

OFFICE OF PERSONNEL MANAGEMENT

Privacy Act of 1974: Update and Amend System of Records

AGENCY: U.S. Office of Personnel Management (OPM).

ACTION: Update and amend OPM/GOVT-10, Employee Medical File System Records.

SUMMARY: OPM proposes to update and amend OPM/GOVT-10, Employee Medical File System Records contained in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. This action is necessary to meet the requirements of the Privacy Act to publish in the **Federal Register** notice of the existence and character, as well as any new use or intended new use of records maintained by the agency. 5 U.S.C. 552a(e)(4) and (11).

DATES: These changes will become effective without further notice forty (40) calendar days from the date of this publication, unless we receive comments that result in a contrary determination.

ADDRESSES: Send written comments to the Group Manager, Employee Services, Resources Management Group, 1900 E Street, NW., Room 7305, Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Willie Powers, Group Manager, willie.powers@opm.gov.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management's (OPM) system of record notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register**. The proposed changes include an addition of a new category of record, (f), to reflect records resulting from participation in agency-sponsored health promotion and wellness activities; an amendment to NOTE 2, under categories of records in the system, to include participation in an agency-sponsored health and wellness program; an addition of two new purposes—(l) to facilitate communication among members of an on-site health and wellness program and to the individual employee participating in the program, and (m) to enable evaluation of the effectiveness of on-site health and wellness programs. We have also proposed an update to routine use (m) to include other agencies or contractors acting on behalf of the agency, the removal of routine use (x) due to duplication of routine use (q), and an addition of a new routine use (x) to evaluate and report on the

effectiveness of health and wellness programs. We are providing advance notice of these amendments to Congress and OMB, as required by subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

John Berry,
Director, U.S. Office of Personnel Management.

OPM/GOVT-10 System Name:

Employee Medical File System Records

SYSTEM LOCATION:

a. For current employees, records are located in agency medical, personnel, dispensary, health, safety, or other designated offices within the agency, or contractors performing a medical function for the agency.

b. For former employees, most records will be located in an Employee Medical Folder (EMF) stored at the National Personnel Records Center operated by the National Archives and Records Administration (NARA). In some cases, agencies may retain for a limited time (*e.g.*, up to 3 years) some records on former employees.

Note 1: The records in this system of records are "owned" by the Office of Personnel Management (OPM) and should be provided to those OPM employees who have an official need or use for those records. Therefore, if an employing agency is asked by an OPM employee to access the records within this system, such a request should be honored.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former Federal civilian employees as defined in 5 U.S.C. 2105.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records maintained in this system include:

a. Medical records, forms, and reports completed or obtained when an individual applies for a Federal job and is subsequently employed;

b. Medical records, forms, and reports completed during employment as a condition of employment, either by the employing agency or by another agency, State or local government entity, or a private sector entity under contract to the employing agency;

c. Records pertaining and resulting from the testing of the employee for use of illegal drugs under Executive Order 12564. Such records may be retained by the agency (*e.g.*, by the agency Medical Review Official) or by a contractor laboratory. This includes records of negative results, confirmed or unconfirmed positive test results, and

documents related to the reasons for testing or other aspects of test results.

d. Reports of on-the-job injuries and medical records, forms, and reports generated as a result of the filing of a claim for Workers' Compensation, whether the claim is accepted or not. (The official compensation claim file is not covered by this system; rather, it is part of the Department of Labor's Office of Workers' Compensation Program (OWCP) system of records.)

e. All other medical records, forms, and reports created on an employee during his/her period of employment, including any retained on a temporary basis (*e.g.*, those designated to be retained only during the period of service with a given agency) and those designated for long-term retention (*i.e.*, those retained for the entire duration of Federal service and for some period of time after).

f. Records resulting from participation in agency-sponsored health promotion and wellness activities, including health risk appraisals, biometric testing, health coaching, disease management, behavioral management, preventive services, fitness programs, and any other activities that could be considered part of a comprehensive worksite health and wellness program.

Note 2: Records maintained by an agency dispensary are included in this system only when they are the result of a condition of employment or related to an on-the-job occurrence or result from participation in an agency-sponsored health and wellness program.

