approximate percentage of such vehicles in the general car population.

IV.

It is ordered that respondent Batten, Barton, Durstine & Osborn, Inc., a corporation, its successors and assigns, its officers, representatives, agents, employees, directly or through any corporate or other device, in connection with the advertising of the additive F-310, forthwith cease and desist directly or indirectly from:

1. Advertising by or through the use of or in conjunction with any test, experiment, or demonstration, or the result thereof, or any other information or evidence that appears or purports to confirm or prove or is offered as confirmation, evidence or proof of any fact, product characteristic, or of the truth of any representation which does not accurately demonstrate, prove, or confirm such fact, product characteristic, or representation unless the respondent can establish it neither knew, nor had reason to know, nor upon reasonable inquiry could have known that such was the case.

2. Using any pictorial or other visual means of communication with or without an accompanying verbal text which directly or by implication creates a misleading impression in the minds of viewers as to the true state of material facts which are the subject of said pictures or other visual means of communication unless the respondent can establish it neither knew nor had reason to know nor upon reasonable inquiry could have known the true facts.

3. Misrepresenting in any manner or by any means any characteristic, property, quality, or the result of the use of such gasoline additive product unless the respondent can establish it neither knew nor had reason to know nor upon reasonable inquiry could have known that such representations are false.

It is further ordered that respondent corporations shall forthwith distribute a copy of this order to each of their operating divisions.

It is further ordered that respondents herein shall notify the Commission at least thirty (30) days prior to any proposed change in any of the corporate respondents such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of the order.

It is further ordered that respondents shall, within sixty (60) days after service of this order upon them, file with the Commission a written report, signed by the respondents, setting forth in detail the manner and form of their compliance with the order to cease and desist.

By the Commission, Commissioner. Pitofsky did not participate.

Carol M. Thomas,

Secretary.

[FR Doc. 80-35301 Filed 11-12-80; 8:45 am]

BILLING CODE 6750-01-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 200

[Release Nos. 34-17272, IA-737, IC-11429]

Delegation of Authority to the Director of the Office of Opinions and Review

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Commission is amending its Rules of Organization to delegate to the Director of the Office of Opinions and Review the authority to rule on motions to stay final Commission orders in disciplinary proceedings pending appeal to the federal courts; motions to stay disciplinary action taken by a self-regulatory organization pending review of that action by the Commission; and requests for oral argument in appeals from disciplinary or exclusionary action taken by self-regulatory organizations. The Commission believes that it will facilitate timely disposition of these applications if authority to rule on them is delegated to the Director of the Office of Opinions and Review.

EFFECTIVE DATE: November 5, 1980.

FOR FURTHER INFORMATION CONTACT: William S. Stern, Director, Office of Opinions and Review, 500 North Capitol Street, Washington, D.C. 20549, (202) 272-2450.

SUPPLEMENTARY INFORMATION: The Commission adjudicates appeals both from disciplinary action assessed by its administrative law judges in cases instituted by the Commission under the securities acts and Rule 2(e) of its Rules of Practice, and from disciplinary action taken by various self-regulatory organizations. It has the authority to stay its orders affirming or modifying such action pending appeal of those orders to the federal courts. It also has the authority to stay disciplinary action taken by a self-regulatory organization pending Commission review of that action. In addition, pursuant to Rule 19d-3(f) under the Securities Exchange Act (17 CFR § 240.19d-3(f)), the Commission has discretion to grant or deny oral argument in connection with appeals from disciplinary or exclusionary action taken by self-regulatory organizations pursuant to Section 19(d)(2) of the Act. The Commission believes that the determination of stay applications and requests for oral argument in the above situation would be greatly facilitated by delegating those determinations to the Director of the Office of Opinions and Review. Accordingly, the Commission, acting pursuant to the Act of August 20, 1962, Pub. L. No. 87-592, 76 Stat. 394 (15 U.S.C. 78d-1, 78d-2), hereby amends § 200.30-8 (17 CFR § 200.30-8) of the Commission's rules relating to general organization by adding new paragraphs (a)(4), (a)(5) and (a)(6) to delegate to the Director of the Office of Opinions and Review authority to determine stay applications and requests for oral argument as set forth above.

The Commission finds, in accordance with 5 U.S.C. § 553(b)(A) and 5 U.S.C. § 553(d) of the Administrative Procedure Act, that the foregoing action relates solely to agency organization, procedure, or practice and that notice and public procedures in accordance with 5 U.S.C. § 553 are not necessary pursuant to subsection (b) thereof and that, in view of the foregoing, good cause exists for dispensing with the normal 30-day delay in effectiveness. In addition, the Commission finds that the foregoing action does not impose any burden on competition.

Part 200 of Title 17 of the Code of Federal Regulations is amended by adding paragraphs (a)(4), (a)(5), and (a)(6) to § 200.30-8, as follows:

PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

§ 200.30-8 Delegation of authority to Director of Office of Opinions and Review

* * * * *

(a) * * *

(4) With respect to disciplinary proceedings conducted or reviewed pursuant to the provisions of the the Securities Exchange Act of 1934 (15 U.S.C. 78(a), et seq.), the Investment Company Act of 1940 (15 U.S.C. 80a-1, et seq.), the Investment Advisers Act of 1940 (15 U.S.C. 80b-1, et seq.), and the provisions of Rule 2(e) of the Commission's rules of practice (§ 201.2(e) of this chapter), to determine applications to stay Commission orders imposing, affirming, or modifying sanctions pending appeal of those orders to the federal courts.

(5) With respect to disciplinary review proceedings pursuant to sections 19 (d) and (e) of the Securities Exchange Act of 1934 (15 U.S.C. 78s (d) and (e)), to

determine applications for a stay of disciplinary action taken by a self-regulatory organization pending Commission review of that action.

(6) In connection with Commission review of disciplinary and exclusionary actions taken by self-regulatory organizations, pursuant to sections 19(e) and (f) of the Securities Exchange Act of 1934 (15 U.S.C. 78s (e) and (f)), to grant or deny requests for oral argument in accordance with the provisions of § 240.19d-3(f) of this chapter.

* * * * *

(Pub. L. No. 87-592, 76 Stat. 394 (15 U.S.C. 78d-1, 78d-2))

By the Commission.

George A. Fitzsimmons,

Sectretary.

November 5, 1980

[FR Doc. 80-35283 Filed 11-12-80; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 401

42 CFR Part 401

Disclosure of Official Records and Information about Individuals

AGENCY: Social Security Administration, HHS.

ACTION: Final rule.

SUMMARY: This regulation describes the general principles the Social Security Administration will use in deciding when to disclose official records and information about individuals and the limitations on those disclosures. This regulation implements the provisions of the Privacy Act of 1974, the Freedom of Information Act and its amendment by the Government in the Sunshine Act, the Tax Reform Act of 1976, and section 1106 of the Social Security Act.

EFFECTIVE DATE: November 13, 1980.

FOR FURTHER INFORMATION CONTACT: Armand Esposito, Legal Assistant, 6401 Security Boulevard, Baltimore, Maryland 21235, (301) 594-7455.

SUPPLEMENTARY INFORMATION:

Introduction

The Social Security Administration (SSA) has traditionally followed a policy of strict confidentiality of its records. Since 1939, section 1106 of the Social Security Act has been the basic authority for that policy. Section 1106 prohibited the disclosure of information from SSA's records except as permitted in regulations issued by the Secretary of HHS. Section 1106 gave the Secretary of HHS broad discretion to decide what these regulations should be.

The 1967 Freedom of Information Act (FOIA) directed the Government to make many of its records public, but permitted section 1106 to be recognized as a controlling statute. Therefore, the Secretary's regulations on confidentiality of information continued to provide authority for refusal to disclose even though the FOIA would otherwise require or permit it. As a result, SSA's policies governing the disclosure of personal information continued to be very restrictive. The Privacy Act of 1974 had little effect on SSA's disclosure policies since these policies were generally more strict than those required by the Privacy Act. A major change came, however, when Congress enacted the Government in the Sunshine Act, effective March 12, 1977.

As a result of that Act, the Secretary's discretion to deny disclosure requests under section 1106 of the Social Security Act was greatly reduced. It provided that section 1106 could no longer be the basis for an exemption from disclosure under the FOIA.

The Department has published interim regulations on disclosure which complied with the provisions in the Government in the Sunshine Act. These regulations were published in the **Federal Register** on March 16, 1977 (42 FR 14704). They are quite general and provide for disclosure in most instances under FOIA principles. The rules set out below describe in more detail the principles we will use in determining whether information may be disclosed to someone other than the individual to whom the information relates. These rules also reflect the policies contained in HHS' Privacy Act regulations at 45 CFR Part 5b which are binding on the Social Security Administration under 45 CFR 5b.2(b). Disclosure of nonpersonal information will continue to be governed by the FOIA rules in HHS regulations (45 CFR Part 5) and in SSA's regulations in Subpart E of Part 22 of this chapter.

