA).
- D. Provide data for health hazard evaluations, epidemiologic studies and public health activities.
- E. Ensure that all relevant, necessary, accurate, and timely data are available to support any medically related decisions affecting the subject of the records, including decisions pertaining to fitness-for-duty and disability retirement.
- F. Document possible re-employment rights under statutes governing that program.

- G. Document employee's reporting of on-the-job injuries or unhealthy or unsafe working conditions, including the reporting of such conditions to the OSHA and actions taken by the agency or by the employing agency.
- H. To ensure that all relevant, necessary, accurate, and timely data are available to support any medically-related employment decisions affecting the subject of the records (e.g., in connection with fitness-for-duty and disability retirement decisions).
- I. Ensure proper and accurate operation of BPA's employee drug testing program under Executive Order 12564.

III. RESPONSIBILITIES

- A. **Chief Human Capital Officer (CHCO):** The CHCO is responsible, through the Employee Medical File System Manager, for the maintenance, retention, and transmittal of occupational medical records pertaining to employees, consistent with 5 CFR 293, Employee Medical File System Records, and DOE-33 for the proper implementation of this policy.
- B. **Employee Medical File System (EMFS) Manager:** The Manager is responsible for the proper maintenance, retention, and transmittal of medical records maintained by BPA. The Medical Program Manager serves as the EMFS Manager.
- C. **Medical Records Custodians (MRC):** The EMFS Manager, by the provision of this Personnel Letter, can designate MRC's, allowing them direct access and responsibility for defined medical records. The delegates are:
 - 1. **Manager, Safety and Health** has the authority to review medical records that originate as a result of BPA Safety Program activities and OSHA regulations. Audiometric records are part of the EMFS, but are physically located in the Safety Office in support of BPA's hearing conservation program. These records are to be included in the EMF upon separation or transfer of an employee from BPA.
 - 2. **HCM Injury Compensation Specialist** has the responsibility of reviewing and maintaining all OWCP files. This position is also provides oversight and management of open OWCP cases.
 - 3. **Drug and Alcohol Testing Program Coordinator** maintains drug and alcohol testing records, and implements and documents BPA's compliance to mandatory drug and alcohol directives.
 - 4. **Reasonable Accommodation Coordinator** has the authority to review, analyze, and maintain medical documentation related to reasonable accommodation request.
- D. **BPA Privacy Act/Freedom of Information Act Officer** has the responsibility for determining the appropriate release of information under the Freedom of Information Act (FOIA). As the Authorizing Official designated by the FOIA Officer, the Medical Program Manager is responsible for identifying, locating, collecting and determining availability of

requested information. The EMFS is exempt from FOIA requests. However, any such request must be referred to the Freedom of Information Act Officer for review.

IV. LOCATION AND SECURITY OF EMF'S

A. The physical location or data storage site of the medical records (with the exception of the hearing conservation records, which are maintained in the Safety Office) are at the BPA Headquarters Office and is restricted to the following individuals:

1. The Medical Program Manager.
2. The Manager, Safety and Health.
3. The Reasonable Accommodation Coordinator
4. The Injury Compensation Specialist.
5. The Drug and Alcohol Testing Coordinator.

Security of Files: Paper records are maintained in locked cabinets and rooms. Electronic records are controlled through established DOE computer center procedures (personnel screening and physical security), and they are password protected. Passwords are known only by the system manager. Access is limited to those whose official duties require access to the records.

V. EXCLUSIONS FROM THE EMF'S

The following types of records are not part of the EMFS.

- A. Employee Assistance and Counseling Records: Records that are created when an employee enters and participates in BPA's Employee Assistance Program (e.g., drug or alcohol abuse or personal counseling).
- B. Agency FECA Records: Copies of claims and medical documentation submitted as part of a claim under FECA, and retained by BPA with the official file residing with Department of Labor.
- C. Non-Occupational/Patient Records: Records of medical treatment or examination not related to employment (e.g., records of voluntary employee physical examinations, administration of allergy shots, or records of non-work-related medical treatment or examination).

