

# CHAPTER 9

## RECORDS MANAGEMENT

### WHAT ARE THE BASIC PRINCIPLES/OBJECTIVES OF RECORDS MANAGEMENT?

1. To implement a cost-effective Department-wide program that provides for adequate and proper documentation of Department of Energy activities, proper records disposition, and promotes economy and efficiency in the program.
2. To ensure compliance with the implementing regulations for Records Management issued by the National Archives and Records Administration (NARA). (Title 36, C.F.R., Chapter 12)

All DOE Contracts, including its performance-based management contracts (PBMCs) should contain provisions related to the creation, preservation, and disposition of records. Records management provides a formal structure for implementing Federal requirements for recorded information, regardless of media.



*Records management is the law -- not just good business practice.*

### WHAT IS THE VALUE OF A SOUND RECORDS MANAGEMENT PROGRAM?

The availability of complete and accurate documentation under the Records Management Program allows the Department to:

- Protect the legal and financial rights of the Government and of individuals directly affected by Government activities; and
- Preserve institutional memory so that informed decisions are possible and thus facilitate action by DOE and PBMC contractor officials and their successors.

### WHY IS RECORDS MANAGEMENT IMPORTANT?

The purpose of this chapter is to provide insight into the contract administration aspects of the mechanisms by which the Department and its Performance Based Management Contract (PBMC) contractors conduct records management. Records Management provides a rational basis for making decisions about recorded information, including what should be saved and what should be discarded. These decisions are necessary to support the legal, fiscal, administrative, and other needs of the Government owned contractor operated facilities, the federal government, the individual State governments, and the general public.

#### What is the definition of “records?”

The statutory definition of “records” (44 United States Code 3301) is:

“books, papers, maps, photographs, machine readable materials, or other documentary materials, regardless of physical form or characteristics, made or received by an agency of the United States Government under Federal law or in connection with the transaction of public business and preserved or appropriate for preservation by that agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations or other activities of the Government or because of the informational value of the data in them.”

**To what records does this definition apply?**

This definition applies to all Departmental records including those created, received, and maintained by all contractors pursuant to their contracts. Virtually all recorded information in the custody of the Government (including information created by contractors on behalf of the Government) regardless of its media (hard copy, machine-readable, microfilm, or electronic) is considered to be “Government” records. Records may include, not only the deliverables specified by the contract, but can also include any supporting or backup data used to create the deliverables, and related health, safety and environmental information.

**Does the Department retain ownership of all records produced in association with its contracts?**

No! The Department recognizes the right of its contractors to retain ownership of certain records. DEAR 970.5204-79, “Access to and Ownership of Records,.” sets forth certain categories of records which may be considered to be the property of the contractor: It is the responsibility of the contracting officer to identify which of the following categories of records will be included in the clause as contractor owned records:

- Employment-related records except for those records described by the contract as being maintained in Privacy Act systems of records;
- Confidential contractor financial information, and correspondence between the contractor and other segments of the contractor located away from the DOE facility;
- Records relating to any procurement action by the contractor, except for records that under 48 CFR (DEAR) 970.5204-9, Accounts, Records, and Inspection, are described as the property of the Government;
- Legal records, including legal opinions, litigation files, and documents covered by the attorney-client and attorney work product privileges; and
- Certain records maintained pursuant to the technology transfer clause of this contract.

## **What is Records Management?**

Records Management refers to the planning, budgeting, organizing, directing, training, and control involved in managing the life cycle of records in any medium. This life cycle encompasses the interrelated and interdependent phases of records creation or collection, records maintenance and use, and records disposition:

- a. Phase I, Creating Records, includes adequate and proper documentation of government activities. This is achieved by complying with record keeping requirements established by Department policy and at each site.
- b. Phase II, Using and Maintaining Records, includes document control; files and filing equipment management; identification and maintenance of vital records (disaster recovery and rights and interests records), quality assurance records, and records requiring protection for national security reasons.
- c. Phase III, Records Disposition, includes appraising (placing value on) and scheduling records, retiring, storing and retrieving records, and preserving historical records.

## **Why is Records Management critical to administering the Department's PBMC contracts?**

A criticality in dealing with records management under the Department's site management PBMCs arises from the hazardous nature of much of the work being conducted at the sites. The potential risks in doing this work result in concerns for the

health and welfare of individual workers, the natural environment, the interest of the general public and liabilities to the Department. It is imperative that the Department maintain records in a way which cost effectively addresses all of these concerns.