Affected HHS Components

These regulations replace the interim regulations on disclosure for SSA. Included within SSA is the Office of Family Assistance (OFA) which is responsible for the Aid to Families with Dependent Children (AFDC) program. These regulations apply to information that OFA has. The Federal rules on disclosure of personal information that States, local governments and others have under the AFDC program are in 45 CFR 205.50.

The interim regulations will continue to apply to the Health Care Financing Administration's disclosure of Medicare (title XVIII) program information until HHS publishes new regulations regarding that information. We have modified those regulations to show that they apply only to the Health Care Financing Administration, and we have relocated them to 42 CFR Chapter IV, Part 401.

Basic Rules

Both the proposed and final versions of this regulation follow the same basic rules. When a Federal law requires that we disclose information for a particular reason, we will comply with that requirement (§ 401.205). For example, the law requires us to furnish information to the Federal Parent Locator Service to help locate absent parents having child support obligations, and to the Immigration and Naturalization Service to carry out certain of its duties regarding aliens.

When a Federal law prohibits us from disclosing certain information, we will comply with that prohibition (§ 401.210). For example, the Internal Revenue Code generally prohibits SSA from disclosing tax return information. This includes, for example, amounts of wages and contributions from employers in tax returns which have been filed with the Internal Revenue Service and which SSA receives to maintain individual earnings records.

When no law specifically requires or prohibits disclosure and the individual has not given consent to disclose, we will generally use the principles in the FOIA to decide whether or not to disclose information. We will generally use these principles whether or not the FOIA governs the the handling of a particular disclosure request or question. For example, the FOIA does not apply to requests from another Federal agency, but we will apply the same principles. We have been doing this since the Government in the Sunshine Act became effective in March 1977.

Freedom of Information Act Principles

The basic intent of the FOIA is to require that records be made public, and even when withholding is permitted because one of the exemptions in the FOIA applies, SSA will release records (if not prohibited by another law) unless disclosure could result in demonstrable harm to an individual or interest protected by that exemption. The FOIA exemption which most often applies to SSA disclosure questions is whether the disclosure would result in a "clearly unwarranted invasion of personal privacy." We apply this test by considering—

(1) The sensitivity of the information to the individuals (e.g., whether individuals would suffer harm or embarrassment as a result of disclosure);

(2) The public interest in the disclosure;

(3) The individual's right and expectation to have personal information about him or her kept confidential; and

(4) The public's interest in maintaining general standards of confidentiality of personal information.

For example, we believe that there is a strong public interest in sharing information with other agencies with programs having the same purposes. However, there is usually little or no public interest in disclosing information for disputes between two private parties or for other private or commercial purposes; we generally do not share information for these purposes. We describe these rules in § 401.300 of the regulation.

Other General Rules

The other provisions of the regulation describe how we will use the FOIA principles when the Privacy Act applies. First we determine whether the Privacy Act would permit disclosure. If the Privacy Act permits disclosure, generally we apply FOIA principles to decide whether, to make the disclosure in question. In many cases, application of the FOIA exemption concerning a "clearly unwarranted invasion of personal privacy" results in a more limited disclosure policy than is permitted by the Privacy Act.

(1) *Disclosures within HHS (§ 401.305).* The Privacy Act allows the sharing of information within an agency when needed to carry out its duties. HHS is an agency under both the Privacy Act and the FOIA. Therefore, to the extent disclosure is not prohibited by another law, we will share with other parts of HHS the information they need from our records to carry out their duties.

(2) *Routine use and compatibility (§ 401.310).* The Privacy Act allows an agency to disclose information routinely without an individual's consent if the information is to be used for a purpose which is compatible with the purposes for which the information was collected. Applying FOIA principles we disclose information where necessary to carry out SSA's programs. Under FOIA principles we also disclose information for use in other programs which have the same purposes as SSA programs, if the information concerns eligibility, benefit amounts, or other matters of benefit status in a social security program and is relevant to determining the same matters in the other program.

We consider disclosures for programs whose purpose is, like SSA's programs, income maintenance to involve a strong public interest and to be, therefore, consistent with FOIA principles, since these disclosures help assure that payments and determinations of rights under these vital programs are correct. We consider this public interest to outweigh the individual's expectancy of privacy. Examples of cash income maintenance programs are: veterans' benefits, railroad retirement annuities, worker's compensation, and unemployment compensation. Examples of noncash income maintenance programs are food stamps, social services under title XX programs, and rent subsidy. In addition, SSA still retains many responsibilities for the Medicare program now under the Health Care Financing Administration. Therefore, we consider health insurance or health services programs provided under Federal statutes (e.g., Medicare, Medicaid, or the uniformed services health programs) to be compatible with SSA's programs. We disclose information to such income maintenance and health care programs if the information concerns eligibility, benefit amounts, or other matters of benefit status in a social security program and is relevant to determining the same matters in the other program. For example, we will disclose the amount of an individual's social security benefit where the individual's income bears on his or her eligibility for another income maintenance program. We will disclose evidence concerning an individual's disability if his or her disability is relevant to determining eligibility for benefits in the other program. Under this test, however, we will not generally disclose an individual's social security number or last-known address, since that information does not concern the individual's eligibility or benefit status in the social security program. (However, it has been our policy to verify social security numbers at the request of other agencies, and we will continue to do so under these regulations.)

We will also disclose information under appropriate circumstances for epidemiological and similar research. We consider this health-related activity to be a compatible purpose, since it may help prevent or lessen diseases, and thus may reduce the need for benefits under health maintenance programs.

(3) *Law enforcement (§ 401.315).* The Privacy Act permits a broad range of disclosures for civil or criminal law enforcement activities. However, the Senate Government Operations Committee report on the Privacy Act (Sen. Rep. No. 93-1183, p. 73) states:

> In requiring that the agency rule on each request on a case-by-case basis, it is hoped that secret law enforcement access, that is disclosure without notification to the subject of the file, will only be permitted in the most exigent and essential circumstances.

We believe that disclosure in this area should be limited under FOIA principles because, unless there are clearly defined situations for disclosure, it is often difficult to determine what is in the public interest and what is a "clearly unwarranted invasion of personal privacy" when the public and private interests must be weighed against each other. Generally, we believe that information should be released only in criminal cases involving—

(1) Violent crimes (like murder or kidnapping) where the individual about whom the information is sought has been indicted or convicted of that crime;

(2) Criminal activities involving a social security program; and

(3) Criminal activities involving another program with the same purposes if the information concerns eligibility, benefit amounts, or other matters of benefit status in a social security program and is relevant to determining the same matters in the other program.

In extreme life theatening situations such as those involving a threat to national security, the holding of hostages, and acts of terrorism the Commissioner or designee, after appropriate consultation with the Secretary, will decide under § 401.115 whether to disclose the needed information.

In other situations under our application of FOIA principles we believe a reduced public interest in disclosure will be outweighted by the individual's interest in privacy.

Disclosures and Safeguards for Research and Statistical Purposes

We will continue disclosing information for statistical and research purposes. We will disclose if the following conditions apply—

(1) The requester indicates that it will use the information only for research and statistical purposes and will protect individuals from unreasonable and unwanted contact;

(2) The activity is related to the social security program or other income or health maintenance programs, including epidemiological and similar research; and

(3) The requester meets the rules we have for safeguarding its confidentiality.

Research about the nation's income, work, age, and health patterns is clearly in the public interest. Since SSA itself uses data in its records for research and statistical purposes, we believe disclosure to requesters for those purposes is permissible under the Privacy Act. Moreover, we will do our best to see that the information is not further disclosed or used for nonresearch purposes. The new regulation would permit disclosure of data identifying specific individuals only in limited circumstances.

Court Orders

The Privacy Act allows disclosure to comply with any court order. However, as in the area of law enforcement, we have applied FOIA principles to limit the scope of these disclosures. Since participation in the social security programs is compulsory, individuals have little choice in the amount or kinds of information which we collect and keep about them. Court testimony generally becomes a matter of public record, so there can be no further protection of its confidentiality. Furthermore, the information requested is often more readily available from other sources or with the consent of the person concerned. These factors all argue for a restrictive position.

Accordingly, we disclose information in response to court orders if no law precludes disclosure and if—

(1) Another section of the regulation would allow the release; or

(2) The Secretary of HHS is a party to the proceeding; or

(3) The information is necessary for due process in a criminal proceeding.

In other cases, we disclose information in response to the needs of the courts while trying, to the extent practicable, to preserve the confidentiality of information.

Obtaining and Correcting Your Record

Sections 401.400 through 401.420 discuss how to request information from your record, and how to correct any information with which you do not agree.

The sensitive nature of medical information causes special problems in guaranteeing individuals the right to all information in an agency's files about them. Sometimes, a person's health might be harmed if he or she knew what was in a medical record.

The Privacy Act guarantees an individual the right to know what records an agency maintains about him or her, with certain exceptions, but also allows an agency to set up special procedures for giving an individual access to medical records. The regulation requires an individual to name a doctor or some other responsible representative whenever the individual wants to have access to a medical record. If we feel that the information might harm the individual, the report will be sent to the representative that the individual named.

