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 Century Station Federal Office Building, 300 Fayetteville Mall, Room 438, Raleigh, North Carolina 27601  
 1600 167th Street, Suite 9, Calumet City, Illinois 60409  
 O'Hara Lake Plaza, 2360 East Devon Avenue, Suite 1010, Des Plaines, Illinois 60018  
 344 Smoke Tree Business Park, North Aurora, Illinois 60542  
 Federal Office Building, 1240 East 9th Street, Room 899, Cleveland, Ohio 44199  
 Federal Office Building, 200 N. High Street, Room 620, Columbus, Ohio 43215  
 US P.O. & Courthouse Building, 46 East Ohio Street, Room 423, Indianapolis, Indiana 46204  
 36 Triangle Park Drive, Cincinnati, Ohio 45246  
 2618 North Ballard Road, Appleton, Wisconsin 54915  
 Henry S. Reuss Building, Room 1180, 310 West Wisconsin Avenue, Milwaukee, Wisconsin 53203  
 110 South 4th Street, Suite 1220, Minneapolis, Minnesota 55401  
 234 North Summit Street, Room 734, Toledo, Ohio 43604  
 801 South Waverly Road, Suite 306, Lansing, Michigan 48917-4200  
 4802 East Broadway, Madison, Wisconsin 53716  
 2918 W. Willow Knolls Road, Peoria, Illinois 61614  
 8344 East R.L. Thornton Freeway, Suite 420, Dallas, Texas 75228  
 903 San Jacinto Boulevard, Suite 319, Austin, Texas 78701  
 Westbank Building, Suite 820, 505 Marquette Avenue, NW, Albuquerque, New Mexico 87102  
 2156 Wooddale Boulevard, Hoover Annex, Suite 200, Baton Rouge, Louisiana 70806  
 Wilson Plaza, 606 N. Carancahua, Suite 700, Corpus Christi, Texas 78401  
 Federal Office Building, 1205 Texas Avenue, Room 806, Lubbock, Texas 79401  
 350 North Sam Houston Parkway East, Suite 120, Houston, Texas 77060  
 17625 El Camino Real, Suite 400, Houston, Texas 77058  
 420 West Main Place, Suite 300, Oklahoma City, Oklahoma 73102  
 North Starr II, Suite 430, 8713 Airport Freeway, Fort Worth, Texas 76180-7604  
 TCBY Building, Suite 450, 425 West Capitol Avenue, Little Rock, Arkansas 72201  
 4171 North Mesa Street, Room C119, El Paso, Texas 79902  
 6200 Connecticut Avenue, Suite 100, Kansas City, Missouri 64120  
 911 Washington Avenue, Room 420, St. Louis, Missouri 63101  
 210 Walnut Street, Room 815, Des Moines, Iowa 50309