Because of the potential risks, the potential significant liabilities, and the importance of maintaining records on the work performed, the integration and close coordination of the various members of the contract administration team is paramount.

## **What determines who will be involved in the administration of records under the contract?**

The types of records and which offices have cognizance over those records will influence what offices will be members of the Records Management part of the contract administration team. The Contracting Officer (CO), the site Records Officer, the Project Manager, attorneys, and others are possible members of the contract administration team in this area.

## **Moratoria on the Destruction of Records:**

The routine disposition of records created and maintained by the DOE and its Contractors may be suspended by a Program Manager or Site Manager through the issuance of a Moratorium. A Moratorium may be required to:

- Suspend the routine disposition of Departmental and Contractor records to support an investigation,

- Preserve records for research, or
- Provide evidence for a legal action.



Remember that moratoria on records destruction are in effect for certain types of records.

Contractors should determine if a moratorium exists prior to the disposition of records. The DOE has an obligation to inform the Contractors when a moratorium is placed or removed from Federal records. Notification of a Moratorium will be made formally through the issuance of a letter. These letters are posted on the DOE/HQ Records management Web site at Appendix B of this Reference Book.

### What are Disposition Schedules?

Records Disposition Schedules document the value of government records. Schedules include listings of record categories or “series” and length of time each should be retained. For disposition purposes, records are divided into two types:

- “Permanent” records are those records with special significance and enduring value. They are retained by the Department for as long as needed and legal custody is then transferred to the National Archives.
- “Temporary” records have limited value and are retained only for a designated period of time prior to disposition. Disposition may include destruction or

storage at a Federal Records Center or a local records storage facility.

Records Disposition Schedules, although coordinated through DOE HQ, must be approved by the Archivist of the United States.

Generic Records Disposition Schedules have been created for the Department and, when justified by the uniqueness of the records, site-specific Schedules are created. Records Disposition Schedules are applicable to all Federal records whether created by the Department or its Contractors. Approved DOE Disposition Schedules and the Federal Government’s General Records Schedules are accessible at the DOE Records Management web page at Appendix B.

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## PAPERWORK REDUCTION ACT

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### What is the Paperwork Reduction Act?

One of the statutes which influences Records Management is the Paperwork Reduction Act of 1994, as amended (44 USC Sections 3501-3520).

The purpose of the Act is to:

- Minimize the Federal paperwork burden of individuals, small businesses, State and local governments, and other persons;
- Minimize the cost to the Federal Government of collecting, maintaining, using, and disseminating information;

- Maximize the usefulness of information collected, maintained, and disseminated by the Federal Government;
- Coordinate, integrate and, to the extent practicable and appropriate, make uniform Federal information policies and practices;
- Ensure that automatic data processing, telecommunications, and other information technologies are acquired and used by the Federal Government in a manner which improves service delivery and program management, increases productivity, improves the quality of decision making, reduces waste and fraud, and wherever practicable and appropriate, reduces the information processing burden for the Federal Government and for persons who provide information to and for the Federal Government; and
- Ensure that the collection, maintenance, use and dissemination of information by the Federal Government is consistent with applicable laws relating to confidentiality, including the Privacy Act.

The Paperwork Reduction Act is implemented in the Department's contracts by DEAR 952.224-70, "Paperwork Reduction Act." The clause is used if it is anticipated that information collection from 10 or more persons will be necessary under the contract. The clause requires that in the event that it subsequently becomes a requirement to collect or record information calling either for answer to identical questions from 10 or more persons other than Federal employees, or information from Federal employees which is to be used for

statistical compilations of general public interest, the Paperwork Reduction Act will apply to the contract. Under the clause no plan, questionnaire, interview guide, or other similar device for collecting information may be used without first obtaining clearance from the Office of Management and Budget.

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## PRIVACY ACT

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### What is the Privacy Act?

The Privacy Act of 1974, as amended, (5 USC 552a) restricts access by unauthorized individuals to certain categories of records created and managed by the Department.

The purpose of the Act is to:

- Protect the privacy of the individuals working within the Department by restricting the general release of certain types of information; and
- Ensure that the collection, maintenance, use and dissemination of information by the Federal Government is consistent with applicable laws relating to confidentiality, including the Privacy Act.