We believe this procedure protects the individual from harm that might occur if he or she received the report directly, and also protects the individual's right under the Privacy Act to have access to information in an agency's files about him or her.

Appeals

Sections 401.500 through 401.510 discuss how to appeal any decision in which we refuse to correct a record, refuse to disclose information, or refuse to grant access to a record.

Public Response

We published this regulation with a Notice of Proposed Rule Making on April 10, 1079, at 44 FR 21498. We allowed the public until June 11, 1979, to comment on the regulation. On June 1, 1979, we announced a series of seven public meetings to explain these rules and to obtain public response to them (44 FR 31667). At that time we also extended the period within which the public could submit written comments to August 31, 1979.

We received 18 letters that supported broad disclosure of SSA's records. One of these was signed by 20 individuals. We also received 29 letters making specific comments on our proposed rules. Many similar comments and recommendations were received from the speakers and the audiences at the public meetings. We received two letters expressing support for sharing information with agencies having purposes compatible with those of the Social Security Administration.

Discussion of Comments

Major Changes

§ 401.215 *Freedom of Information Act.*

In response to comments we modified this section to show that an oral request is a valid FOIA request. However, since oral requests are usually handled by oral responses and are not documented, a decision on an oral request is not appealable. Therefore, we modified § 401.500 to show that only decisions made on written requests can be appealed.

§ 401.300 *General principles.*

In response to several comments regarding the intent and clarity of this section, we have restructured the section and modified the language.

§ 401.315 *Law enforcement purposes.*

In response to comments and concerns expressed at several public meetings on the release of information for law enforcement purposes, we have deleted the portion dealing with national security and have modified the material regarding other serious crimes.

§ 401.350 *Deceased persons.*

We modified the language of this section in response to a suggestion that we protect the privacy of a living person when disclosing information about a deceased person.

§ 401.400 *General.*

In response to a comment that we might charge individuals for obtaining information from their records, a possible restriction on their ability to pursue appeals, we have modified § 401.125 to show that we generally do not charge for this type information.

§ 401.405 *How to get your own record.*

One commenter stated that we should limit a parent's access to a minor's records. We followed the Privacy Act in modifying this section to require that the parent must be acting on the child's behalf.

§ 401.510 *Appeals after denial of disclosure or access.*

One commenter stated that, when a requester receives a notice stating that SSA will disclose part of the records requested, he or she will have 30 days from date of receipt of the notice to appeal that decision. The commenter suggested that the time to appeal begins when the released records are received, if this receipt occurs after receipt of the "partial denial" notice. We have modified this section to adopt this suggestion.

General Comments

Comment. Several speakers at the public meetings stated that these regulations should be more restrictive, and several persons submitted written comments making the same suggestion. Conversely, several persons wrote that these rules should be less restrictive. The reason generally given for disclosing more information was to improve the efficiency of Government programs at various levels. The reason given for disclosing less information was to protect individual privacy.

Response. We recognized in drafting these rules that public opinion would be divided on how broad SSA's authority to disclose information from its records should be. We tried to reflect a fair balance between the requirements of the various laws in this area. Many commenters supported this approach although they suggested modifications which are discussed below.

Comment. Several speakers at the hearings and many of those submitting written comments said some of the proposed rules were vague or should be more specific.

Response. Because we tried to reflect the balance between the requirements of various laws on the disclosure of information in our records, we had to use broad general statements in setting out our rules. For example, the first sentence in § 401.100 states "The Social Security Administration (SSA) generally provides information which individuals request about themselves." Similar types of statements are made about what we do with requests from various agencies, organizations, and other persons for information about an individual. While these statements explain the general principles we will follow in evaluating requests for information from sources other than the individual, they do not cover all situations or provide the details on how we will perform this evaluation in specific cases. Even if we could anticipate every situation that can arise, which we cannot, we do not believe it is desirable to include that level of detail in a regulation. Further information will be contained in the procedures we are developing for SSA employees to follow when evaluating these requests. These procedures will be available for inspection at any social security office in the near future.

Response to Comments by Section

§ 401.105 *When the regulation applies.*

Comment. A law group commented that this section seemed to exclude all information about the acts of SSA officials and employees.

Response. While the proposed rule explained that these rules do not apply to information about the acts of SSA officials and employees, it also cited the rules which do apply to that kind of information. We have restructured § 401.105 to bring this information together so that it clearly states what information is covered by these rules and where to find other rules that apply to information which is not covered here. We also added a new paragraph (e) which clarifies our policy on disclosure by medical, psychological and vocational consultants who examine social security applicants under contracts with State agencies.

§ 401.115 *Situations not specified in this part.*

Comment. Several legal services groups commented on the broad authority vested in the Commissioner by this section. They were concerned that this authority could be used to disclose information in any instance where it was not specifically prohibited. One group suggested this section be deleted or rewritten to set out the situations when this type of disclosure would be made.

Response. We understand the concerns of the commenters. However, reading § 401.115 in the context of the rest of Regulation No. 1, we believe those concerns should be alleviated. The purpose of § 401.115 is to do no more than recognize that disclosure may be permitted even though one of the exemptions in the FOIA applies. SSA, however, does not intend to disclose any information where disclosure would result in significant harm to any individual or interest protected by an exemption and, of course, will not disclose any information where disclosure is prohibted by law. We have added an example of the unique situations in which this authority may be used.

§ 401.120 *Safeguards against unauthorized disclosure or use.*

Comments. We received several different comments on this proposed section. One commenter wanted to know if the onsite inspections were voluntary or enforceable. Another asked if we consider the mechanisms for safeguarding the information rather than the mere assurance that such measures will be taken. A third commenter indicated that the information should be withheld if appropriate safeguards are not present. At the hearing in Denver, an individual pointed out that we should have more control over redisclosures.

Response. While we agree with the point of these observations, no law gives us authority over what happens to information once we disclose it under the FOIA. We can only exercise control over its release. Therefore, we have set up assurances we may properly obtain before releasing information to someone other than the person whom the information concerns. In determining whether appropriate measures to safeguard the requested information will be taken, we may need to know and evaluate what measures or mechanisms are planned by the requestor of the information. Although an individual may assure us prior to release of any information that we would be permitted to conduct an onsite inspection to verify that safeguards are in place, this permission is voluntary. If any of these assurances are not complied with after the information is released, the limited recourse we might have is to deny subsequent requests for information from the individual or organization.

§ 401.205 *Disclosures required by law.*

§ 401.210 *Disclosures prohibited by law.*

Comment. We were asked to list in each of these sections the laws which apply. This commenter also questioned the use of the term information in these sections when in § 401.110 we defined "information about an individual."

Response. We considered listing the laws that apply to these two sections. However, any listing of laws would only be accurate up to a certain point in time. It is possible we could have several new laws in this area each year, and therefore be in a position of either having to update the regulation each time that happens or leave the list incomplete. We therefore chose not to list the various laws. However, whenever we withhold requested information we will include in the denial notice a citation as to any law authorizing us to make that denial. When complying with a request for information, we will generally do no more than release the information, if it is discloseable.

Regarding the use of the term "information," we have modified § 401.110 so that it now defines the term "information" as meaning information about an individual. This will permit us to use the shorter term "information" throughout these regulations, without any question about the definition.

§ 401.215 *Freedom of Information Act.*

Comment. Several commenters pointed out that this section implies that an oral request is not a request under the FOIA. Also, one of these commenters suggested this section be reorganized to make it and subsequent sections easier to understand.

Response. We have deleted the references to written requests from this section so that it now applies to any request for information. However, the time limits for responding to FOIA requests (20 CFR 422.436) and appeal rights set out in § 401.510 will apply only to written requests, and we will continue to furnish written responses only to written requests.

§ 401.220 *Other laws.*

Comment. A commenter stated this section was unclear as to when section 1106 of the Social Security Act applies, and suggested we provide some examples. This commenter also felt that we should discuss in this section the consequences of the Privacy Act on the disclosure of information under the FOIA.

Response. Section 1106 is the main statute authorizing our regulating disclosure of information in our records, although the other laws mentioned in this regulation, primarily the FOIA and the Privacy Act, govern when we may or may not disclose information. Citing "examples" in the regulation of situations in which section 1106 applies would be useless because it applies to all information covered by the regulation, except information pertaining exclusively to the black lung program.

Regarding the consequences of the Privacy Act on the FOIA, 5 U.S.C. 552a(b)(2) states the Privacy Act shall not prevent any disclosure required by the FOIA. We have modified § 401.215 to reflect that provision.

Comment. A State rehabilitation agency suggested that we add a new section which would permit a State agency to redisclose Social Security Administration information to another State agency which also has an established routine use need for that information.

Response. We have agreements with each State which govern what information we will disclose to the State and how the State may use it. We believe that a policy allowing redisclosure by one agency to another agency within that State should be detailed in these agreements rather than in a uniform nationwide regulation.