300 Epic Center, 301 North Main, Wichita, Kansas 67202  
 Overland—Wolf Building, Room 100, 6910 Pacific Street, Omaha, Nebraska 68106  
 8600 Farley, Suite 105, Overland Park, Kansas 66212-4677  
 2900 Fourth Avenue, North, Suite 303, Billings, Montana 59101  
 220 E. Rosser, Room 348, P.O. Box 2439, Bismarck, North Dakota 58501  
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 71 Stevenson Street, Room 420, San Francisco, California 94105  
 101 El Camino Plaza, Suite 105, Sacramento, California 95815  
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 300 Ala Moana Boulevard, Suite 5122, P.O. Box 50072, Honolulu, Hawaii 96850  
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 505 106th Avenue, Northeast, Suite 302, Bellevue, Washington 98004  
 1220 Southwest Third Avenue, Room 640, Portland, Oregon 97204  
*Pension and Welfare Benefits Administration  
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 Regional Director, J.F.K. Federal Bldg., Room 575, Boston, Massachusetts 22203  
 Regional Director, 1633 Broadway, Rm. 226, New York, N.Y. 10019  
 Regional Director, 3535 Market Street, Room M300, Gateway Building, Philadelphia, Pennsylvania 19104  
 District Supervisor, 1730 K Street N.W., Suite 556, Washington, DC 20006  
 Regional Director, 61 Forsyth Street, S.W., Room 7B54, Atlanta, Georgia 30303  
 District Supervisor, 8040 Peters Road, Building H, Suite 104, Plantation, Florida 33324  
 Regional Director, 1885 Dixie Highway, Suite 210, Ft. Wright, Kentucky 41011  
 District Supervisor, 211 West Fort Street, Suite 1310, Detroit, Michigan 48226-3211  
 Regional Director, 200 West Adams Street, Suite 1600, Chicago, Illinois 60606  
 Regional Director, City Center Square, 1100 Main Street, Suite 1200, Kansas City, Missouri 64105  
 District Supervisor, 815 Olive Street, Room 338, St. Louis, Missouri 63101  
 Regional Director, 525 Griffin Street, Room 707, Dallas, Texas 75202  
 Regional Director, 71 Stevenson Street, Suite 915, P.O. Box 190250, San Francisco, California 94119-0250  
 District Director, 1111 Third Avenue, Room 860, Seattle, Washington 98101-3212  
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 Region I  
 J.F. Kennedy Federal Building, Government Center, Room E-315, Boston, Massachusetts 02203  
 Region II  
 201 Varick Street, Room 766, New York, New York 10014  
 Region III  
 U.S. Customs House, Room 802, Second and Chestnut Streets, Philadelphia, Pennsylvania 19106  
 Region IV  
 Atlanta Federal Center, 61 Forsyth Street, SW., Room 6T85, Atlanta, Georgia 30303  
 Region V  
 230 South Dearborn, Room 1064, Chicago, Illinois 60604  
 Region VI  
 525 Griffin Street, Room 858, Dallas, Texas 75202  
 Region VII  
 Center City Square, 1100 Main Street, Suite 850, Kansas City, Missouri 64105-2112  
 Region VIII  
 1801 California Street, Suite 910, Denver, Colorado 80202-2614  
 Region IX  
 71 Stevenson Street, Suite 705, San Francisco, California 94105  
 Region X  
 1111 Third Avenue, Suite 800, Seattle, Washington 98101-3212  
 Signed at Washington, DC, this 15th day of October, 1998.  
**Alexis M. Herman,**  
*Secretary of Labor.*  
 [FR Doc. 98-28212 Filed 10-21-98; 8:45 am]  
 BILLING CODE 4510-27-P

## DEPARTMENT OF LABOR

### Office of Workers' Compensation Programs

#### 20 CFR Part 10

RIN 1215-AB18

### Use and Disclosure of Federal Employees' Compensation Act Claims File Material

**AGENCY:** Employment Standards Administration, Office of Workers' Compensation Programs, Labor.

**ACTION:** Notice of final rulemaking.

**SUMMARY:** The Department of Labor's Office of Workers' Compensation Programs (OWCP), is revising the rules regulating the release, use, and disclosure of documents covered by the Privacy Act system of records entitled "DOL/GOVT-1 (Office of Workers'

Compensation Programs, Federal Employees' Compensation Act File)." This system covers all documents relating to claims filed under the Federal Employees' Compensation Act (FECA), including copies retained by employing agencies. Because records covered by DOL/GOVT-1 are used by the OWCP in making decisions with regard to FECA entitlement, the Department is revising its regulation to reserve to the OWCP the exclusive authority for ruling on requests submitted by the subject of the FECA file for the correction or amendment of any record contained in such file.

**EFFECTIVE DATE:** November 23, 1998.

**FOR FURTHER INFORMATION CONTACT:**

Thomas M. Markey, Director for Federal Employees' Compensation, Employment Standards Administration, U.S. Department of Labor, Room S-3229, 200 Constitution Avenue, NW, Washington, DC 20210-0002. Telephone: (202) 219-7552.

**SUPPLEMENTARY INFORMATION:**

**I. Discussion**

In a notice published July 28, 1997 (62 FR 40418), the Department proposed to amend § 10.12 of part 10 to clarify the provisions regulating the release, use and/or disclosure of documents relating to claims filed under the Federal Employees' Compensation Act (FECA), 5 U.S.C. 8101 *et seq.* Only one comment was received by the Department. In its written submission, the Department of Defense's Civilian Personnel Management Service agreed with the provisions giving the OWCP exclusive authority over FECA related records. The Service expressed concern, however, on the impact which the provisions could have on so-called dual records. The Service wrote:

It is evident that a work related incident that causes an injury will likely trigger many records other than Workers' Compensation documentation. A single incident may generate a safety investigation, a criminal investigation, and various personnel actions, any one of which will create dual records. These dual records are currently part of the DoD systems of records. Copies of these records may be submitted to OWCP as evidence to support or controvert initial or continuing actions in the Worker's Compensation case.

