(a) **Access to Employee Exposure and Medical Records - OSHA Standard 1910.1020.**

This section aims to provide subject access to medical records and relevant exposure to employees and their designated representatives, and subject access to these records to representatives of the Assistant Secretary so, in line with the Occupational Safety and Health Act, they are able to fulfill their duties.

In order to achieve improvements that are both indirect and direct in the realization, prevention and treatment of occupational diseases, this right of access is essential to employees, their representatives and the Assistant Secretary.

While each employer shall assure compliance with this section, operations involving compliance with the regulations on access and availability of medical records may be undertaken on the employer's behalf by medical practitioners or the healthcare staff responsible for the medical records of employees.

Unless explicitly provided, nothing herein shall influence current legal, moral or ethical commitments with regard to the storage, preservation and privacy of health information supplied by employees, the obligation to disclose data to patients or employees or another element of the relationship with health care, or any current legal commitments with respect to the security of trade secret information.

(b) **Scope and application.**

(b)(1) The scope and application section refers to each maritime, construction, and general sector employer who contracts, makes, maintains or is able to gain access to employee exposure or medical records, or subsequent analyses, for employees exposed to harmful substances or toxic sources of energy.

(b)(2) This portion refers to all medical records and employee exposure, and subsequent analyses, of these employees, should the records be required by particular safety and health standards.

(b)(3) This area refers to all medical records and employee exposure, and subsequent analyses, created and preserved in any way, including on a contractual, fee-for-service or in-house basis.

Every employer is to ensure that, regardless of how records and documents are produced or maintained, the conditions for conservation and access to this section are complied with.

(c) **Definitions.**

(c)(1) Access implies the opportunity and right to inspect and duplicate.

(c)(2) Analysis Using Exposure or Medical Records refers to any collection of data or statistical analysis based in part, at least, on the information gathered from individual healthcare records or employee exposure or collected information from claims made via health insurance Records, as long as the individual responsible for compiling the analysis is presently no longer doing work, and the analysis is noted to the employer and the individual who is preparing the analysis is not carrying out further work.

(c)(3) Designated Representative implies a person or organization with written authorization from an Employee to exercise his or her right to access.

For the purpose of accessing employee exposure records and analyses using medical records or exposure records, a certified or recognized collective bargaining agreement shall be automatically treated as a designated representative, regardless of any employee authorization in writing.

(c)(4) Employee implies an existing employee, a previous employee and includes an employee who is allocated or moved to a job where exposure to harmful, toxic materials or physical agents occurs.

The legal representative of the employee may exercise directly all of the employee's rights in this section in the event that the employee is legally incapacitated or deceased.

(c)(5) *Employee Exposure Record is a record which contains the below information:*

(c)(5)(i) Environmental (workplace) surveying and evaluation of harmful substance or toxic physical agent, including grab, wipe, personal, area, or another sampling method, as well as calculations, associated accumulation and analytical techniques, and other appropriate background information for the analysis of the acquired results.

(c)(5)(ii) Biological monitoring outcomes that directly evaluate the absorption by body systems of a harmful substance or toxic physical agent, such as the quantity of a chemical in the urine, blood, hair, fingernails, breath, etc. but do not include results assessing the biological effects of an agent or substance determining the use of drugs or alcohol by the employee.

(c)(5)(iii) Material safety data sheets that show the potential of material presenting a health hazard to humans

(c)(5)(iv) Absent the above, any record or chemical inventory revealing when and where used, and the nature of the toxic substance or harmful physical agent (e.g., common, chemical, or trade name).

(c)(6)(i) *Employee Medical Record is a record of an employee's state of health that is produced or kept by a doctor, nursing staff or another staff member who delivers health care, including:*

(c)(6)(i)(A) Employment and medical questionnaires (including descriptions of jobs and Occupational Exposures) or histories of employment,

(c)(6)(i)(B) Medical examination results prior to employment, prior to assignment, episodic or periodic, as well as laboratory tests and results, including X-ray results obtained to determine a baseline or detect occupational illnesses and any biological monitoring that does not fall under the employee exposure record,

(c)(6)(i)(C) Medical diagnoses, progress documents, opinions, and recommendations,

(c)(6)(i)(D) First aid records,

(c)(6)(i)(E) Overview of treatments and prescriptions, and

(c)(6)(i)(F) Employee medical complaints.

