Model 146 airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends Section 39.13 of Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.89; and 49 CFR 1.47.

2. By adding the following new airworthiness directive:

British Aerospace: Applies to all Model BAe 146 airplanes certificated in any category on which Modification HCM00301A or B has been accomplished, and on which Modification HCM00432A or B has not been accomplished. Compliance is required within the next 100 landings after the effective date of this airworthiness directive (AD). To detect and prevent chafing of the fuselage skin, accomplish the following, unless previously accomplished:

1. Inspect the fuselage skin beneath the wing-to-fuselage fairings for chafing, repair if necessary, and apply anti-chafe tape in accordance with British Aerospace Service Bulletin 53-5 dated August 15, 1984, or Service Bulletin 53-5, Revision 1, dated April 19, 1985.

2. Repeat the inspection required by paragraph 1., above, at intervals not to exceed 1000 landings until Modification HCM00432A or B is incorporated.

3. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

4. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

This amendment becomes effective August 22, 1985.

Issued in Seattle, Washington, on July 8, 1985.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 85-16673 Filed 7-12-85; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 85-ANM-2]

Alteration of Glasgow, MT, Control Zone and Transition Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action alters the control zone and transition area at Glasgow, Montana, to enlarge the control zone extensions and reduce the size of the 700' transition area. This action is necessary to ensure segregation of aircraft using approach procedures in instrument weather conditions and other aircraft operating in visual weather conditions.

EFFECTIVE DATE: 0901 GMT, September 26, 1985.

FOR FURTHER INFORMATION CONTACT: Katherine Paul, Airspace Technical Specialist, ANM-535, Federal Aviation Administration, Docket No. 85-ANM-2, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The telephone number is (206) 431-2530.

SUPPLEMENTARY INFORMATION:

History

On April 19, 1985, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to enlarge the control zone extensions and reduce the size of the 700' transition area of Glasgow, Montana (50 FR 15577).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Sections 71.171 and 71.181 of Part 71 of the Federal Aviation Regulations were republished in Handbook 7400.6A dated January 2, 1985.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations enlarges the control zone extensions and reduces the size of the 700' transition area at Glasgow, Montana. The control extensions are required due to recent amendments to instrument approach procedures at Glasgow International Airport. The reduction of the 700' transition area is permitted due to cancellation of instrument approach procedures at Valley Industrial Park Airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Control zones/Transition areas/ Aviation safety.

Adoption of the Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) amends Part 71 of the FAR (14 CFR Part 71) as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); [14 CFR 11.69]; 49 CFR 1.47.

2. By amending §§ 71.171 and 71.181 as follows:

Glasgow, Montana Control Zone—(Revised)

"Within a 5-mile radius of the Glasgow International Airport (lat. 48°12'48"N, long. 106°37'06" W); within 3 miles each side of the Glasgow VOR/DME 327° radial, extending from the 5-mile radius zone to 8.5 miles northwest of the VOR/DME; and within 3 miles each side of the Glasgow VOR/DME 127° radial, extending from the 5-mile radius zone to 8.5 miles southeast of the VOR/DME; and within 3 miles each side of the Milk River NDB 106° bearing, extending from the 5-mile radius zone to 8.5 miles east of the NDB".

Glasgow, Montana, Transition Area—(Revised)

"That airspace extending upward from 700 feet above the surface within an 11-mile radius of the Glasgow VOR/DME; and that airspace extending upward from 1,200 feet above the surface starting at lat. 48°40'00" N, long.106°00'00" W; to lat. 48°32'00" N, long.105°50'00" W; to lat. 48°03'00" N, long.105°50'00" W; to lat. 48°03'00" N, long. 106°10'00" W; to lat. 47°53'00" N, long. 106°22'30" W; to lat. 48°15'00" N, long. 107°07'00" W; to lat. 48°40'00" N, long. 107°07'00" W; thence to point of beginning, excluding that area designated as the Wolf Point, Montana, 1,200 foot transition area".

Issued in Seattle, Washington, on June 21, 1985.

Charles R. Foster,

Director, Northwest Mountain Region.