The Service sought clarification on whether it was appropriate to maintain records concerning an injury covered by the FECA in systems of records it may have established, and, if so, whether the agency could make corrections or amendments to its own records.

The Department of Labor, which has the exclusive authority for administering and enforcing the

workers' compensation program applicable to Federal employees (5 U.S.C. 8128(b), 8145), considers all records collected because a claim was filed seeking benefits under the FECA, to be official records of the Department and, with one limited exception, covered by DOL/GOVT-1, the government-wide Privacy Act system of records most recently reported by the Department at 62 FR 49548 (September 23, 1993). The one exception specifically recognized by the Department provides that an agency may retain forms CA-1 and CA-2 in an Employee Medical Folder (EMF) in accordance with guidelines issued by the Office of Personnel Management (OPM), but only if those forms were not submitted to the OWCP (20 CFR 10.102(a); 52 FR 10488 (April 1, 1987)). The instances where such reports are not to be submitted to the OWCP, and thus do not become part of a file assigned a FECA claims number covered by DOL/GOVT-1, are extremely limited. Cf. 20 CFR 10.102(a).

When the forms CA-1 or CA-2, or other claim forms are submitted to the OWCP, and/or the OWCP assigns a claim file number to a particular injury, all materials relating to that claim or injury, whether in the possession of the OWCP or the agency, are covered by DOL/GOVT-1, and thus subject to OWCP's exclusive control. As a general matter, therefore, it would not be appropriate for an agency to maintain copies of records generated as a result of a FECA claim in a system other than DOL/GOVT-1. That is not to say that a record created to satisfy two or more purposes (i.e., personnel, safety and health, potential criminal matters, etc.), may not be covered by other systems of records even though the subject-matter of the document relates to an on-the-job injury sustained by a Federal employee. To comply with the Privacy Act in such situations, the agency should place a copy of the document in folders specifically designated as covered by other systems of records. However, before an agency discloses or uses any record covered by DOL/GOVT-1 for purposes other than those directly related to the FECA program, it must ensure that such disclosure or use has been authorized by the Department of Labor.

It should be noted that the Privacy Act grants the Department broad discretion to determine how and when a particular record should be used. Thus, even where a routine use could be construed as authorizing the release of a Privacy Act record, such release is not mandatory. The owner of the record, in this case the Department of Labor's

OWCP, may, in the exercise of its statutory discretion, determine not to authorize a record to be used in particular situations. For example, the Department has determined that records covered by DOL/GOVT-1 may not be used in connection with a personnel action absent consent of the subject of the record. See "Injury Compensation for Federal Employees," Publication CA-810 (February 1994) p. 46. Agencies must remember, therefore, that it is not permissible to use or release FECA documents in connection with personnel matters unless they have first obtained the claimant's written consent. Any questions an agency has concerning the disclosure of or uses to which FECA-related documents should be referred to the OWCP for resolution.

On the other hand, any records collected by an agency as part of a safety, criminal, or personnel investigation conducted pursuant to other statutory or regulatory authority, would not be covered by DOL/GOVT-1. The use, release and/or disclosure of those records, even though having some relationship to a FECA-covered injury, would be controlled by the investigating agency, as would the authority and responsibility for responding to requests for the correction of the records contained in the agency's system of records.

If the agency subsequently submits copies of the documents collected as described above to the OWCP for use in connection with the FECA claim, then the copies given to the OWCP would become part of the official claims file covered by DOL/GOVT-1. Thereafter, the correction of the record, insofar as the FECA proceedings are concerned, would be controlled by § 10.12 of title 20 as amended by this rule: any request submitted by the subject of the FECA file to correct a record contained in the claims file must be sent to the OWCP for handling.

The fact that records concerning an injury covered by the FECA may be maintained in another system of records does not necessarily mean that "dual records" exist. In our view, a dual record would exist only if both systems contained the identical documents which were collected for the same purposes. The use of a government-wide system of records approved by the OMB and published in the **Federal Register**, such as DOL/GOVT-1, was designed to prevent this from happening. Moreover, the official FECA file maintained by or under the control of the OWCP, will include many records that neither the employing agency nor an investigative arm of that agency have in their possession, and vice versa. Second, the

purposes for which the records were collected are not the same: the FECA file is maintained for the purpose of determining the worker's entitlement to compensation for a job-related injury, while an agency safety and health file might be maintained to ensure compliance with the recordkeeping and reporting guidelines imposed on Federal agencies.