(c)(6)(ii) *Employee Medical Record not including medical or healthcare information in the following form:*

(c)(6)(ii)(A) Physical samples, which are regularly disposed of as part of ordinary medical practice (e.g. urine or blood sampling).

(c)(6)(ii)(B) Records of claims made via health insurance are separate from a medical program offered by an employer and are not available to an employer by the employee's legal name or another unique identifier (e.g. payroll numbers, social security number, for example.), or

(c)(6)(ii)(C) Records prepared exclusively for litigation that are discovered under the rules of evidence or procedure;

(c)(6)(ii)(D) Records of programs of voluntary employee assistance (e.g., drug or alcohol abuse or private counseling) if kept separate from an employer's medical and health program and associated records.

(c)(7) Employer implies a present, former or subsequent employer.

(c)(8) Exposure or Exposed implies that, in the course of employment, a worker is subjected to a toxic substance or harmful physical agent, by means of ingestion, inhalation, contact with the skin or absorption, etc. This also includes previous exposure, and future potential exposure (e.g. possible or accidental).

This does not, however, include circumstances where an employer can prove that the toxic substance or harmful physical agent is not used, stored, handled, produced or present in any form

in a place of work in a manner distinct from non-occupational typical circumstances.

(c)(9) Health Professional refers to a physician, toxicologist, industrial hygienist, healthcare nurse, or epidemiologist, who provides medical or other workplace health services to exposed employees.

(c)(10) Record relates to any individual item, group of data or collection, irrespective of how it has been stored (e.g. microfilm, microfiche, X-ray sheets, automated data processing or paper document).

(c)(11) Specific Chemical Identity means Chemical Abstracts Service (CAS) Registry Number, a chemical name, or another form of data that precisely reveals the chemical designation of the substance.

(c)(12)(i) *Specific Written Consent is an authorization in writing which contains the below:*

(c)(12)(i)(A) An employee's signature and the name of the individual who authorizes the medical data release,

(c)(12)(i)(B) The date the authorization was written,

(c)(12)(i)(C) The full name of the person or organization permitted to disclose the medical data,

(c)(12)(i)(D) The name of the designated representative (person or organization) permitted to access the data disclosed,

(c)(12)(i)(E) A vague or general description of the medical data permitted to be disclosed,

(c)(12)(i)(F) A brief, general overview of the intent for the disclosure, and

(c)(12)(i)(G) The condition or date for the expiry of a written authorization (if fewer than 365 days).

(c)(12)(ii) An authorization in writing cannot allow for the disclosure of medical data that does not exist at the time of the authorization unless it has been expressly approved for the disclosure of future data and has not been in operation for longer than 12 months from the date of the approval in writing.

(c)(12)(iii) An authorization in writing can be withdrawn at any time in writing.

(c)(13) *"Toxic substance or harmful physical agent" means any biological agent (virus, fungus, bacteria, etc.), chemical substance, or stress produced physically (ionizing radiation, heat, noise, vibration, repetitive motion, non-ionizing, hypo- or hyperbaric pressure, cold, etc.) which:*

(c)(13)(i) Is included in the most recent print version of the Institute for Occupational Safety and Health (NIOSH) Registry of Toxic Effects of Chemical Substances (RTECS), which is incorporated by reference as indicated in Sec. 1910.6; or

(c)(13)(ii) Has given positive proof that the test is performed by or explicitly stated to the employer is an acute or chronic health risk; or

(c)(13)(iii) "Trade secret" relates to any confidential process, pattern, device, formula or information or collection of information that can be used for an employer's business, and which grants the employer a competitive advantage over the competition who fail to use or know it.