§ 401.300 *General principles.*

Comment. One commenter pointed out that in § 401.120 we weigh the requestor's "need to know" against whether there is a "clearly unwarranted invasion of privacy." Yet, in § 401.300 our standard is "the public interest in the disclosure." The commenter asked that we clarify our policy.

Another commenter, who also spoke at the hearing in Atlanta, wrote that this section is somewhat ambiguous, that the criteria for determining whether to disclose are inconsistent with the Privacy Act, and stated that the last phrase in the section, "we generally do not share information for these purposes," is vague.

Response. We have modified this section to show that in weighing the public interest in a disclosure we will also consider the public's expectations that a requestor will preserve the confidentiality of the information he or she may be given.

We have made certain editorial changes which clarify the meaning of this section.

Section 401.300 is entirely consistent with the Privacy Act. It describes how we evaluate questions on whether to disclose information when no law specifically requires or prohibits the disclosure, e.g., the disclosure involves work information which is not prohibited from being disclosed by the Tax Reform Act. The Privacy Act permits, but does not require, disclosure under the circumstances outlined in §§ 401.305–401.345. The Privacy Act says nothing about whether an agency must or should disclose information under these circumstances. We believe that many of these questions will involve FOIA requests which are also excepted from the Privacy Act restrictions against disclosure. Therefore, we will apply the FOIA principles we describe in this section to all questions of disclosure. In this way we will be able to maintain uniform standards in treating disclosure questions.

With regard to the comment that the last phrase of § 401.300 is ambiguous, this phrase must be taken in the context of the sentence in which it appears. However, since there is a question of its meaning, we have modified that sentence's structure to better tie that phrase to the rest of the sentence.

§ 401.305 *Within HHS.*

Comment. Several groups and individuals recommended that SSA should be the agency and not HHS as stated in this section. In addition to citing the Privacy Act definition of agency, they pointed out that the information in question was collected for social security purposes and not for miscellaneous unrelated HHS programs.

Response. HHS is considered to be the "agency" for Privacy Act purposes. As such, the Privacy Act permits disclosure to officers and employees within HHS of SSA records they need to perform their duties. This exchange of records is considered necessary to fulfill the Department's administrative and program responsibilities. However, within the context of those responsibilities, HHS makes every effort practicable to assure the privacy of those records.

§ 401.310 *Compatible purposes.*

Comment. We received many comments on this section, both in writing and at the hearings. They were about evenly divided between suggestions that the criteria for "compatible purposes" be broadened and suggestions that they be more restrictive. Several State rehabilitation agencies requested that this section specifically provide for disclosure to agencies providing vocational rehabilitation services. Several commenters asked that we freely provide information to social services agencies.

Response. This section explains the balance under the law between our responsibility to maintain the privacy of the information in our files and to meet our needs and the information needs of those programs with the same purposes as SSA programs. The regulation provides for disclosure to other income-maintenance or health-maintenance programs only where the information concerns eligibility, benefit amounts, or other matters of benefit status in both the social security and recipient programs. We believe this limitation is necessary to protect the confidentiality of information that is incidental to the individual's social security status while allowing some exchange of information based on the close relationship between eligibility requirements or benefit status in these related government programs.

Rather than maintain an exhaustive listing in this section of the agencies and groups (including State Rehabilitation and social service agencies) to whom we will provide information for "routine uses," we prefer to periodically publish these lists in the **Federal Register** with our notices of systems of records as required by law. Those notices are more detailed than a regulation as to what information will be provided and to whom. They also provide greater flexibility for change. A copy of these notices of systems of records is maintained in each social security office and is available for public inspection.

§ 401.315 *Law enforcement purposes.*

Comment. One commenter suggested this section would open SSA's records to "fishing" expeditions by a variety of law enforcement agencies. Further, this commenter felt this section left open-ended the types of situations in which the FBI and Secret Service could receive information.

Two commenters asked that we broaden paragraph (c) by listing additional crimes as examples of when we would consider disclosing information. One of these commenters pointed out that without a definitive listing there would be delays in responding to requests. We were also asked to set up an office to process information requests from law enforcement agencies. Another commenter expressed the concern of his clients over the potential release of their medical records to law enforcement agencies. We were also asked to make this section more restrictive.

On paragraph (d), one commenter suggested that we limit the disclosures discussed in this paragraph to those involving a substantial, documented basis for the investigation and when the amount in question is significant. Another commenter suggested we clarify the wording of this section.

Response. We recognize that requests from the FBI or Secret Service in matters involving the national security, hostage taking, or acts of terrorism involve always complex, often unique and extremely sensitive factual situations and should not be decided routinely, as perhaps, the proposed regulation suggested. Therefore, we have deleted paragraph (b) (National Security) which now means that decisions to disclose information in these situations will only be made under § 401.115 by the Commissioner or designee after appropriate consultation with the Secretary.

In drafting paragraph (c) we purposely narrowed the range of felonious crimes concerning which we would disclose information. This listing should not be read as precluding us from disclosing information in connection with other serious crimes where the public interest served by disclosure outweighs the privacy interest. However, we agree that disclosing information for what might be considered "fishing" expeditions could violate individual privacy rights. Therefore, we have modified the new paragraph (b) to clarify that information in situations involving violent crimes will be disclosed only where the individual about whom the information is sought has been indicated or convicted of the crime.

Our experience has shown that most "law enforcement" requests, which don't involve income or health maintenance programs, are for an individual's most recent home or work address. Except for up-to-date addresses for persons receiving benefits from SSA, primarily retired and disabled persons, we normally have information about the last location at which a person worked. Beginning with 1978, we receive employer's wage reports only once a year. Since this information is not received until after the close of a year, it is generally several months old. In most situations we cannot disclose this information because of restrictions contained in the Tax Reform Act (see § 401.210). Better information will usually be available from other sources. Consequently, we did not provide a comprehensive list of felonies, since that might encourage many fruitless requests for information.

We have redesignated proposed paragraph (d) as paragraph (c). We have also modified the language to limit the extent of disclosures where a criminal activity involves other programs which have the same purposes as SSA's programs.

We will disclose information for investigation or prosecution of criminal activity if the information concerns eligibility, benefit amounts, or other matters of benefit status in both the social security and other programs. This limitation is the same as the policy on disclosures for compatible purposes discussed in our response to comments on § 401.310. We do not feel there should be dollar limits on when we will release information to protect these programs.

§ 401.325 *Statistical and research activities.*

Comment. Two groups commented that the Privacy Act does not allow the disclosure of records in personally identifiable form for statistical and research purposes. One of these groups also suggested that we provide for more stringent safeguards if we decide to disclose personally identifiable information. Another commenter asked how we will ensure that the stated safeguards are actually followed. A fourth commenter believed this section was quite protective of the individual but suggested we review the safeguards to be taken to protect disclosed information and not merely rely on the requestor's assurances. At the Atlanta hearing an individual also commented that we should do more than just obtain assurances that disclosed information will be safeguarded.

Response. It is true that the Privacy Act, at 5 U.S.C. 552a(b)(5), specifically discusses disclosure of records which are not individually identifiable. It provides for written agreements between an agency and a data user who assures the agency that any released unidentifiable records will be used only as a statistical research or reporting record. We enter into these agreements when disclosure of identifiable information would be unauthorized, and there is a risk that the data user can combine various pieces of unidentifiable information to identify a particular individual. However, paragraph (b)(5) does not prevent an agency from disclosing a record in identifiable format if the record is to be disclosed under another Privacy Act exception. For example, we might provide information in identifiable format to the Census Bureau under paragraph (b)(4), or to the statistical component of another Federal agency which has established a compatible routine use under paragraph (b)(3) and which has agreed to safeguard the information.

We set out only the broad principles we will expect recipients of information to follow in safeguarding that information. The detailed requirements of each principle, and the steps we will take to monitor that the given assurances are actually being followed, will be placed in our detailed instructions to employees. These instructions will be in the SSA Claims Manual and will be available for public inspection at any social security office in the near future. We will consider the above comments in preparing those instructions.

§ 401.330 *Congress.*

Comment. One commenter wanted to know if materials transferred between Congress and agencies within HHS are available for release to the public. Another commenter questioned Congress' need for information about specific individuals. Two commenters asked that we modify paragraph (b) to have the same conditions governing disclosure apply to members of Congress as apply to other third party requestors. We were also asked to require some evidence that the Congressperson had received an inquiry, and to broaden this section to include members of State legislatures.

Response. Any statistical information SSA provides to Congress would normally also be made available to the public. Any information we furnish to a Congressperson about a specific individual would not normally be considered public information as a result of that request.

Section 401.330(a) reflects the Privacy Act provision (5 U.S.C. 552a(b)(9)) permitting disclosure of information, without consent, to both Houses of Congress for purposes of official congressional business (e.g., legislative investigations and hearings).

Section 401.330(b) covers situations in which people ask their Congressperson for assistance when they have a claim for benefits or some other matter pending with SSA. The Congressperson, in requesting information from us, nearly always sends us a copy of the constituent's letter. We treat the Congressperson as the constituent's representative. Since disclosure would not be a "clearly unwarranted invasion of personal privacy" under these circumstances, we release information that should help the Congressperson reply to the constituent.