## II. Companion Document

In a companion document published elsewhere in today's issue of the **Federal Register**, the Department is issuing a final rule revising the existing regulations governing the conduct of Departmental employees and members of the public as it pertains to the treatment of records covered by the Privacy Act. That rule also applies to records covered by DOL/GOVT-1.

### Procedural Matters

The final rule does not constitute a significant regulatory action within the meaning of Executive Order 12866 of September 30, 1993 (58 FR 51735). Further, this rule applies only to records concerning individual Federal employees and, therefore, will have no significant impact or other substantial effect on small entities. Accordingly, the requirements of the Regulatory Flexibility Act (5 U.S.C. 605(b)) do not apply. The Assistant Secretary has so certified to the Chief Counsel for Advocacy for the Small Business Administration.

### Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1985, as well as E.O. 12875, this rule does not include any federal mandate that may result in increased expenditures by State, local, or tribal government, or increased expenditures by the private sector of more than \$100 million.

### Paperwork Reduction Act

The final rule is not subject to the Paperwork Reduction Act since it does

not contain a collection of information requirement.

### Submission to Congress and the General Accounting office

In accordance with the Small Business Regulatory Enforcement Fairness Act, the Department will submit to each House of the Congress and to the Comptroller General a report regarding the issuance of today's final rule prior to the effective date set forth at the outset of this notice. The report will note that this rule does not constitute a "major rule" as defined by 5 U.S.C. 804(2).

### List of Subjects in 20 CFR Part 10

Claims, Government employees, Labor, Workers' Compensation.

For the reasons set forth in the preamble, part 10 of Chap. I of title 20 of the Code of Federal Regulations is amended to read as follows:

### PART 10—CLAIMS FOR COMPENSATION UNDER THE FEDERAL EMPLOYEES COMPENSATION ACT, AS AMENDED

1. The authority citation for part 10 is revised to read as follows:

**Authority:** 5 U.S.C. 301; Reorganization Plan No. 6 of 1950, 15 FR 3174, 64 Stat. 1263; 5 U.S.C. 8149; Secretary's Order 5-96, 62 FR 107.

2. Section 10.12 is revised to read as follows:

#### § 10.12 Protection, release, inspection and copying of records.

(a) All records relating to claims for benefits filed under the Act, including any copies of such records maintained by an employing agency, are covered by the government-wide Privacy Act system of records entitled DOL/GOVT-1 (Office of Workers' Compensation Programs, Federal Employees' Compensation Act File). This system of records is maintained by and under the control of the Office, and, as such, all records covered by DOL/GOVT-1 are

official records of the Office. The protection, release, inspection and copying of records covered by DOL/GOVT-1 shall be accomplished in accordance with the rules, guidelines and provisions of this part, as well as those contained in 29 CFR parts 70 and 71, and with the notice of the system of records and routine uses published in the **Federal Register**. All questions relating to access/disclosure, and/or amendment of FECA records maintained by the Office or the employing agency, are to be resolved in accordance with this section.

(b) (1) While an employing agency may establish procedures that an injured employee or beneficiary should follow in requesting access to documents it maintains, any decision issued in response to such a request must comply with the rules and regulations of the Department of Labor which govern all other aspects of safeguarding these records.

(2) No employing agency has the authority to issue determinations with respect to requests for the correction or amendment of records contained in or covered by DOL/GOVT-1. That authority is within the exclusive control of the Office. Thus, any request for correction or amendment received by an employing agency must be referred to the Office for review and decision.

(3) Any administrative appeal taken from a denial issued by the employing agency or the Office shall be filed with the Solicitor of Labor in accordance with 29 CFR 71.7 and 71.9.

Signed at Washington, DC, this 15th day of October, 1998.

**Bernard E. Anderson,**

*Assistant Secretary for Employment Standards.*

**T. Michael Kerr,**

*Deputy Assistant Secretary for Workers' Compensation Programs.*

[FR Doc. 98-28211 Filed 10-21-98; 8:45 am]

BILLING CODE 4510-27-P