VI. ESTABLISHMENT, TRANSMITTAL, AND RECEIPT OF EMF'S

A. EMF's will be established as follows:

1. The EMFS Manager at Headquarters establishes the EMF in accordance with the guidance provided in the regulations, and policies in the reference section.
2. An EMF will be established when medical records are received that are encompassed by the Policy Summary.

- B. The EMFS Manager is responsible for the transmittal of the EMF to the NPRC or an employee's new agency (including another employing office within the Department). The EMF will be transmitted only to the appropriate official at the NPRC or to the EMFS Manager (and only the EMFS Manager) at the employee's new agency.
 - 1. Human Capital Management will notify the MRCs when an employee is leaving BPA and request that all medical records pertaining to the employee be transmitted to the Manager, Medical Program within 20 working days.
 - 2. The Medical Program Manager will consolidate this information and make it available for transmission to the NPRC.
- C. The MRC at Headquarters is authorized to receive an EMF from another agency, the NPRC, or another organization within the Department. The EMF will be requested from the previous agency at the same time as the employee's OPF. The EMF will be maintained by Headquarters until the employee leaves BPA.

VII. ACCESS TO AND DISCLOSURE OF MEDICAL RECORDS

- A. Medical records are subject to the Privacy Act. The EMFS Manager must ensure that the provisions of the Privacy Act are strictly followed. Guidance on this issue is available in 5 CFR, Part 293, Subpart E, Employee Medical File System of Records, 5 U.S.C. § 552a, Privacy Act, Records Maintained on Individuals, OPM/GOVT-10. DOE-33 and from the Privacy Act/Freedom of Information Act Officer.
- B. The MRC maintains medical records as part of his/her official duties. OPM has published "routine uses" for these records in its systems-of-records notice OPM/GOVT-10. Additional guidance is given from the U.S Department of Energy in DOE-33. A records custodian must not release any records covered by this policy. Their first responsibility is to protect the confidentiality of the records.

Any request for release of medical records must be forwarded to the EMFS for review. If the request for information is appropriate, only the minimal information required will be released. This will normally include summaries and documentation with restricted medical information redacted. The EMFS Manager should consult with the BPA Privacy Act/Freedom of Information Act Officer if unsure about releasing the records.

Additionally, it is BPA policy that medical evaluations and other restricted medical information that describe an employee's medical condition are not to be released to the employee's management. Instead, only the resulting job restrictions and recommendations for job modifications may be released.

Unauthorized disclosure of medical records exposes the individual releasing the information to the penalties (including fines) under the Privacy Act. The EMFS Manager should release these records only to the individuals who require the data to perform their

official duties in accordance with OMP/GOVT-10 and DOE-33. The BPA EMFS has been set up to make an unauthorized release very rare, since employees who require the records to perform their official duties have been identified as MRCs for those records and only the EMFS Manager may authorize “routine use” releases of information from the EMF

Any “non-routine use” release of information from the EMF, without a signed authorization from the employee must be referred to the Privacy Act Officer.

- C. Unless a request is for “routine use,” no disclosure from the Employee Medical File, in any form, may be released without the expressed written consent of the individual to whom the record pertains.
- D. Routine request for disclosures of medical records must be documented and requested in writing. This request must include the date, name, address and organization of the requestor and the purpose of the request. Documentation of these disclosures must be retained for the life of the record.
- E. Employees have the right to access their medical files. This includes the right to designate in writing another party to represent them, providing the written designation specifies the record and name of the representative. Guidance on this issue is available in 5 CFR, Part 293.504(b), Employee Medical File System of Records. When a request for access involves medical or psychological records that require special handling or may harm the requesting employee, the requester shall be advised that the material will only be provided to their physician. Upon receipt of the designation and upon verification of the physician's identity, the records will be made available to the physician, who will have full authority to disclose those records to their patient, 5 CFR, Part 297.205.

If any records are withheld from the requester, the requestor must be notified in writing of their right to appeal to OPM at:

U. S. Office of Personnel Management
Assistant Director for Workforce Information
Human Resources Systems Service
1900 E. Street NW
Washington, DC 20415-0001

- E. The EMFS is exempt from FOIA requests. However, any such request must be referred to the Freedom of Information Act Officer for review.