The Privacy Act provision cited does not apply to State legislatures. However, a request from such a body for information which would help it meet its legislative functions would be carefully considered under the FOIA rules described in the regulation (§§ 401.215 and 401.300). A request from a particular

State legislator, who has received a request for assistance from a constituent, would receive similar consideration. Such inquiries from State legislatures and their members are quite rare. We do not believe that they warrant a special provision in the regulations.

§ 401.340 *Courts.*

Comment. We received several written comments and a speaker in Atlanta also commented on this section. One commenter asked what situations we meant by "In other cases," in paragraph (b) while another asked that this test be dropped. Another individual suggested that these rules should require that we respond to court orders by advising the court of the Privacy Act's provisions and that, when necessary, we advise the court that under the circumstances the disclosure would be inappropriate. The latter point was also made by the speaker in Atlanta. Two commenters indicated we should require that individuals seek information elsewhere before subpoenaing a record. We were also asked what relationship the Secretary's being a party to a proceeding has to the propriety of disclosing information from SSA's files, and to notify the individual in question before honoring a subpoena requesting information from his or her file.

Response. The sentence in paragraph (b) which reads, "In other cases, we try to satisfy the needs of courts while preserving the confidentiality of information," was included because of SSA's need for some flexibility in dealing with courts. SSA does not automatically comply with every attempt to obtain information through court order or subpoena. For example, SSA will resist subpoenas issued in suits brought by private parties when no other provision of the regulation permits the disclosure (e.g., under the FOIA principles) and the individual about whom the information pertains does not consent to the disclosure. This provision in paragraph (b) allows SSA to work with a court to satisfy the court's needs with a minimum of invasion of privacy. For example, we might ask a judge to examine sensitive personal information in chambers without entering it in the open court record. Judges may also be requested to issue protective orders prohibiting further disclosure of information disclosed during a court proceeding.

We agree in principle that in many cases persons should seek information from other sources before subpoenaing SSA's files. However, in many other cases SSA's information will be more readily available, in a more usable form, and/or more reliable than the same information obtained elsewhere, and when the rules set out in the regulation permit disclosure, we do not object to releasing the information as requested.

We consider subpoenas to be a type of court order for Privacy Act purposes. We have amended paragraph (b) to clarify that we will disclose information in response to a subpoena or other court order if the criteria in paragraph (b) are met. This change merely reflects the policy contained in the last sentence of paragraph (a). When we do honor subpoenas as court orders, we try to comply with the subpoena within the time period stipulated by the court, if possible. Also, as required by the Privacy Act (5 U.S.C. 552a(e)(8)), we will try to notify an individual about a subpoena requesting information about him or her when we disclose information which will become part of a public record. However, time constraints might prevent us from receiving and considering that individual's response before honoring the subpoena.

Regarding the Secretary being a party to a judicial proceeding, the Secretary is the proper defendant in judicial proceedings involving SSA (see 20 CFR 422.210(d)). If the court order involves a proceeding of which the Secretary is a party, the Secretary must, like other parties, respond to the order. While we notify the individual of the subpoena, the court order may not allow us time to receive and consider that individual's response before honoring the court order.

§ 401.350 *Deceased persons.*

Comment. Two commenters indicated that medical information about deceased persons should be kept confidential. These commenters questioned why the cause of death or the person's mental or emotional state should be made public. Another commenter felt we should specify how the privacy rights of living persons who may be affected by disclosure of information about a deceased person would be affected.

Response. This provision sets out the general rule on disclosure of information about deceased persons. We do not usually have information on cause of death or mental and emotional state at death. If a person is receiving benefits from SSA and dies, we generally accept a statement reporting that person's death to terminate his or her benefits, without requiring formal proof of death. When a claim for social security benefits is filed based on a deceased person's work record, we request proof of death, but we do not ordinarily receive any information about the cause of death or the emotional state at death, since this usually is not relevant to any claim for benefits. When we do receive this kind of information, it is usually on a death certificate, which is a public record.

Generally, we have no legal authority to withhold information pertaining only to deceased persons. Neither the FOIA nor the Privacy Act recognizes any privacy interests of a deceased person. However, we can withhold a deceased person's record if disclosure would constitute a "clearly unwarranted invasion of a [living] person's privacy." Therefore, we have modified this section to show that, in deciding whether to release information about a deceased person, we will consider whether the disclosure would directly affect a living person adversely (e.g., cause embarrassment to the decedent's family). We note, however, that the disclosure restrictions in the Internal Revenue Code may require our withholding information on a deceased individual's work history. This is adequately covered in § 401.210.

§ 401.400 *General.*

Comment. A commenter wrote that paragraph (c) was inconsistent with the Privacy Act and HHS implementing regulations. A speaker at the Atlanta hearing said the right of an individual to obtain his or her own records should be unrestricted. Another commenter was concerned that we charge an individual for obtaining information from his or her file. The commenter was especially concerned that these costs could restrict an individual's ability to pursue his or her appeal rights under the Social Security Act.

Response. The Privacy Act requires unrestricted access in most situations, but does permit limitations on access to medical records, and records compiled for possible court action or certain formal administrative proceedings. Subpart D reflects these Privacy Act provisions and the Department's Privacy Act regulation (45 CFR 5b.2(e)(5) and 5b.6). We have amended § 401.125 to show that we do not generally charge an individual for obtaining information from his or her file. We also added to § 401.125 a cross-reference to the fee schedule we follow when responding to requests for information or records.

§ 401.405 *How to get your own record.*

Comment. A commenter recommended that paragraph (a) be amended to limit a parent's right of access to a minor's records. At the San Francisco hearing there was some discussion over requiring identification from individuals before granting them access to a record.

Response. We have amended paragraph (a) to show that, under the Privacy Act, a parent can get nonmedical information about a minor only if the parent is acting on behalf of that minor. We have modified paragraph (b) to show that an individual may have to show documentary proof of his or her identity when he or she requests access to records. This change to paragraph (b) reflects the requirements of 45 CFR 5b.5(b)(2).

§ 401.410 *Medical information.*

Comment. We received numerous written comments on this section. Also, at five of the seven hearings someone addressed the policy in this section. The comments raised the following points:

(a) An individual should be able to get his or her medical records without having to use a representative except in extreme cases;

(b) The criteria when a representative is needed are vague;

(c) SSA should have a doctor on hand to explain medical records to a requestor; and

(d) Appointing a representative to receive medical records is too costly for the poor.

Speakers at the Boston and Denver hearings agreed that an individual's medical records should be partially or wholly withheld from him or her.

Response. This section reflects the provisions of HHS regulation 45 CFR 5b.6, and has been amended to refer to that HHS regulation. While § 401.410 requires that an individual seeking his or her medical records name a representative, the requested information will not always be sent to the representative. In most cases an individual will be given his or her medical records directly. This would be done after a careful review of the material.

We did not list situations when a representative will be used because each request for medical information will require an independent judgment. This judgment will consider such factors as the nature of the individual's condition and whether our file indicates the treating physician has explained the condition to the individual, especially in terminal cases.

We do not believe we should be expected to provide a physician to explain the contents of an individual's medical records when we release them to that individual. Our experience has been that individuals generally request this information in connection with a claim for benefits or a lawsuit. Interpretation and use of these records should be left wholly to the individual or the representative whom the individual appoints.

We are unaware of physicians or other responsible individuals directly charging a person solely for the right to appoint them as a representative to receive any disclosed medical records. That a physician might charge for any office time used to explain the disclosed medical records, though, is understandable. People normally request medical information from our files in connection with a claim for benefits or some lawsuit and often have attorneys representing them.

This section does permit them to designate their attorney to receive the information. Any costs associated with this additional service would normally be included in the attorney's fee and should not result in an immediate expense to the individual. Moreover, a competent adult need not appoint a professional representative who will charge a fee for the service. As the rule in this section states, he or she may appoint any responsible person.

§ 401.420 *How to correct your record.*

Comment. One commenter suggested that individuals be allowed to request a correction in person so that they could get help in preparing their requests. Another commenter felt we did not need to know why an individual wanted to correct or amend his or her record. This commenter also felt that paragraph (b) was unclear.

Response. This section is not intended to preclude an individual from requesting a correction of his or her records in person. However, individuals will normally have to make a written request since the manager of the systems of records they want to correct will normally be in SSA's headquarters in Baltimore, Maryland. We have modified paragraph (a), though, to show that a person can obtain assistance at any social security office in preparing the request.

We need to know why an individual believes that his or her record is not accurate, complete, timely, or relevant in order to understand the request. We have modified paragraph (a)(4) to make this more clear.

To clarify the intent of paragraph (b), we have added an example which describes a situation where we would not change a record.

§ 401.505 *Appeal of refusal to correct a record.*

Comment. One commenter proposed that paragraph (b) be amended so that the time to review an appeal is not extended for 30 days in all cases. It was also recommended that we provide the requester with a reason why we need additional time to reply to the request.