The Privacy Act is implemented under the Department's contract through two clauses:

- FAR 52.224-1, "Privacy Act Notification," and
- FAR 52.224-2, "Privacy Act"

Both clauses are used when the design, development, or operation of a system of

records on individuals is required to accomplish an agency function.

Under, FAR 52.224-1, "Privacy Act Notification," the contractor will be required to design, develop, or operate a system of records on individuals, to accomplish an agency function in accordance with the Privacy Act of 1974. Violation of the Act may involve the imposition of criminal penalties.

Under FAR 52.224-2, "Privacy Act," the contractor agrees to--

- Comply with the Privacy Act of 1974 and the agency rules and regulations issued under the Act in the design, development, or operation of a system of records covered by the clause;
- Include the Privacy Act notification contained in the contract in every appropriate solicitation and resulting subcontract and in every appropriate subcontract; and
- Include the clause prescribed in FAR 52.224-2, in all appropriate subcontracts.

In the event of violations of the Act, a civil action may be brought against the agency and criminal penalties may be imposed upon the officers or employees of the agency. For purposes of the Act, when the contract is for the operation of a system of records on individuals to accomplish an agency function, the contractor is considered to be an employee of the agency.

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## **RECORD KEEPING UNDER THE CHRONIC BERYLLIUM DISEASE PREVENTION PROGRAM**

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Under 10 CFR Part 850 which appeared in the Federal Register as a final rule on December 8, 1999, the Department of Energy (DOE) established a chronic beryllium disease prevention program (CBDPP) to reduce the number of workers currently exposed to beryllium in the course of their work at DOE facilities managed by DOE or its contractors, minimize the levels of, and potential for, exposure to beryllium, and establish medical surveillance requirements to ensure early detection of the disease.

This program improves and codifies provisions of a temporary CBDPP established by DOE directive in 1997. As a current DOE regulation, this program is a requirement in contracts involving the use of beryllium. The program established specific record keeping requirements including retaining such beryllium associated information for a minimum of 75 years (see 10 CFR Section 850.39).

## **WHAT ARE MY MAJOR ROLES AND RESPONSIBILITIES IN THE AREA OF RECORDS MANAGEMENT?**

On the following pages are the major roles and responsibilities of members of the contract administration team. Key sections of documents have been summarized for ease of reference. Please bear in mind that the referenced documents themselves are controlling and should be consulted for a complete discussion of the various roles, responsibilities and requirements. Additionally, other documents, not listed here, may contain other roles and responsibilities.

Note: Various responsibilities on the following pages are marked with an asterisk (\*). This signifies that the responsibility is not specifically assigned to this individual by a clause, regulation, or procedure. It is suggested because:

- (1) The responsibility is necessary to perform Government contract administration responsibilities; and is either commonly performed by this individual or reflects "good business practice."
- (2) The responsibility is stated in the reference as a DOE/Government responsibility; and is either commonly performed by this individual or reflects "good business practice."

Local guidance may determine who specifically is obligated to perform the responsibility.

### **Regarding General Records Management**

#### **LEGAL COUNSEL**

\* Provide advice on:

- records issues related to litigation,
- the disposal of occupational radiation exposure records and other records related to the rights and interests of the DOE employees, contractors and the general public, and
- interpretation of ownership (Government or contractor) of specific records when such ownership is questioned.

[DEAR 952.223-75]

## **RECORDS MANAGEMENT OFFICE (HEADQUARTERS AND FIELD OFFICES)**

\* Provide guidance and assistance to DOE Offices at their location in accordance with regulations on the creation, management & disposition of Federal records.

**[DOE G 1324.5B]**

\* Provide direction for and oversight of Contractor Records Management programs, including the coordination of approvals for new and revised disposition schedules and implementing moratoria for selected records.

Coordinate the transfer of permanent records to the National Archives.

**[36 CFR, Chapter 12]**

\* Assist the Contracting Officer in the management of the Records Management portion of the contract by acting as a subject matter expert.

\* Provide advice on disposal of occupational radiation exposure and other types of records.

**[FAR 52.224-1; DEAR 952.223-75; DOE G 1324.5B; Title 36 CFR, Chapter 12 Subchapter B (Records Management), 44 USC Chapters 29, 31, and 33, “Federal Records Act” ]**

## **OFFICE OF ENVIRONMENT, SAFETY AND HEALTH**

\* Provides advice and assistance with dispositioning decisions regarding records placed under moratorium, including records such as occupational radiation exposure records, x-rays, medical records, industrial hygiene records, site environmental records and other health-related records.