[FR Doc. 85-16671 Filed 7-12-85; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 85-ANM-10]

Establish Transition Area, Quincy, WA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action provides controlled airspace from 700 feet above the surface for aircraft executing a new instrument approach procedure at Quincy Municipal Airport. The area will be shown on aeronautical charts enabling pilots to circumnavigate the area or, otherwise, comply with instrument flight rules (IFR) during instrument flight conditions.

EFFECTIVE DATE: 0901 GMT, September 26, 1985.

FOR FURTHER INFORMATION CONTACT: Ted Melland, Airspace & Procedures Specialist, ANM-533, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The telephone number is (206) 431-2533.

SUPPLEMENTARY INFORMATION:

History

On May 3, 1985, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish the Quincy, Washington, 700 foot transition area (50 FR 18877).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. During the comment period more accurate geographical coordinates for the airport location were published. The change is not considered significant and, therefore, except for the geographical coordinate changes, this amendment is the same as that proposed in the notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6A dated January 2, 1985.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations establishes a 700 foot transition area to provide controlled airspace for aircraft executing a new instrument approach procedure to Quincy Municipal Airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Transition areas, Aviation safety.

Adoption of the Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) amends Part 71 of the FAR (14 CFR Part 71) as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10654; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); [14 CFR 11.69]; 49 CFR 1.47.

2. By amending § 71.181 as follows:

Quincy, Washington Transition Area—(New)

"That airspace extending upward from 700 feet above the surface within a 5-mile radius of the Quincy Airport (lat. 47°12'34.8" N long. 119°50'19" W), excluding the Moses Lake, Washington, transition area."

Issued in Seattle, Washington, on July 2, 1985.

Charles R. Foster,

Director, Northwest Mountain Region.

[FR Doc. 85-16672 Filed 7-12-85; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Parts 401 and 422

Availability of Information and Records to the Public; Fees for Providing Information and Records; Procedures and Appeals

AGENCY: Social Security Administration, HHS.

ACTION: Final rule.

SUMMARY: The Social Security Administration (SSA) announces changes in the fees it charges for providing records from its files and record related services. These changes conform SSA's fee schedule to that of the Department of Health and Human Services (HHS). The rules also implement the discretion given the Secretary of Health and Human Services by section 2207 of the Omnibus Budget Reconciliation Act of 1981 to charge the full cost of providing certain information and records. The rules do not change SSA's longstanding policy of generally not charging an individual for information needed to assure that our records concerning her or him are correct. In preparing these amendments, we deleted from SSA's rules several provisions concerning Medicare information. The Health Care Financing Administration (HCFA) has published separate regulations governing the availability of Medicare information and records.

We have also clarified the rules for handling requests for information about individuals under the Privacy Act and the Freedom of Information Act (FOIA) and incorporated HHS' rules on who has authority to release or deny records in this revised material.

EFFECTIVE DATE: These revised regulations are effective beginning July 15, 1985.

FOR FURTHER INFORMATION CONTACT: Cliff Terry, Legal Assistant, 6401 Security Boulevard, Baltimore, Maryland 21235, (301) 594-7519.

SUPPLEMENTARY INFORMATION:

Introduction

These regulations were published as proposed rules September 20, 1983, at 48 FR 42830. They revise SSA's rules in 20 CFR Part 422, Subpart E, on the availability of records and information to the public under the FOIA. These changes are needed to remove material made obsolete by the creation of HCFA, to clarify the rules for handling requests for records under the FOIA, to conform SSA's fee schedule for providing records and record related services under the FOIA to the revised HHS fee schedule, to announce a fee schedule under which we will charge the full cost of providing certain records, and to revise SSA's rules on who can release or deny a record. These provisions affect the fees for and the routing of requests for information covered by 20 CFR Part 401, the rules on the availability of personal information contained in program records. The substantive disclosure rules for such information have not been

changed. The new rules also do not change SSA's longstanding policy of generally not charging an individual for information needed to assure that our records concerning her or him are correct (see Subpart D of Part 401, and see §§ 422.125 and 422.440 as amended by these regulations).

These rules revise Subpart E of 20 CFR part 401, Appeals, to clarify the procedures on how an individual can appeal, under the Privacy Act, a decision denying that individual access to her or his own records.