Response. We have modified paragraph (b) to reflect these two suggested changes.

§ 401.510 *Appeals after denial of disclosure or access.*

Comment. One commenter recommended that we provide in paragraph (a) that an appeal may be taken within 30 days of receipt of records which are in partial response to a request for records. This would apply to situations in which the individual receives a notice stating only part of the requested records will be furnished and that those records will be released shortly. As proposed, the individual would have 30 days from the date of the notice to appeal, but the individual has not yet seen the requested records which are being released. Thus when someone receives a notice stating that only part of the requested records will be furnished, and receives the records himself later, the commenter felt that the 30-day appeal period should start from receipt of the records rather than the notice. Another commenter recommended that we include in paragraph (a) whether we will notify a requester of the reasons why we denied his or her request, and of the right to appeal that decision.

Response. We have modified paragraph (a) to reflect these two suggested changes.

Due to the recent redesignation of the Department of Health, Education, and Welfare (HEW) as the Department of Health and Human Services (HHS), we have made the necessary conforming designation changes. We have also made several editorial and clarifying changes.

Accordingly, these rules are adopted as set forth below.

(Catalog of Federal Domestic Assistance Programs No. 13.802–13.805 and 13.807–13.812, Social Security Programs)

Dated: June 5, 1980.

William J. Driver,

Commissioner of Social Security.

Approved: October 30, 1980.

Patricia Roberts Harris,

Secretary of Health and Human Services.

20 CFR Part 401 is amended as follows:

1. Subpart A is transferred to 42 CFR Chapter IV and redesignated as Subpart A in new Part 401. A heading is added for 42 CFR 401 Subpart B. The headings for 42 CFR 401 and for Subparts A and B of 401 read as follows:

PART 401—DISCLOSURE OF OFFICIAL RECORDS AND INFORMATION

Subpart A—General Provisions

* * * * *

Subpart B—Confidentiality and Disclosure [Reserved]

2. In 42 CFR, § 401.1, paragraph (a) is revised to read as follows:

§ 401.1 Purpose and scope.

(a) The Regulations in this Part implement section 1106(a) of the Social Security Act as it applies to the Health Care Financing Administration. The rules apply to information obtained by officers or employees of the Health Care Financing Administration in the course of administering title XVIII of the Social Security Act, information obtained by Medicare intermediaries or carriers in the course of carrying out agreements under sections 1816 and 1842 of the Social Security Act, and any other information subject to section 1106(a) of the Social Security Act.

* * * * *

§§ 401.1, 401.2 and 401.3 [Amended]

2.a 42 CFR 401 is amended as follows: In §§ 401.1(b), 401.2(a), and 401.3(b)(2) change the references to "Part 422, Subpart E of this chapter" to 20 CFR Part 422, Subpart E." Sections 401.1, 401.2, and 401.3 are redesignated 401.101, 401.102, and 401.105 respectively.

3. In 20 CFR Part 401 Subpart B is redesignated as Subpart F and sections 401.101 to 401.105 are redesignated as 401.600 to 401.604.

4. The table of contents for 20 CFR Part 401 is amended to read as follows:

PART 401—DISCLOSURE OF OFFICIAL RECORDS AND INFORMATION

Subpart A—General Provisions

Subpart B—How Laws Apply

Subpart C—Individual Disclosures

Subpart D—Obtaining and Correcting Your Records

Subpart E—Appeals

Subpart F—Disclosure of Wage Information for Programs of Aid to Families With Dependent Children

Authority: Secs. 205, 1102, and 1106 of the Social Security Act; 53 Stat. 1368, as amended, 49 Stat. 647, as amended, 53 Stat. 1398, as amended, sec. 290, 66 Stat. 234; (42 U.S.C. 405, 1302, 1306; 8 U.S.C. 1360); sec. 413(b) of the Federal Coal Mine Health and Safety Act of 1969, 83 Stat. 794; 30 U.S.C. 923, 5 U.S.C. 552a (Privacy Act); 5 U.S.C. 552 (Freedom of Information Act), as amended by Pub. L. 94-409; 90 Stat. 1241; 26 U.S.C. 6103, as amended by Pub. L. 94-455, 90 Stat. 1667 (Tax Reform Act of 1976).

5. New Subparts A through E are added to read as follows:

Subpart A—General Provisions

§ 401.100 Purposes of the regulation.

The Social Security Administration (SSA) generally provides information which individuals request about themselves. This regulation describes how individuals may get access to their own records. This regulation also describes the rules SSA uses to decide whether to disclose information about individuals without their consent. These rules are set out in Subparts A through E of this part. These rules comply with the Freedom of Information Act, the Privacy Act, section 1106 of the Social Security Act, and other applicable statutes. When required by the Privacy Act, SSA publishes notices of routine use for public information and comment. Procedures for requesting information are in §§ 422.428 and 422.436 of this chapter and 45 CFR Parts 5 and 5b.

§ 401.105 When the regulation applies.

(a) *Scope of rules.* This regulation sets out the general guidelines which we follow in deciding whether to make disclosures. However, we must examine the facts of each case separately to decide if we should disclose the information or keep it confidential.

(b) *Social security records.* This regulation applies to information about an individual contained in SSA's records. Other regulations apply to—

(1) Information which is not about an individual—45 CFR Part 5 and Subpart E of Part 22 of this chapter; or

(2) Information about acts of SSA officials and employees or to SSA's personnel records—45 CFR Parts 5 and 5b; or

(3) Information in the possession of a State or local agency administering a program of Aid to Families with Dependent Children—45 CFR 205.50.

(c) *Health insurance records.* This regulation also applies to health insurance records which SSA maintains for the Health Care Financing Administration's (HCFA) programs under title XVIII of the Social Security Act. SSA will disclose these records to HCFA. HCFA may redisclose these records under the regulations applying to records in HCFA's custody.

(d) *Black lung benefit records.* This regulation also applies to records which SSA maintains for the administration of the Federal Coal Mine Health and Safety Act. However, this information is not covered by section 1106 of the Social Security Act.

(e) *Records kept by consultants.* Information retained by a medical, psychological or vocational professional concerning an examination performed under contract in the social security program shall not be disclosed except as permitted by this part.

§ 401.110 Terms defined.

"Access," as that term is used in the Privacy Act (5 U.S.C. 552a(d)), means the individual's right to review and copy records about that individual.

"Act" means the Social Security Act.

"Disclosure" means the availability or release of a record about an individual to another party.

"FOIA" means the Freedom of Information Act.

"HHS" means the Department of Health and Human Services.

"Individual" means a living natural person; this does not include corporations, partnerships, and unincorporated business or professional groups of two or more persons.

"Information" means information about an individual, and includes, but is not limited to, vital statistics; race, sex, or other physical characteristics; earnings information; professional fees paid to an individual and other financial information; benefit data or other claims information; the social security number, employer identification number, or other individual identifier; address; phone number; medical information, including psychological or psychiatric information or lay information used in a medical determination; and information about marital and family relationships and other personal relationships.

"Record" means any item, collection, or grouping of information about an individual that SSA maintains (e.g., employment history, medical history (including consultative examinations), education) and that contains his or her name, or an identifying number, symbol, or any other means by which an individual can be identified.

"Secretary" means the Secretary of Health and Human Services and any individual authorized to act for him or her in the administration of a social security program.

"Social Security Administration" (SSA) means (1) that principal operating component of the Department of Health and Human Services which has administrative responsibilities under titles, I, II, IV—Part A, X, XI, XIV, XVI, and XVIII of the Act; and (2) units of State governments which make determinations under agreements made under sections 221 and 1633 of the Act.

"Social security program" means any program or provision of law which SSA is responsible for administering, including the Freedom of Information Act and Privacy Act. This includes our responsibilities under Parts B and C of the Federal Coal Mine Health and Safety Act.

"System of records" means a group of records under our control from which information about an individual is retrieved by the name of the individual or by an identifying number, symbol, or other identifying particular.

"We" means the Social Security Administration.

§ 401.115 Situations not specified in this part.

If no other provision in this regulation specifically allows SSA to disclose information, the Commissioner or designee may disclose this information if not prohibited by Federal law. For example the Commissioner or designee may disclose information necessary to respond to life threatening situations.

§ 401.120 Safeguards against unauthorized disclosure or use.

The FOIA does not authorize us to impose any restrictions on how information is used after we disclose it under that law. However, the FOIA does permit us to withhold information, for example, if disclosure would result in a "clearly unwarranted invasion of personal privacy." In deciding whether this exemption applies in a given case, we must consider all the ways in which the recipient might use the information and how likely the recipient is to redisclose the information to other parties. Thus, before we disclose personal information we may consider such factors as—

(a) Whether only those individuals who have a need to know the information will obtain it;

(b) Whether appropriate measures to safeguard the information to avoid unwarranted use or misuse will be taken; and

(c) Whether we would be permitted to conduct on-site inspections to see whether the safeguards are being met.

§ 401.125 Fees.