(d) **Preservation of records.**

(d)(1) *Unless an occupational health and safety standard is specified and provides a different stated period, each individual employer shall ensure that records are maintained as follows:*

(d)(1)(i) *"Employee medical records." Each employee's medical records shall be stored for at least the length of their employment, and for a minimum of thirty years, with the exception of the following records, which do not need to be kept for a specific period of time:*

(d)(1)(i)(A) The records of claims made via health insurance are kept independently from the employer's health program and records of the employer,

(d)(1)(i)(B) First aid records (which do not include medical histories) or one-time treatments and following observations of minor cuts, scratches, splinters, burns, etc. which do not include restriction of motion or work, transfer to a different job, loss of consciousness, or medical treatment, if made by an individual who isn't a physician on-site and if kept independently from the employer's health program and records of the employer; and

(d)(1)(i)(C) The medical records of an employee who has worked for the employer less than one year do not be kept further than the employment term provided they are given upon termination to the employee.

(d)(1)(ii) *"Employee exposure records." Every record of employee exposure will be maintained and preserved for at least thirty years, with the exception of the following:*

(d)(1)(ii)(A) Background information for workplace (environmental) measuring or monitoring, for example, laboratory data and worksheets, should be kept for only 365 days, provided the results of the sampling, methodology for the collection, a description of mathematical and analytical methods chosen, and a brief summary or overview of the other background information pertaining to how the obtained results will be interpreted, are kept for a minimum of thirty years; and

(d)(1)(ii)(B) Data sheets on material safety and the records of subsection (c)(5)(iv) relating to the unique identity of the agent or substance shall not be maintained for any period of time, provided any record is maintained of the unique identity (such as a chemical name if available) of the agent or material, location and time period it was used, for a minimum of thirty years; and

Material safety data sheets should be held for the chemicals presently being used which are affected by the Hazard Communication Standard.

(d)(1)(ii)(C) The results of biological monitoring indicated as exposure records by specific workplace health and safety standards records, must be kept and maintained, as required by those specific standards.

(d)(1)(iii) "Analyses using exposure or medical records." Every analysis using exposure records or medical assessments must be retained for a minimum of thirty years.

(d)(2) This section does not mandate the manner, form or process an employer maintains records, provided the information within the record has been retained and is retrievable, with the exception of X-ray films for the chest, which must be maintained in their original state.

(e) **Access to records.**

(e)(1) General.

(e)(1)(i) If a designated representative or employee wishes access to a record, the employer should assure that access is provided within a reasonable timeframe, manner, and place. If, within the time period of fifteen working days, the employer is unable to provide access to the record reasonably, the employer has fifteen working days to inform the employee or chosen representative requiring the record, the cause of the specific delay and notify them of the earliest time and date upon which the record is accessible.

(e)(1)(ii) The requester is only entitled to information from the employer that should be readily available by the requestor, and that is necessary to identify or locate the requested records (e.g. places and dates in which the employee has been employed during the specific time frame in question).

(e)(1)(iii) *Each time the designated representative or an employee requests a copy of a record, the employer must make sure that either:*

(e)(1)(iii)(A) The employee or representative shall be provided with a free copy of the specified record,

(e)(1)(iii)(B) The appropriate mechanical copying services are accessible to employees or agents

for producing duplicates of the record at no cost (e.g. photocopying).

(e)(1)(iii)(C) The selected record is lent for a time period that is deemed reasonable to the employer or representative so that a copy can be produced.

(e)(1)(iv) If an original X-ray is required, the employer may choose to limit access to an examination on-site, or arrange other appropriate arrangements for a temporary loan of the X-ray.

(e)(1)(v) Where an employee or designated representative earlier has been provided previously with a record without cost, the employer may choose to ask for a reasonable administrative charge that is non-discriminatory (i.e., copying and search expenses, excluding overhead expenses) when the designated representative or an employee requests multiple copies or versions of the record, except that

(e)(1)(v)(A) An employer may not financially or otherwise charge for a request for a copy of new information which is an addition to a record previously provided by the employer; and

(e)(1)(v)(B) An employer may not financially or otherwise charge for the initial request of a version of an employee exposure record or a break down using medical records or exposure made by a certified or a recognized collective bargaining agent.

(e)(1)(vi) There is nothing stated in this chapter intended to prevent group bargaining by collective bargaining agents and employees from obtaining access to data along with that provided in this section.

(e)(2) Employee and designated representative access

(e)(2)(i) Employee exposure records.