Health Care Financing Administration

In March, 1977, SSA's Bureau of Health Insurance became part of a new agency, the Health Care Financing Administration (HCFA). As a result SSA is no longer responsible for the Medicare information and reports described in 20 CFR 422.426(b) (1) and (2) and 422.433 through 422.435. HCFA published final regulations which govern the availability of its Medicare (title XVIII) information and records on November 12, 1981 at 46 FR 55695. The HCFA regulations supersede the former §§ 422.426(b) (1) and (2) and 422.433 through 422.435. The remaining material in former § 422.426 is incorporated in the revision to § 422.416. Therefore, we have removed those sections.

Freedom of Information Act

The Freedom of Information Act (FOIA) permits any person to see and get a copy of any Federal agency's records unless the material is within a category of records which the FOIA exempts. Under the FOIA, we are generally required to let members of the public see and get a copy of instructional manuals issued to our employees, general statements of policy, and other materials, such as Social Security Rulings, which are used in processing claims but which are not published in the **Federal Register**. We have rewritten sections of the regulations on how we comply with the FOIA to reflect several significant conforming changes. In final rules published on May 12, 1982, at 47 FR 20309, HHS limited the authority to release or deny SSA records to the Director, Office of Information (SSA), her or his designee, or as otherwise provided by regulations. In §§ 422.426 and 422.444 we set out this internal delegation of authority.

In addition, we have reorganized the material on processing requests for records and on administrative appeals.

Conforming Changes to Fee Schedule for Providing Records for Program Purposes

Section 422.440 incorporates the fee provisions of 45 CFR Part 5, which sets out the fees we will charge for providing records under the FOIA for program purposes. Program related requests would include requests for records which must be disclosed under the Social Security Act (the Act) and requests for records which will be used for a purpose directly related to the administration of a program under the Act. We have established four broad criteria we will consider in deciding whether a proposed use is so related:

(a) Whether the record will be used to pursue some benefit under the Act;

(b) Whether the record is needed solely to verify the accuracy of information obtained in connection with a program administered under the Act;

(c) Whether the record is needed in connection with an activity which has been authorized under the Act; and

(d) Whether the record is needed by an employer to carry out her or his taxpaying responsibilities under the Federal Insurance Contributions Act or under the provisions of section 218 of the Act.

Our experience is that most program related requests will fall within one of these criteria. However, we will also consider, on a case by case basis, those requests which do not meet these criteria but whose purposes are claimed to be program related.

For furnishing records under the FOIA for program purposes, we are providing that our fee schedule is the schedule in the HHS FOIA regulations, 45 CFR Part 5, which we are already required to follow. The current HHS fee schedule was published as a final rule on September 22, 1982, at 47 FR 41751. Briefly, the fees are as follows:

Manual searches for records increased from $3 to $10 per hour;

Photocopying standard size pages remains at 10 cents per page;

Photocopying odd-size pages, etc., remains at actual cost except that the charge for an employee's time is now limited to no more than $10 per hour;

Certification or authentication of a record increased from $3 to $10 for each service; and

Forwarding materials to destination increased from no charge for postage to actual cost for postage.

The minimum billing amount is changed from five dollars to the cost of sending a bill, i.e., if the bill is less than it would cost us to prepare and send the bill and to set up controls on the amount due, we would not bill the requester. However, where a requester makes multiple separate requests, we will usually add the costs incurred and periodically bill the requester an aggregate amount for the total services rendered to date.

Changes in the HHS FOIA fee schedule are currently under consideration. Any future changes in the HHS FOIA fee schedule will automatically apply to SSA records requested for program purposes, unless HHS provides otherwise. In the final rule we have made references to the HHS fee schedule less specific ("45 CFR Part 5" instead of "45 CFR 5.61(a) (1) through (8) and (b)") so that our reference will not be outdated by future revisions of the HHS regulation. We have also deleted Exception 2 from § 422.441(b), because that exception was based on 45 CFR 5.61(a)(9) and is covered by our broadened reference to 45 CFR Part 5. It is still true, as Exception 2 stated in the proposed rule, that we will use the fee schedule in 45 CFR 5.61(a) (1) through (8) and (b) whenever disclosing, under the FOIA, information other than records of Social Security number holders, wage earners, employers, or claimants.