Note 3: Records pertaining to employee drug or alcohol abuse counseling or treatment, and those pertaining to other employee counseling programs conducted under the Health Service Program established pursuant to 5 U.S.C. chapter 79, are not part of this system of records.

Note 4: Only Routine Use "u" identified for this system of records is applicable to records relating to drug testing under Executive Order 12564. Further, such records shall be disclosed only to a very limited number of officials within the agency, generally only to the agency Medical Review Official (MRO), the administrator of the agency Employee Assistance Program, and any supervisory or management official within the employee's agency having authority to take the adverse personnel action against the employee.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Executive Orders 12107, 12196, and 12564 and 5 U.S.C. chapters 11, 33, and 63.

PURPOSE(S):

Records in this system of records are maintained for a variety of purposes, which include the following:

a. To ensure that records required to be retained on a long-term basis to meet the mandates of law, Executive Order, or regulations (e.g., the Department of Labor's Occupational Safety and Health Administration (OSHA) and OWCP regulations), are so maintained.

b. To provide data necessary for proper medical evaluations and diagnoses, to ensure that proper treatment is administered, and to maintain continuity of medical care.

c. To provide an accurate medical history of the total health care and medical treatment received by the individual as well as job and/or hazard exposure documentation and health monitoring in relation to health status and claims of the individual.

d. To enable the planning for further care of the patient.

e. To provide a record of communications among members of the health care team who contribute to the patient's care.

f. To provide a legal document describing the health care administered and any exposure incident.

g. To provide a method for evaluating quality of health care rendered and job-health-protection including engineering protection provided, protective equipment worn, workplace monitoring, and medical exam monitoring required by OSHA or by good practice.

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. To document claims filed with and the decisions reached by the OWCP and the individual's possible reemployment rights under statutes governing that program.

j. To document employee's reporting of on-the-job injuries or unhealthy or unsafe working conditions, including the reporting of such conditions to OSHA and actions taken by that agency or by the employing agency.

k. To ensure proper and accurate operation of the agency's employee drug testing program under Executive Order 12564.

l. To facilitate communication among members of an on-site health and wellness program and to the individual employee participating in the program.

m. To enable evaluation of the effectiveness of on-site health and wellness programs.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Note 5: With the exception of Routine Use "u," none of the other Routine Uses identified for this system of records are applicable to records relating to drug testing under Executive Order 12564. Further, such records shall be disclosed only to a very limited number of officials within the agency, generally only to the agency Medical Review Official (MRO), the administrator of the agency Employee Assistance Program, and the management official empowered to recommend or take adverse action affecting the individual. These records and information in these records may be used:

a. To disclose information to the Department of Labor, Department of Veterans Affairs, Social Security Administration, Federal Retirement Thrift Investment Board, or a national, State, or local social security type agency, when necessary to adjudicate a claim (filed by or on behalf of the individual) under a retirement, insurance, or health benefit program.

b. To disclose information to a Federal, State, or local agency to the extent necessary to comply with laws governing reporting of communicable disease.

c. To disclose information to another Federal agency, to a court, or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency when the Government is a party to the judicial or administrative proceeding.

d. To disclose information to the Department of Justice, or in a proceeding before a court, adjudicative body, other administrative body before which the agency is authorized to appear, when:

1. The agency, or any component thereof; or

2. Any employee of the agency in his or her official capacity; or

3. Any employee of the agency in his or her individual capacity where the Department of Justice or the agency has agreed to represent the employee; or

4. The United States, where the agency determines that litigation is likely to affect the agency or any of its components, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice or the agency is deemed by the agency to be relevant and necessary to the litigation, provided, however, that in each case it has been determined that the disclosure is compatible with the purpose for which the records were collected.

e. To disclose in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

f. To disclose pertinent information to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order when the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

g. To disclose information to the Office of Management and Budget at any stage in the legislative coordination and clearance process in connection with private relief legislation as set forth in OMB Circular No. A-19.