(e)(2)(i)(A) *Unless limited by the paragraph* (f) *of this section, every employer is to provide access to the exposure records for their employee pertaining to the employee and the designated representative on request. The objective of this section, an exposure record which pertains to the employee must consist of:*

(e)(2)(i)(A)(1) A record of monitoring or measuring the amount of a toxic substance or harmful physical agent which the employee is or has been exposed to;

(e)(2)(i)(A)(2) If such records that are directly relevant are absent, records of another or multiple employees with former or present work responsibility or workplace conditions relating to or similar to those of the employee to an extent which reasonably indicates the nature and the amount of toxic substances or harmful physical agents the employee has been or is going to be exposed to, and

(e)(2)(i)(A)(3) Exposure records which reasonably indicate to a necessary extent the nature and the number of harmful physical agents or toxic substances at the workplace or under the physical working conditions the employee is transferred or assigned to.

(e)(2)(i)(B) *Demands for non-consented access to an employee exposure record made by designated representatives shall be submitted in written form and must include:*

(e)(2)(i)(B)(1) The record which was requested must be revealed; and

(e)(2)(i)(B)(2) The necessity of receiving access to such records for occupational health.

(e)(2)(ii) Employee medical records.

(e)(2)(ii)(A) Upon request, each employer shall ensure that the medical records of every employee who is the subject are accessible to the employee except as mentioned in paragraph (e)(2)(ii)(D).

(e)(2)(ii)(B) Upon request, every employer shall ensure that employee medical records are accessible to each and every designated representative of an employee who has been given said designated representative specific consent in writing. A template form for the establishment of specific written consent for accessing employee medical records for is contained in Appendix A.

(e)(2)(ii)(C) *If there is a request for employee medical records to be accessed, a physician, representing the employer may wish to advise that the designated representative or employee:*

(e)(2)(ii)(C)(1) Confer a physician for an evaluation and discussion of the requested records,

(e)(2)(ii)(C)(2) Allow a summary in the absence of the requested records of the material facts and opinions, or

(e)(2)(ii)(C)(3) Agree upon the release only to a doctor, physician or another designated representative of the requested records.

(e)(2)(ii)(D) If a medical professional representing the employer is in the belief that direct employee access to employee medical records in relation to a specified diagnosis of a mental health or psychiatric condition or terminal illness could be incredibly detrimental to the employee’s health, the employer should make the employee who requests access to his or her employee medical records aware that access can only be issued to a designated representative of the employee who has specific consent in writing, which prevents the employee’s direct access to this information.

If access to the withheld information is requested with specific written consent by a designated

representative, the employer must assure this information is accessible to the designated representative, even where it is apparent that this information will be shared with the employee by the designated representative.

(e)(2)(iii) Analyses using exposure or medical records. The unique identity of a relative, a private friend or an employee has given private information relating to an employee's health status can be deleted from the documents requested by a physician, healthcare provider, or other person accountable who maintains employee medical records.

(e)(2)(iii)(A) Upon request, every employer must ensure every designated representative and employee have access to the various analysis using medical or exposure records relating to the employee’s workplace or working conditions.

(e)(2)(iii)(B) When access to analysis containing employee medical records content is requested by direct identifier (payroll number, social security number, name, address, etc.) or through information which can be used under circumstances which indirectly identifies specific employees (age, sex, weight, height, race, job title, date of employment, etc.), the employer must assure that any and forms of personal identification are redacted before allowing access. If an employer is able to demonstrate that removing all personal identification features from an analysis is not possible, access to portions of the analysis with personal identifiers need not be included.

(e)(3) OSHA Access.

(e)(3)(i) If requested and without reducing any rights under the Occupational Safety and Health Act of 1970, 29 U.S.C. 651 "et seq.," or Constitution, that the employer chooses to exercise, each employer shall assure representatives of the Assistant Secretary of Labor for Occupational Safety and Health prompt access to records of employee medical and exposure, and to analysis using medical or exposure records. Agency rules of following the correct practices and procedures for access by OSHA to the medical records of an employee are set out in 29 CFR 1913.10

(e)(3)(ii) If OSHA requests access to the medical information of an employee with personal identifiers by an access order in writing to the employer pursuant to 29 CFR 1913.10(d), the employer must conspicuously send a copy of the access order in writing and the accompanying cover letter in at least fifteen working days.