## **CHIEF INFORMATION OFFICER**

\* Shall coordinate with OMB to obtain appropriate clearance for the collecting or recording, under the contract, of information calling either for answers to identical questions from 10 or more persons other than Federal employees, or information from Federal employees which is to be used for statistical compilations of general public interest.

**DEAR 952.224-70.**

## **CONTRACTING OFFICER**

Direct the contractor to deliver records to the Government from time to time during the process of the work, or in any event upon completion or termination of the contract in accordance with direction from DOE Records Management, and in accordance with approved Records Disposition Schedules. A determination of the supporting or backup information to be included with the turnover records is to be made at the time of turnover.

**[DEAR 970.5204-79]**

Identify which of the categories of contractor-owned records will be included in the clause as being considered as the property of the contractor and not within the scope of DEAR 970.5204-79, paragraph (a) of the clause, "Access to and Ownership of Records."

**[DEAR 970.5204-79]**

Protect records, upon delivery, in accordance with applicable Federal laws, as appropriate. May request the contractor to deliver records to a specified location for inspection, copying, and audit.

**[DEAR 970.5204-79]**

\* May need to specify the delivery of background data that may have reuse value to the Government when contracts involve the creation of data for the Government's use.

**[36 CFR Part 1222.48]**

\* Authorize the contractor to dispose of federal records, including the occupational radiation exposure records, at termination or completion of contract in consultation with records management personnel, legal counsel, EH and other program office representatives and in accordance with approved records schedules.

**[FAR 52.224-1, DEAR 952.223-75, DOE G 1324.5B]**

## **CONTRACTOR**

\* Contractors are responsible for complying with Federal Regulations in creating adequate and proper documentation and making sure that records are disposed of in accordance with NARA-approved disposition schedules.

**[DEAR 970.5204-78, DEAR 970.5204-79]**

Deliver records to the Government or otherwise dispose of those records upon completion or termination of the contract.

**[DEAR 970.5204-79]**

Deliver to DOE or its designees, including successor contractors and sub-contractors, copies of any of the contractor-owned records identified in the clause "Access to and ownership of records," (DEAR 970.5204-79) upon the request of the Government in the event of completion or termination of the contract.

**[DEAR 970.5204-79]**

Make available, at all reasonable times, for inspection, copying, and audit by the Government or its designees, all records acquired or generated by the contractor under the contract in the possession of the contractor, including those described as contractor owned records.

**[DEAR 970.5204-79]**

Shall make records available to authorized individuals in the performance of their duties as directed by the site Records Managers through the Contracting Officer.  
Retain records in accordance with records retention standards under the Records Management Program and DOE Records Schedules.

**[DEAR 970.5204-79]**

Afford the Government or its designees reasonable facilities for inspection, copying, and audit of records; provided, however, that upon request by the contracting officer, the contractor shall deliver such records to a location specified by the contracting officer for inspection, copying, and audit.

**[DEAR 970.5204-79]**

Include the requirements of DEAR 970.5204-79 in all subcontracts that are of a cost-reimbursement type if any of the factors in, paragraph (g) of the clause is present.

**[DEAR 970.5204-79]**

Retain individual radiation exposure records generated in the performance of work under the contract until DOE authorizes disposal. **Remember! There is a moratorium on the disposal of health records.**

**[DEAR 970.5204-79]**

May submit FAR standard, optional or agency unique forms, unless specifically prohibited, on a computer generated version of the form, provided there is no change to the name, content, or sequence of the data elements on the form, and provided the form carries the FAR or agency form number and edition date.

**[FAR 52.253-1]**

Preserve and make available for inspection records generated in performance of work under a contract until disposal is authorized by DOE, or delivered to DOE upon completion or termination of the contract.

**[DEAR 952.223-75]**

Protect records in accordance with applicable federal laws, as appropriate.

**[DEAR 952.224-79]**

Establish and maintain (for a minimum of 75 years) accurate, records of all beryllium inventory information, hazard assessments, exposure measurements, exposure controls, and medical surveillance.

Convey to DOE or its designee all record series required under this rule if the employer ceases to be involved in the CBDPP.