We follow HHS regulations (45 CFR 5.60, 5.61 and 5b.13) and § 422.440 of Part 422 of this Chapter to determine the amount of fees, if any, to be charged for providing information under the FOIA and Privacy Act. Generally, we do not charge an individual for obtaining information from his or her file.

Subpart B—How Laws Apply

§ 401.200 General.

This section describes how various laws control the disclosure or confidentiality of personal information which we keep. We must consider these laws in the following order.

(a) Some laws require us to disclose information (§ 401.205); some laws require us to withhold information (§ 401.210). These laws control whenever they apply.

(b) If no law of this type applies in a given case, then we must look to the FOIA. See § 401.215.

(c) When the FOIA doesn't require disclosure, we may disclose information if both the Privacy Act and section 1106 of the Social Security Act permit the disclosure. See § 401.220.

§ 401.205 Disclosures required by law.

We disclose information when a law specifically requires it. The Social Security Act requires us to disclose information for certain program purposes. These include disclosures to the Office of Inspector General, HHS, the Parent Locator Service and to States for the administration of the Aid to Families with Dependent Children program. Also, there are other laws which require that we furnish other agencies information which they need for their programs. These include the Veterans Administration for its benefit programs, the Immigration and Naturalization Service to carry out its duties regarding aliens, and the Railroad Retirement Board for its benefit programs.

§ 401.210 Disclosures prohibited by law.

We do not disclose information when a law specifically prohibits it. The Internal Revenue Code generally prohibits us from disclosing tax return information which we receive to maintain individual earnings records. This includes, for example, amounts of wages and contributions from employers. Other laws restrict our disclosure of certain information about drug and alcohol abuse which we collect to determine eligibility for social security benefits.

§ 401.215 Freedom of Information Act.

The FOIA requires us to disclose any information in our records upon request from the public, unless one of several exemptions in the FOIA applies. When the FOIA requires disclosure, the Privacy Act permits it. "The public" does not include Federal agencies, courts, or the Congress, but does include State agencies, individuals, corporations, and most other parties. The FOIA does not apply to requests that are not from "the public" (e.g., from a Federal agency). However, we apply FOIA principles to requests from these sources for disclosure of information (see § 401.300; also see §§ 401.330 and 401.335 for disclosures to Congress and the General Accounting Office.

§ 401.220 Other laws.

When the FOIA does not apply, we may not disclose any personal information unless both the Privacy Act and section 1106 of the Social Secuity Act permit the disclosure. Sections 401.305 through 401.340 discuss how we apply the various provisions of the Privacy Act that permit disclosure. Section 1106 of the Social Security Act requiries the Secretary of HHS to set out in regulations what disclosures may be made; therefore, any disclosure permitted by this regulation is permitted by section 1106.

Subpart C—Individual Disclosures

§ 401.300 General principles.

When no law specifically requiring or prohibiting disclosure (see § 401.205 and § 401.210) applies to a question of whether to disclose information, we follow the FOIA principles to resolve that question. We do this to insure uniform treatment in all situations. The

FOIA principle which most often applies to SSA disclosure questions is whether the disclosure would result in a "clearly unwarranted invasion of personal privacy." To decide whether a disclosure would be a clearly unwarranted invasion of personal privacy we consider—

(a) The sensitivity of the information (e.g., whether individuals would suffer harm or embarrassment as a result of the disclosure);

(b) The public interest in the disclosure;

(c) The rights and expectations of individuals to have their personal information kept confidential; and

(d) The public's interest in maintaining general standards of confidentiality of personal information; and

(e) Those factors discussed in § 401.120. We feel that there is a strong public interest in sharing information with other agencies with programs having the same or similar purposes, so we generally share information with those agencies. However, since there is usually little or no public interest in disclosing information for disputes between two private parties or for other private or commercial purposes; we generally do not share information for these purposes.

§ 401.305 Within HHS

The Privacy Act allows an agency to share information inside the agency when necessary for the agency to carry out its duties. For purposes of this provision, HHS considers itself one "agency." SSA, as a part of HHS discloses information to another HHS component when SSA determines that the other component has a legitimate need for the information and no other law prohibits it.

§ 401.310 Compatible purposes.

(a) *General.* The Privacy Act allows us to disclose information, without the consent of the individual, to any other party for "routine uses."

(b) *"Routine use."* This means the disclosure of a record outside HHS for a purpose which is "compatible" with the purpose for which the record was collected. We publish notices of systems of records in the **Federal Register** which contain a list of all "routine use" disclosures.

(c) *Determining compatibility.* We disclose information for "routine uses" where necessary to carry out SSA's programs. It is also our policy to disclose information for use in other programs which have the same purposes as SSA programs if the information concerns eligibility, benefit amounts, or other matters of benefit status in a social security program and is relevant to determining the same matters in the other program. For example, we disclose information to the Railroad Retirement Board for pension and unemployment compensation programs, to the Veterans Administration for its benefit program, to worker's compensation programs, to State general assistance programs, and to other income maintenance programs at all levels of government; we also disclose for health-maintenance programs like Medicare and Medicaid, and in appropriate cases, for epidemiological and similar research.

§ 401.315 Law enforcement purposes.

(a) *General.* The Privacy Act allows us to disclose information for law enforcement purposes under certain conditions. Much of the information in our files is especially sensitive or very personnel. Furthermore, participation in social security programs is mandatory, so people cannot limit what information is given us. Therefore, we generally disclose information for law enforcement purposes only in limited situations. Paragraphs (b) and (c) of this section discuss the disclosures we generally make for these purposes.

(b) *Serious crimes.* SSA may disclose information for criminal law enforcement purposes where a violent crime such as murder or kidnapping has been committed and the individual about whom the information is being sought has been indicted or convicted of that crime.

The Privacy Act allows us to disclose if the head of the law enforcement agency makes a written request giving enough information to show—That these conditions are met; What information is needed; and Why it is needed.

(c) *Criminal activity involving the social security program or another program with the same purposes.* We disclose information when necessary to investigate or prosecute fraud or other criminal activity involving the social security program. We may also disclose information for investigation or prosecution of criminal activity in other income-maintenance or health-maintenance programs (e.g., other governmental pension programs, unemployment compensation, general assistance, Medicare or Medicaid) if the information concerns eligibility, benefit amounts, or other matters of benefit status in a social security program and is relevant to determining the same matters in the other program.

§ 401.320 Health or safety.

The Privacy Act allows us to disclose information in compelling circumstances where an individual's health or safety is affected. For example, if we learn that someone has been exposed to an excessive amount of radiation, we may notify that person and appropriate health officials. If we learn that someone has made a threat against someone else, we may notify that other person and law enforcement officials. When we make these disclosures, the Privacy Act requires us to send a notice of the disclosure to the last known address of the person whose record was disclosed.

§ 401.325 Statistical and research activities.

(a) *General.* Statistical and research activities often do not require information in a format that identifies specific individuals. Therefore, whenever possible, we release information for statistical or research purposes only in the form of aggregates or individual data that cannot be associated with a particular individual. The Privacy Act allows us to release records if there are safeguards that the record will be used solely as a statistical or research record and the individual cannot be identified from any information in the record.

(b) *Safeguards for disclosure with identifiers.* The Privacy Act also allows us to disclose data for statistical and research purposes in a form allowing individual identification when the purpose is compatible with the purpose for which the record was collected. We will disclose personally identifiable information for statistical and research purposes if—

(1) We determine that the requester needs the information in an identifiable form for a statistical or research activity, will use the information only for that purpose, and will protect individuals from unreasonable and unwanted contacts;

(2) The activity is designed to increase knowledge about present or alternative social security programs or other Federal or State income-maintenance or health-maintenance programs, or consists of epidemiological or similar research; and

(3) The recipient will keep the information as a system of statistical records, will follow appropriate safeguards, and agrees to our on-site inspection of those safeguards so we can be sure the information is used or redisclosed only for statistical or research purposes. No redisclosure of the information may be made without SSA's approval. We will also require these safeguards when we disclose personally identifiable information to another HHS component for its own

statistical or research functions (see § 401.305).

(c) *Statistical record.* A statistical record is a record in a system of records which is maintained only for statistical and research purposes, and which is not used to make any determination about an individual. We maintain and use statistical records only for statistical and research purposes. We may disclose a statistical record if the conditions in paragraph (b) of this section are met.

(d) *Compiling of records.* Where a request for information for statistical and research purposes would require us to compile records, and doing that would be administratively burdensome to ongoing SSA operations, we may decline to furnish the information.

§ 401.330 Congress.

(a) We disclose information to either House of Congress. We also disclose information to any committee or subcommittee of either House, or to any joint committee of Congress or subcommittee of that committee, if the information is on a matter within the committee's or subcommittee's jurisdiction.

(b) We disclose to any member of Congress the information needed to respond to constituents' requests for information about themselves (including requests from parents of minors, or legal guardians). However, these disclosures are subject to the restrictions in § 401.400ff.

§ 401.335 General Accounting Office.

We disclose information to the General Accounting Office when that agency needs the information to carry out its duties.

§ 401.340 Courts.