(f) **Trade secrets.**

(f)(1) Nothing in this section, except what is given in paragraph (f)(2), prevents the employer from destroying any data which relates to trade secrets or discloses procedural information or reveals the proportion of a chemical element in a mixture, provided the health professional, designated representative or employee is made aware that this information has been destroyed or deleted. Where the destruction of trade secret information significantly impacts the evaluation of

the time when or the place where exposure to a toxic substance or harmful physical agent occurred, the employer must disclose alternate information that is sufficient to allow the party who have requested the information to identify when and where exposure may have occurred.

(f)(2) *The employer can choose to withhold from a disclosable record the chemical identity, including the specific chemical name and other identification of the toxic substance, provided that:*

(f)(2)(i) Any claims suggest the information being withheld should be considered a trade secret;

(f)(2)(ii) All the other information available about the characteristics and effect of the harmful substance is communicated;

(f)(2)(iii) The party requesting the information is informed by the employer that the specific chemical identity is being withheld for the reason it is a trade secret; and

(f)(2)(iv) Health professionals, designated representatives, and employees have access to information about the specific chemical identity, in compliance with certain provisions of this exact paragraph.

(f)(3) If it is determined that a medical emergency is apparent, by a treating nurse or physician and knowing the exact chemical nature of a toxic substance is crucial for first-aid or emergency treatment, the employer should disclose the exact chemical nature of the trade secret immediately so the nurse or physician giving treatment, regardless of a statement in writing or a confidentiality agreement. In compliance with the provisions specified in paragraphs (f)(4), as soon as possible, or circumstances allow, the employee may require a statement of need in writing and a confidentiality agreement.

(f)(4) *Upon a request, in a non-emergency situation, an employer should disclose a specific chemical identity to a health professional, employee, or designated representative who can be withheld according to this section in paragraph* (f)(2)*, if:*

(f)(4)(i) The request is issued in writing;

(f)(4)(ii) *The request defines one or multiple of the below occupational health data requirements in reasonable detail:*

(f)(4)(ii)(A) For the purpose of evaluating the risks of any chemicals employees may be exposed to;

(f)(4)(ii)(B) Carry out sampling or evaluate the workplace environment in order to determine employee exposure levels;

(f)(4)(ii)(C) Conducting medical monitoring of exposed employees prior to assignment or periodically;

(f)(4)(ii)(D) Allowing medical treatment of exposed employees;

(f)(4)(ii)(E) To assess or select the appropriate Personal Protective Equipment that are used by exposed employees;

(f)(4)(ii)(F) To assess or design Engineering Controls or similar protective measures as given to exposed employees; and

(f)(4)(ii)(G) To research exposure and evaluate its health impacts.

(f)(4)(iii) The demand clarifies in detail the reason for making the unique chemical identity known and that, instead, the information provided in this paragraph (f)(4)(ii) of this section is inadequate for the provision of occupational health services for the doctor, healthcare professional, designated representative or the employee;

(f)(4)(iii)(A) Any effects and the properties of the specified chemical;

(f)(4)(iii)(B) The measurements that need to be taken to control exposure by different employees to the chemical;

(f)(4)(iii)(C) Which methods of analyzing and monitoring employee exposure to the chemical; and

(f)(4)(iii)(D) Methods of diagnosis and treatment of toxic exposures to the chemical;

(f)(4)(iv) The request contains a detailed description of the methods to ensure that the information revealed is kept confidential; and

(f)(4)(v) The employee, health professional or designated representative and the contractor or employer of the services of the designated representative or health professional have a confidentiality agreement in writing that the employee, health professional or designated representative will under no circumstances use information relating to trade secrets for anything other than providing for the health need(s) stated, and agree, except as permitted under the terms of that contract or an employer, not to disclose data under any conditions outside of OSHA, as specified in paragraph (f)(7) of this section.