Charging Full Cost for Information To Be Used for a Non-Program Purpose

On August 13, 1981, section 2207 of the "Omnibus Budget Reconciliation Act of 1981" became effective. That provision added section 1106(c) to the Act, which permits the Secretary to charge requesters the full cost of supplying information requested to comply with the Employee Retirement Income Security Act of 1974, or ". . . for any other purpose not directly related to the administration of the program or programs under . . . [the Social Security] Act", notwithstanding the fee limitations under the Privacy Act, FOIA, or "any other provision of law". In new § 422.441 we describe how we will implement this provision.

We will consider as non-program related all requests not found to be program related, such as (but not limited to) requests for earnings information for use in computing private pension benefits, or for use in establishing the existence and duration of an employment relationship.

For requests categorized as non-program related we will charge the full cost (direct and indirect) of providing the requested information as allowed by law. The fee schedule for non-program related requests is set forth in § 422.441.

We have revised § 422.125(e) to conform to §§ 422.440 and 422.441.

Setting Limit on Fee

We have added a new § 422.442, similar to HHS section 45 CFR 5.62, stating that when someone sends us a request we assume the requester agrees to pay for the services needed to locate and send a record to the requester. However, the requester will be able to put a limit on the amount she or he is willing to spend. We will notify the requester if it appears the costs will exceed that limit and give the requester the opportunity to decide if she or he wants us to continue searching for the requested record. Also, before we start work on a request under § 422.441 we will generally notify the requester of our exact or estimated charge for the information, unless it is clear that the requester has a reasonable idea of the cost (the proposed rule did not mention this fact).

Section 422.442 also states that if the fee will be unusually large or if the requester has failed to pay a previous bill we may ask the requester to pay the estimated fee, or a deposit, before continuing to search for the requested record or before we send it to the requester. In those instances we will notify the requester shortly after receiving the request that an advance payment or deposit is needed. This will apply to any request for a record.

Waiver or Reduction of Fees in the Public Interest

New § 422.443 describes our policy on waiving or reducing a fee in the public interest. We will follow the HHS criteria in section 45 CFR 5.63 when making such determinations.

Effect of HHS Delegations and Fee Schedule

The HHS regulations on fees are binding on SSA under 45 CFR 5.11. We are using them to establish SSA's fees for providing any records requested under the FOIA. These are the same fees described in section 422.440. We are also following the HHS rules published on May 12, 1982, regarding who has authority to release or deny a record. These officials are listed in §§ 422.426 and 422.444.

Changes to 20 CFR Part 401

We have changed several cross-references in 20 CFR Part 401 and removed a sentence from § 401.125 to reflect the changes to Subpart E of Part 422. We have also revised Subpart E of Part 401. The revisions limit Subpart E to describing how an individual can appeal under the Privacy Act a decision denying that individual access to her or his own records, those of the individual's minor child, or those of a person for whom the individual is legal guardian. This subpart formerly included procedures for appealing decisions denying requests for disclosure of information about other persons, which we process under the FOIA. The changes reflect that policy.

Comments Received on Proposed Rules

We received one letter of comments, which recommended five changes in the proposed rules. A summary of the comments follows, with our responses.

Comment: Proposed § 422.416(b)(3) (§ 422.416(b)(1)(iii) in the final regulations) goes beyond what the FOIA allows us to exempt from disclosure, and should be deleted. The commenter does not give a reason for this opinion.

Response: We agree that § 422.416(b)(1)(iii) may overstate exemption (b)(5) of the FOIA in one respect. Our proposed rule could be read to indicate incorrectly that we will withhold predecisional memoranda in their entirety, despite the presence of separable factual portions. We have added a phrase to indicate that we will not withhold separable factual portions.

Comment: Section 422.426, which provides that generally only SSA's Freedom of Information Officer may determine under the FOIA whether to release any record in SSA's control and possession, is too restrictive. We should allow individual components of SSA to release "routine" documents.

Response: That is our policy. Any material listed specifically in regulations or in the Index of Administrative Manuals and Instructions to Staff (FOIA Index) as disclosable may be disclosed by any office that has a copy of the material. We have added a sentence to § 422.426 cross-referring to §§ 422.410, 422.430, and 422.432, where some of these materials are listed.

Comment: Section 422.429, which says we will determine whether to provide a requested record within 10 working days after the appropriate official receives the request, is contrary to the FOIA, which requires us to count those 10 days from receipt by the agency.