Link data on workplace conditions and health outcomes in order to establish a basis for understanding the beryllium health risk.

**[10 CFR Section 850.39, DEAR 970.5204-79]**

**CONTRACTING OFFICER'S REPRESENTATIVE**

\* Receive delivery of and inspect records under a contract.  
**[FAR 52.224-2]**

## **Regarding the Paperwork Reduction Act**

### **CONTRACTING OFFICER**

\* Request, for the contractor, the clearance required in “Paperwork Reduction Act” clause from OMB through the Chief Information Officer to the extent that the contractor’s intention to collect or record information is considered reasonable.

Provide the contractor, upon receipt of an OMB approval, with a written authorization to expend funds and to proceed with the collection of data.

**(DEAR 952.224-70)**

### **CONTRACTOR**

\* Request the required OMB clearance from the CIO through the contracting officer before expending any funds or making public contacts for the collection of data in the event that the provisions of the Paperwork Reduction Act become applicable regarding a requirement to collect or record information.

**(DEAR 952.224-70)**

## **Regarding The Privacy Act**

### **CONTRACTING OFFICER**

\* Protect records, upon delivery, in accordance with applicable federal laws (including the Privacy Act), as appropriate.

**[DEAR 970.5204-79]**

\* May list applicable Chronic Beryllium Disease Program records as a system of records under the local clause entitled “Privacy Act Records.”

**[AL 99-05]**

## **CONTRACTOR**

Comply with the Privacy Act and any DOE rules and regulations issued under the Act in the design, development, or operation of any system of records on individuals to accomplish an agency function subject to the "Privacy Act."

**(FAR 52.224-1)**

Comply with the Privacy Act of 1974 and the agency rules and regulations of the Act when required to design, develop, or operate a system of records on individuals as a contractual task. Include the Privacy Act notification contained in the specific contract in every solicitation and resultant subcontract or subcontract awarded without a solicitation where the subcontract requires a design, development, or operation a system of records on individuals subject to the Privacy Act. Include FAR 52.224-2 in all subcontracts requiring the design, development, or operation of a system of records on individuals.

**(FAR 52.224-2)**

Protect records in accordance with the Privacy Act, as appropriate.

**(DEAR 970.5204-79)**

Ensure the confidentiality of all work-related records generated under this program including the requirement that the records be used or disclosed only in conformance with any applicable requirements imposed by the Americans with Disabilities Act, the Privacy Act of 1974, the Freedom of Information Act, and any other applicable law.

**[10 CFR Section 850.39, DEAR 970.5204-79]**

## WHERE CAN I GO FOR MORE DETAILED INFORMATION?

### On Records Management in General?

1. DEAR 952.223-75, "Preservation of Individual Occupational Radiation Exposure Records"
2. DEAR 970.0407-1, "Alternate Retention Schedules"
3. DEAR 970.5204-9, "Accounts, Records and Inspection"
4. DEAR 970.5204-78, "Laws, Regulations, and DOE Directives"
5. DEAR 970.5204-79, "Access to and Ownership of Records"
6. DOE G 1324.5B, "Implementation Guide for Use with 36 CFR Chapter XII - Subchapter B Records Management"
7. FAR 4.7, "Contractor Records Retention Responsibilities"
8. FAR 52.253-1, "Computer Generated Forms"
9. 36 CFR, Chapter 12 Subchapter B (Records Management)
10. 18 USC, Chapter 101, "Records and Reports", Part 2071, "Concealment, Removal or Mutilation of Records"
11. 44 USC Chapters 29, 31, and 33, "Federal Records Act"

### On the Paperwork Reduction Act?

12. DEAR 952.224-70, "Paperwork Reduction Act"
13. 44 USC 3501-3520, "Paperwork Reduction Act", as amended

### On the Privacy Act?

14. FAR 52.224-1, "Privacy Act Notification"
15. FAR 52.224-2, "Privacy Act"
16. 5 USC 552a, "Privacy Act", as amended
17. AL 99-05, "Deviations, Local Clauses, Uniform Contract Format, and Clause Matrix"
18. 10 CFR Section 850.39, "Recordkeeping and Use of Information," (for Beryllium related records)

**DO YOU HAVE ANY COMMENTS OR SUGGESTIONS FOR  
IMPROVING THIS CHAPTER OR THE BOOK? IF SO, PLEASE  
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