h. To disclose information to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

i. To disclose information to the Merit System Protection Board or the Office of the Special Counsel, the Federal Labor Relations Authority and its General Counsel, the Equal Employment Opportunity Commission, arbitrators, and hearing examiners to the extent necessary to carry out their authorized duties.

j. To disclose information to survey team members from the Joint Commission on Accreditation of Hospitals (JCAH) when requested in connection with an accreditation review, but only to the extent that the information is relevant and necessary to meet the JCAH standards.

k. To disclose information to the National Archives and Records Administration in records management inspections and its role as Archivist.

l. To disclose information to health insurance carriers contracting with the Office to provide a health benefits plan under the Federal Employees Health Benefits Program information necessary to verify eligibility for payment of a claim for health benefits.

m. By the agency maintaining or responsible for generating the records (or third parties under contract with the agency) to locate individuals for health research or survey response and in the production of summary descriptive statistics and analytical studies (e.g., epidemiological studies) in support of the function for which the records are collected and maintained. While published statistics and studies do not contain individual identifiers, in some instances the selection of elements of data included in the study might be structured in such a way as to make the data individually identifiable by inference.

n. To disclose information to the Office of Federal Employees Group Life Insurance or Federal Retirement Thrift Investment Board that is relevant and necessary to adjudicate claims.

o. To disclose information, when an individual to whom a record pertains is mentally incompetent or under other legal disability, to any person who is responsible for the care of the individual, to the extent necessary.

p. To disclose to the agency-appointed representative of an employee, all notices, determinations, decisions, or other written communications issued to the employee, in connection with an examination ordered by the agency under medical evaluation (formerly Fitness for Duty) examinations procedures.

q. To disclose to a requesting agency, organization, or individual the home address and other information concerning those individuals who it is reasonably believed might have contracted an illness or been exposed to or suffered from a health hazard while employed in the Federal workforce.

r. To disclose information to a Federal agency, in response to its request or at the initiation of the agency maintaining the records, in connection with the retention of an employee, the issuance of a security clearance, the conducting of a suitability or security investigation of an individual, the classifying of jobs, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, or the lawful, statutory, administrative, or investigative purpose of the agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

s. To disclose to any Federal, State, or local government agency, in response to its request or at the initiation of the agency maintaining the records, information relevant and necessary to the lawful, statutory, administrative, or investigatory purpose of that agency as it relates to the conduct of job related epidemiological research or the assurance of compliance with Federal, State, or local government laws on health and safety in the work environment.

t. To disclose to officials of labor organizations recognized under 5 U.S.C. chapter 71, analyses using exposure or medical records and employee exposure records, in accordance with the records access rules of the Department of Labor's OSHA, and subject to the limitations at 29 CFR 1910.20(e)(2)(iii)(B).

u. To disclose the results of a drug test of a Federal employee pursuant to an order of a court of competent jurisdiction where required by the United States Government to defend against any challenge against any adverse personnel action.

v. To disclose information to contractors, grantees, or volunteers performing or working on a contract, service, grant, cooperative agreement or job for the Federal Government.

w. To disclose records on former Panama Canal Commission employees to the Republic of Panama for use in employment matters.

x. To evaluate and report on the effectiveness of health and wellness programs by agency staff or third parties under contract with the agency to conduct such evaluations.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, SAFEGUARDING, AND RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in file folders, on microfiche, in electronic record systems, and on file cards, x-rays, or other medical reports and forms.

RETRIEVABILITY:

Records are retrieved by the employee's name, date of birth, social security number, or any combination of those identifiers.

SAFEGUARDS:

Records are stored in locked file cabinets or locked rooms. Electronic records are protected by restricted

access procedures and audit trails. Access to records is strictly limited to agency or contractor officials with a bona fide need for the records.

RETENTION AND DISPOSAL:

The EMF is maintained for the period of the employee's service in the agency and is then transferred to the National Personnel Records Center for storage, or as appropriate, to the next employing Federal agency. Other medical records are either retained at the agency for various lengths of time in accordance with the National Archives and Records Administration's records schedules or destroyed when they have served their purpose or when the employee leaves the agency. Within 90 days after the individual separates from the Federal service, the EMF is sent to the National Personnel Records Center for storage. Destruction of the EMF is in accordance with General Records Schedule-1(21). Records arising in connection with employee drug testing under Executive Order 12564 are generally retained for up to 3 years. Records are destroyed by shredding, burning, or by erasing the disk.