(a) *General.* The Privacy Act allows us to disclose information when we receive an order from a court of competent jurisdiction. However, much of our information is especially sensitive. Participation in social security programs is mandatory, and so people cannot limit what information is given to SSA. When information is used in a court proceeding, it usually becomes part of a public record, and its confidentiality cannot be protected. Therefore, we treat subpoenas or other court orders for information under the rules in paragraph (b) of this section.

(b) We generally disclose information in response to a subpoena or other court order if—

(1) Another section of this part would specificially allow the release; or

(2) The Secretary of HHS is a party to the proceeding; or

(3) The information is necessary for due process in a criminal proceeding. In other cases, we try to satisfy the needs of courts while preserving the confidentiality of information.

§ 401.345 Other specific recipients.

In addition to disclosures we make under the "routine use" provision, we also release information to—

(a) The Bureau of the Census for purposes of planning or carrying out a census, survey, or related activity; and

(b) The National Archives of the United States if the record has sufficient historical or other value to warrant its continued preservation by the United States Government. We also disclose a record to the Administrator of General Services for a determination whether the record has such a value.

§ 401.350 Deceased persons.

We do not consider the disclosure of information about a deceased person to be a clearly unwarranted invasion of that person's privacy. However, in disclosing information about a deceased person, we follow the principles in § 401.300 to insure that the privacy rights of a living person are not violated.

Subpart D—Obtaining and Correcting Your Records

§ 401.400 General.

The Freedom of Information Act allows you to request information from SSA whether or not it is in a system of records. The Privacy Act gives you the right to have access to most records about yourself that are in our systems of records. Exceptions to this Privacy Act right include—

(a) Certain medical records (see 5 U.S.C. 552a(f)(3) and section 401.410);

(b) Certain criminal law enforcement records (see 5 U.S.C. 552a(k), and HHS' rule in 45 CFR 5b.11); and

(c) Records compiled in reasonable anticipation of a court action or formal adminstrative proceeding.

We generally follow the HHS rules in 45 CFR 5b.5 and 5b.6 on access to an individual's record. However, in a few situations our rules are somewhat more strict, because of the especially sensitive nature of many of our records. This subpart briefly describes our rules.

§ 401.405 How to get your own record.

(a) *Who may ask.* You may ask for any record about yourself that is in an SSA system of records. If you are a minor, you may get information about yourself under the same rules as for an adult. Under the Privacy Act, if you are the parent or guardian of a minor, or the legal guardian of someone who has been declared legally incompetent, and you are acting on his or her behalf, you may ask for information about that individual. See § 401.410 for the rules which apply to requests for medical records.

(b) *Identification.* When you request access to a record, you must identify yourself. One means of identity is your signature but you may also be requested to show your driver's license, birth certificate, or similar document.

(c) *How to ask.* To request access to a record you may visit your local social security office or write to the manager of the SSA system of records. The name and address of the manager of the system is part of the notice of systems of records which is published annually in the **Federal Register**. Every local social security office keeps a copy of the **Federal Register** containing that notice. That office can also help you get access to your record. You do not need to use any special form to ask for a record about you in our files, but your request must give enough identifying information about the record you want to enable us to find your particular record. This identifying information should include the system of records in which the record is located and the name and social security number (or other identifier) under which the record is filed. We do not honor requests for "all records," "all information," or similar blanket requests.

§ 401.410 Medical information.

(a) *Your own record.* In accordance with 45 CFR 5b.6, when you request medical information about yourself, you must also name a representative in writing. The representative may be a physician, other health professional, or other responsible individual who would be willing to review the record and inform you of its contents at your representative's discretion. If you do not designate a representative, we may decline to release the requested information. In some cases, it may be possible to release medical information directly to you rather than to your representative.

(b) *Requests on behalf of a minor.* If you are the parent or guardian of a minor, we will release the minor's medical record only to a representative that you name in writing. The representative in these cases must be a physician or other health professional (excluding a family member) who would be willing to review the record and inform you of its contents at the representative's discretion. If you do not designate a representative, we will decline to release the requested information. We will also make reasonable efforts to inform the minor that the record has been given to the representative. We will also tell the representative when further disclosure may be an unwarranted invasion of the minor's privacy. We will also ask the representative to consider the effect that disclosing the record to the parent or guardian would have on the minor in determining whether the minor's record should be made available to the parent or guardian.

(c) *Requests on behalf of an incapacitated adult.* If you are the legal guardian of an adult who has been declared legally incompetent, you may receive his or her records directly.

§ 401.415 Records about two or more individuals.

(a) When information about two or more individuals is in one record filed under your social security number, you may receive the information about you and the fact of entitlement and the amount of benefits payable to other persons based on your record.

You may receive information about yourself or others, which is filed under someone else's social security number, if that information affects your entitlement to social security benefits or the amount of those benefits.

§ 401.420 How to correct your record.

(a) *How to request a correction.* This section applies to all records kept by SSA (as described in § 401.105) except for records of earnings. (Section 422.125 of this chapter describes how to request correction of your earnings record.) You may request that your record be corrected or amended if you believe that the record is not accurate, timely, complete, relevant, or necessary to the administration of a social security program. To amend or correct your record, you should write to the manager identified in the notice of systems of records which is published annually in the **Federal Register** (see § 401.405(c) on how to locate this information). The staff at any social security office can help you prepare the request. You should submit any available evidence to support your request. Your request should indicate—

(1) The system of records from which the record is retrieved;

(2) The particular record which you want to correct or amend;

(3) Whether you want to add, delete or substitute information in the record; and

(4) Your reasons for believing that your record should be corrected or amended.

(b) *What we will not change.* You cannot use the correction process to alter, delete, or amend information which is part of a determination of fact or which is evidence received in the record of a claim in the administrative appeal process. Disagreements with these determinations are to be resolved through the SSA appeal process. (See Subparts I and J of Part 404, and Subpart N of Part 416, of this chapter.) For example, you cannot use the correction process to alter or delete a document showing a birth date used in deciding your social security claim. However, you may submit a statement on why you think certain information should be altered, deleted, or amended, and this will be made part of your file.

(c) *Acknowledgement of correction request.* We will acknowledge receipt of a correction request within 10 working days, unless the request can be reviewed, processed, and an initial determination of denial or compliance given before that time.

(d) *Notice of error.* If the record is wrong, we will correct it promptly. If wrong information was disclosed from the record, we will tell all those who received that information that it was wrong and will give them the correct information. This will not be necessary if the change is not due to an error, e.g., a change of name or address.

(e) *Record found to be correct.* If the record is correct, we will advise you in writing of the reason why we refuse to amend your record and we will also inform you of your right to seek a review of the refusal and the name and address of the official to whom you should send your request for review.

Subpart E—Appeals

§ 401.500 Which decisions are covered.

This subpart describes how to appeal decisions concerning requests for correction of a record, disclosure of a record, or access to a record. These sections apply only to written requests.

§ 401.505 Appeal of refusal to correct a record.

(a) If we deny your request to correct a record, you may request a review of that decision. As discussed in § 401.420(e), our letter denying your request will tell you to whom to write.

(b) The official will review your request within 30 working days from the date of receipt. However, for a good reason and with the approval of the Commissioner, this time limit may be extended up to an additional 30 days. In that case, the official will notify you about the delay, the reason for it, and the date when the review is expected to be completed. If, after review, the official determines that the record should be corrected, the record will be corrected. If, after review, the reviewing official also refuses to amend the record exactly as you requested, the official will advise you—

(1) That your request has been refused and the reason;

(2) That this refusal is SSA's final decision;

(3) That you have a right to seek court review of this request to amend the record; and

(4) That you have a right to file a statement of disagreement with the decision. Your statement should include the reason you disagree. Your statement will be made available to anyone to whom the record is subsequently disclosed, together with a statement of SSA's reasons for refusal to amend the record. Also, prior recipients of the record will be provided a copy of your statement.

§ 401.510 Appeals after denial of disclosure or access.

(a) If we deny your request for disclosure of information about others or for access to your own record, we will advise you in writing of the reason why we are denying your request and of your right to seek a review of that decision. You may appeal that decision to the Commissioner of Social Security, 6401 Security Boulevard, Baltimore, Maryland 21235, within 30 days after you receive the notice denying your request or only partially allowing your request. If any materials are to be sent to you as the result of a partial allowance of your request, they will usually be enclosed with the notice of that decision. If the materials are sent to you after you receive the notice of the decision, you may appeal within 30 days of the date on which you received the materials.

(b) The Commissioner or a designee will mail you a written decision on your appeal. This decision will state why the decision was made and will explain your rights to have the matter heard in court.

(c) If the Commissioner or a designee affirms the denial of a request for records (completely or partially), or fails to comply with the time limits that apply in FOIA cases, you may ask to have the matter reviewed in a Federal district court.

(d) See Part 422, Subpart E, of this Chapter for other procedural rules pertaining to requests and appeals under the FOIA.

[FR Doc. 80-35032 Filed 11-12-80; 8:45 am]

BILLING CODE 4110-07-M