VIII. EFFECT OF HIPAA ON BPA'S AUTHORITY, AS AN EMPLOYER, TO OBTAIN AND MAINTAIN MEDICAL INFORMATION

- A. HIPAA requirements do not affect BPA's authority to: (1) order or offer medical examinations; (2) request employees to provide medical documentation for the purpose of making employment-related determinations; or (3) maintain employee medical records that are described in Federal Regulations (e.g., in 5 CFR 339, 5 CFR 630, 5 CFR 293 and 20 CFR Chapter 1). HIPAA does not pertain to, or place any restrictions on BPAs authority to obtain medical documentation or conducted medical evaluations related to Federal Employment.
- B. Employees are required to provide adequate medical documentation, when requesting leave related to injury or illness. This includes leave request for the Family and Medical Leave Act or the Family Friendly Leave Act or for reasonable accommodation request due to a medical condition. Not providing the requested information may result the employee's request being denied. (See Personnel Letters 630-1, Leave Administration and 900-2, BPA Reasonable Accommodation Plan).

IX. AMENDMENT OF MEDICAL RECORDS

Under the Privacy Act, an individual is permitted to request any amendment of an EMFS record, including a change in a record, the removal of a document, or the substitution of one medical opinion in lieu of another. A decision not to change the record in the exact manner requested is considered a denial requiring notification to the individual of their right of appeal.

X. RETENTION OF MEDICAL RECORDS

- A. Medical records (see 5 CFR, Part 293, Subpart E, Employee Medical File System of Records, for description) are retained by BPA for the length of employment. Upon transfer, they are forwarded to the receiving agency along with the OPF. If the employee separates from Federal service, the EMF is transferred to the National Personnel Records Center within 90 days of separation. NPRC will maintain these records in accordance with NARA regulations, currently 30 years or for as long as the OPF is maintained, 5 CFR, 293.511.
- B. Records arising in connection with employee drug and/or alcohol testing under Executive Order 12564 are retained for two years. The EMFS Manager may decide to retain such records for a longer duration. .
- C. Medical records that are not placed in the EMF are disposed of by shredding, burning or secure deletion.
- D. The agency copy of OWCP claim information under the Federal Employees Compensation Act (FECA) is retained by BPA and maintained in an agency working file and are not part of the EMF. A notice of injury not filed with OWCP is to be placed in the employee's EMF and retained in accordance with OPM regulations governing disposal of the EMF. When a claim is filed with the Office of Workers' Compensation Programs (OWCP), the official file is retained by the Department of Labor (DOL).

1. Copies of documents retained by BPA as part of the agency working file of OWCP / FECA claims are retained in accordance with the BPA Records Manual retention and disposition file guide.
2. When the BPA copy of OWCP records (i.e., the FECA file) is retained, while the employee is being compensated but is no longer a BPA employee, or when medical records need to be maintained by BPA for some other reason, the following procedures will be followed:
 - a. A notation will be placed in the employee's Official Personnel Folder stating the EMF has been retained by BPA.
 - b. BPA will not destroy records during the specified retention period .If BPA ceases to have use for the records prior to the destruction schedule, it will ship the EMF to the NPRC for storage.

XI. OWNERSHIP OF MEDICAL RECORDS

Medical records in the EMFS are the property of the OPM.

XII. REFERENCES

- 5 CFR, Part 293, Subpart E, Employee Medical File System Records.
- [5 U.S.C. § 552a](#), The Privacy Act of 1974, Records Maintained on Individuals.
- Office of Personnel Management (OPM), Privacy Act of 1974, System of Records, OPM/GOVT-10, Employee Medical File System.
- 5 CFR, Part 339, Subpart C, Medical Examinations, Records, and Reports.
- DOE-33
- Executive Order 12564, Drug Testing.
- Mandatory Guidelines for Federal Workplace Drug Testing Programs, issued by Health and Human Services.
- 49 CFR, Part 40, Procedures for Transportation Workplace Drug and Alcohol Testing Programs.
- Health Insurance Portability and Accountability Act of 1996.

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