SYSTEM MANAGER(S) AND ADDRESS:

a. Group Manager, Employee Services, Resources Management Group, 1900 E Street, NW., Room 7305, Washington, DC 20415.

b. For current Federal employees, OPM has delegated to the employing agency the Privacy Act responsibilities concerning access, amendment, and disclosure of the records within this system notice.

NOTIFICATION PROCEDURE:

Individuals wishing to inquire whether this system of records contains records on them should follow the appropriate procedure listed below.

a. *Current Employees.* Current employees should contact their employing agency's personnel, dispensary, health, safety, medical, or other designated office responsible for maintaining the records, as identified in the agency's internal issuance covering this system. Individuals must furnish such identifying information as required by the agency for their records to be located and identified.

b. *Former employees.* Former employees should contact their former agency's personnel, dispensary, health, safety, medical, or other designated office responsible for maintaining the records, as identified in the agency's internal issuance covering this system.

Additionally, for access to their EMF, they should submit a request to the National Personnel Records Center

(Civilian), 111 Winnebago Street, St. Louis, Missouri 63118.

RECORDS ACCESS PROCEDURE:

a. Current employees should contact the appropriate agency office as indicated in the Notification Procedure section and furnish such identifying information as required by the agency to locate and identify the records sought.

b. Former employees should contact the appropriate agency office as indicated in the Notification Procedure section and furnish such identifying information as required by the agency to locate and identify the records sought. Former employees may also submit a request to the National Personnel Records Center (Civilian), 111 Winnebago Street, St. Louis, Missouri 63118, for access to their EMF. When submitting a request to the National Personnel Records Center, the individual must furnish the following information to locate and identify the record sought:

1. Full name.
2. Date of birth.
3. Social security number.
4. Agency name, date, and location of last Federal service.
5. Signature.

c. Individuals requesting access must also comply with OPM's Privacy Act regulations on verification of identity and access to records (5 CFR part 297).

CONTESTING RECORDS PROCEDURE:

Because medical practitioners often provide differing, but equally valid medical judgments and opinions when making medical evaluations of an individual's health status, review of requests from individuals seeking amendment of their medical records, beyond correction and updating of the records, will be limited to consideration of including the differing opinion in the record rather than attempting to determine whether the original opinion is accurate. Individuals wishing to amend their records should:

a. For a current employee, contact the appropriate agency office identified in the Notification Procedure section and furnish such identifying information as required by the agency to locate and identify the records to be amended.

b. For a former employee, contact the appropriate agency office identified in the Notification Procedure section and furnish such identifying information as required by the agency to locate and identify the record to be amended. Former employees may also submit a request to amend records in their EMF to the system manager. When submitting a request to the system manager, the individual must furnish

the following information to locate and identify the records to be amended:

1. Full name.
 2. Date of birth.
 3. Social security number.
 4. Agency name, date, and location of last Federal service.
 5. Signature.
- c. Individuals seeking amendment of their records must also follow the Office's Privacy Act regulations on verification of identity and amendment of records (5 CFR part 297).

RECORDS SOURCE CATEGORIES:

RECORDS IN THIS SYSTEM ARE OBTAINED FROM:

- a. The individual to whom the records pertain.
- b. Agency employee health unit staff.
- c. Federal and private sector medical practitioners and treatment facilities.
- d. Supervisors/managers and other agency officials.
- e. Other agency records.

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POSTAL REGULATORY COMMISSION

[Docket Nos. CP2010-60 through CP2010-63; Order No. 472]

New Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recently-filed Postal Service request to add new Global Expedited Package Services 2 products to the Competitive Product List. This notice addresses procedural steps associated with the filing.

DATES: Comments are due: June 22, 2010.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at <http://www.prc.gov>. Commenters who cannot submit their views electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on alternatives to electronic filing.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, at stephen.sharfman@prc.gov 202-789-6820.