(f)(5) *The agreement of confidentiality which is authorized in paragraph* (f)(4)(iv):

(f)(5)(i) The intended use of the information may be limited in a written statement of necessity for the purposes of health;

(f)(5)(ii) Proper legal remedies may be provided, including a reasonable prediction of probable damages, in case of violation of the Agreement; and

(f)(5)(iii) The requirement to place a penalty bond may not be included.

(f)(6) No information in this section is intended to prevent parties from seeking, to an extent allowed by law, non-contractual remedies.

(f)(7) Where it is decided that a medical professional, designated representative or employee who receives information regarding trade secrets should disclose it directly to OSHA, the health professional shall inform the employer that the disclosure was received before or simultaneously.

(f)(8) *Should a request in writing reveal a particular chemical identity was denied by the employer, the refusal should:*

(f)(8)(i) Be supplied within thirty days of the request to the employee, health professional or designated representative;

(f)(8)(ii) Be written;

(f)(8)(iii) Submit proof with the claim that the identified chemical is a trade secret;

(f)(8)(iv) Explain specifically the reasons for the request being refused;

(f)(8)(v) Give a detailed explanation as to what alternative information might satisfy the occupational health or medical need, without the need to reveal the specified chemical identity.

(f)(9) If their request for information is rejected in accordance with paragraph (f)(4) of this given section, the health professional, employee, or designated representative may release the application and the denial of the request to OSHA for their consideration

(f)(10) *When a denial is referred to OSHA in compliance with paragraph* (f)(9) *of this section by a health professional, employee, or designated representative, OSHA will review all of the relevant evidence to determine if:*

(f)(10)(i) The claim is supported that the chemical identity in question is a trade secret by the employer;

(f)(10)(ii) If there is a claim about an occupational health need for the information which is supported by the designated representative, health professional and employee; and

(f)(10)(iii) The means to protect privacy has been adequately demonstrated by the health

professional, employee or designated representative.

(f)(11)(i) Should, under paragraph (f)(4) of this section, a specific chemical identity is requested and is determined by OSHA as not to be a "bona fide" trade secret, or there is a legitimate occupational or medical requirement for the information by the requesting health professional, employee or designated representative, and that they have released a confidentiality agreement in writing, and have shown the means to adequately comply with the said agreement, OSHA will subject the employer to citation.

(f)(11)(ii) Should an employer demonstrate to OSHA how the implementation of an agreement of confidentiality will not give acceptable protection against potential harm in the event that a trade secret specific chemical identity is disclosed without authorization, the Assistant Secretary can decide to issue or impose additional limitations on the availability of the chemical information requested to make sure that occupational health needs can be met without potential risk to an employer.

(f)(12) If no trade secret claim is present, any requested information shall be disclosed by the employer, as required under this section, to the Assistant Secretary upon request. When a claim is made for a trade secret, the claim should be made no later than the time it was given to the Assistant Secretary, in such a way to allow the adequate determination of whether or not it has trade secret status, and what necessary safeguards need to be implemented.

(f)(13) Under no circumstances should anything in this section or paragraph shall be construed as to require disclosure of the percentage of mixture or process information which is a trade secret.

(g) **Employee information.**

(g)(1) *Each employer must inform present employees covered in this chapter of the below, at least annually, after an employee's initial entry into employment:*

(g)(1)(i) Location, availability, and the existence of any and all records as covered by this section;

(g)(1)(ii) The individual in charge of maintenance and access to such records;

(g)(1)(iii) The right of every employee to access such records.

(g)(2) A version of this section plus its appendices should be kept by every employer, and have copies which are readily available that they can present, if requested, to employees. Any informative documents made available by the Assistant Secretary of Labor for Occupational Safety and Health to the employer concerning this section shall be distributed by the employer to the current employees.

(h) **Transfer of records.**

(h)(1) An employer should transfer any and all records referred to in this section to the superior or successor employer whenever the employer ceases to do business. These records shall be received and maintained by the successor employer.

(h)(2) If there is not to be a successor employer, to receive and store records in a manner consistent with these standards when the employer ceases to do business, affected employees should be notified by the employer no sooner than three months prior to the cessation of the employer's business of their rights of access to records.