SUPPLEMENTARY INFORMATION:

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I. Introduction

On June 14, 2010, the Postal Service filed a notice announcing that it has

entered into four additional Global Expedited Package Services 2 (GEPS 2) contracts.¹ The Postal Service believes the instant contracts are functionally equivalent to previously submitted GEPS 2 contracts, and are supported by Governors' Decision No. 08-7, attached to the Notice and originally filed in Docket No. CP2008-4. *Id.* at 1-2, Attachment 3. The Notice also explains that Order No. 86, which established GEPS 1 as a product, also authorized functionally equivalent agreements to be included within the product, provided that they meet the requirements of 39 U.S.C. 3633. *Id.* at 1. In Order No. 290, the Commission approved the GEPS 2 product.²

The instant contracts. The Postal Service filed the instant contracts pursuant to 39 CFR 3015.5. In addition, the Postal Service contends that each contract is in accordance with Order No. 86. The term of each contract is one year from the date the Postal Service notifies the customer that all necessary regulatory approvals have been received. Notice at 2-3.

In support of its Notice, the Postal Service filed four attachments as follows:

- Attachments 1A, 1B, 1C and 1D—redacted copies of the four contracts and applicable annexes;
- Attachments 2A, 2B, 2C and 2D—a certified statement required by 39 CFR 3015.5(c)(2) for each of the four contracts;
- Attachment 3—a redacted copy of Governors' Decision No. 08-7 which establishes prices and classifications for GEPS contracts, a description of applicable GEPS contracts, formulas for prices, an analysis and certification of the formulas and certification of the Governors' vote; and
- Attachment 4—an application for non-public treatment of materials to maintain redacted portions of the contracts and supporting documents under seal.

The Notice advances reasons why the instant GEPS 2 contracts fit within the Mail Classification Schedule language for GEPS 2. The Postal Service identifies customer-specific information, general contract terms, and other differences that distinguish the instant contracts from the baseline GEPS 2 agreement, all of which are highlighted in the Notice.

¹ Notice of United States Postal Service Filing of Four Functionally Equivalent Global Expedited Package Services 2 Negotiated Service Agreements and Application for Non-Public Treatment of Materials Filed Under Seal, June 14, 2010 (Notice).

² Docket No. CP2009-50, Order Granting Clarification and Adding Global Expedited Package Services 2 to the Competitive Product List, August 28, 2009 (Order No. 290).

Id. at 3-6. These modifications as described in the Postal Service's Notice apply to each of the instant contracts.

The Postal Service contends that the instant contracts are functionally equivalent to previously filed GEPS 2 contracts and are substantially similar to that in Docket No. CP2009-50 in terms of the product being offered, the market in which it is offered, and its cost characteristics. *Id.* at 2-3. The Postal Service states that "the relevant cost and market characteristics are similar, if not the same for these four contracts and the baseline GEPS contract." *Id.* at 6.

The Postal Service also contends that its filing demonstrates that each of the new GEPS 2 contracts complies with the requirements of 39 U.S.C. 3633. It requests that the contracts be included within the GEPS 2 product. *Id.* at 7.

II. Notice of Filing

The Commission establishes Docket Nos. CP2010-60, CP2010-61, CP2010-62 and CP2010-63 for consideration of matters related to the contracts identified in the Postal Service's Notice.

These dockets are addressed on a consolidated basis for purposes of this order. Filings with respect to a particular contract should be filed in that docket.

Interested persons may submit comments on whether the Postal Service's contracts are consistent with the policies of 39 U.S.C. 3632, 3633 or 3642. Comments are due no later than June 22, 2010. The public portions of these filings can be accessed via the Commission's Web site (<http://www.prc.gov>).

The Commission appoints Paul L. Harrington to serve as Public Representative in the captioned proceedings.

III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket Nos. CP2010-60, CP2010-61, CP2010-62 and CP2010-63 for consideration of matters raised by the Postal Service's Notice.

2. Comments by interested persons in these proceedings are due no later than June 22, 2010.

3. Pursuant to 39 U.S.C. 505, Paul L. Harrington is appointed to serve as officer of the Commission (Public Representative) to represent the interests of the general public in these proceedings.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.