Response: Section 422.428 clearly spells out where and to whom FOIA requests should be sent. A request made in accordance with that section has the best assurance we can give of prompt and proper handling. Other employees who may receive a request for a record and cannot fill the request have instructions to forward it immediately to an appropriate official, but handling these requests is not their primary job. We believe, therefore, that it is reasonable for SSA to treat misdirected requests as received by the agency, within the meaning of the FOIA, at the time the request has been received by an appropriate official identified in § 422.428. This interpretation of the FOIA's 10 day rule has been in HHS and SSA regulations for several years. Similar interpretations also appear in the FOIA implementing regulations of several other Federal agencies.

Comment: The regulations should tell the reader what to do if we fail to act on his or her FOIA request for a record.

Response: We agree and have added a sentence to § 422.449 explaining that, for purposes of that section, our failure to act within the time limits in § 422.429(a) or in § 422.447(b) is equivalent to denial of the request by the Commissioner or a designee. The section explains that the requester may ask a U.S. district court to review that denial.

Comment: The HHS fee schedule for providing records under the FOIA, adopted by SSA in § 422.440(b), is too high; SSA should not adopt it. The commenter does not give a reason for this opinion.

Response: The HHS fee schedule is binding on SSA under 45 CFR 5.11. The rationale for the increases made in the HHS fee schedule on September 22, 1982, is discussed in the preamble to the final regulation changing the fee schedule (47 FR 41751).

Regulatory Procedures

Executive Order 12291—We have determined that these regulations do not meet any of the criteria specified in E.O. 12291 for a major regulation. The only costs involved are the fees which will be charged for supplying the requested information or materials. These fees will not have an annual effect on the economy of $100 million or more or otherwise meet the threshold of the Executive Order. We estimate the total increase in our fees charged per year to be about $8 million, spread over about 175,000 requests, almost all non-program. The only large definable category of requesters is pension funds, for whom, under our current estimates, the average increase in our charges will be, at most, between $33 and $46 per pension applicant. Accordingly, a regulatory impact analysis is not required.

Paperwork Reduction Act of 1980—These regulations impose no reporting/recordkeeping requirements requiring OMB clearance.

Regulatory Flexibility Act—We certify that these regulations will not have a significant economic impact on a substantial number of small businesses or small entities because they impose

fees only on those requesting information and materials. In view of the figures cited under *Executive Order 12291*, above, we do not expect enough information requests by small businesses or small entities for the fees to have a significant economic impact on those requesters. Therefore, a regulatory flexibility analysis as provided in Pub. L. 96-354, the Regulatory Flexibility Act, is not required.

(Catalog of Federal Domestic Assistance Program Nos. 13.802-13.814, Social Security Programs)

List of Subjects

20 CFR Part 401

Administrative practice and procedure, Aid to families with dependent children, Black lung benefits, Freedom of information, Medicare, Old-age, survivors and disability insurance, Privacy, Supplemental security income (SSI).

20 CFR Part 422

Administrative practice and procedure, Freedom of information, Organization and functions (Government agencies), Social security.

Dated: March 1, 1985.

Martha A. McSteen,

Acting Commissioner of Social Security.

Approved: May 21, 1985.

Margaret M. Heckler,

Secretary of Health and Human Services.

Chapter III of Title 20 of the Code of Federal Regulations is amended as follows:

PART 401—[AMENDED]

The authority citation for 20 CFR Part 401 continues to read as follows:

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), unless otherwise noted.

§ 401.100 [Amended]

1. In 20 CFR Part 401, § 401.100 is amended by revising the cross-reference from "§§ 422.428 and 422.436 of this chapter and 45 CFR Parts 5 and 5b" to "§§ 422.426 and 422.428 of this chapter and 45 CFR Parts 5 and 5b".

§ 401.125 [Amended]

2. In 20 CFR Part 401, §401.125 is amended by revising the cross-reference from "§422.440" to "§§ 422.440 and 422.441" and by deleting the last sentence.

3. In 20 CFR Part 401, §§ 401.500 and 401.510 are revised to read as follows:

§ 401.500 Which decisions are covered.

This subpart describes how to appeal a decision made under the Privacy Act concerning your request for correction of a record or for access to your records, those of your minor child, or those of a person for whom you are the legal guardian. We generally handle a denial of your request for information about another person under the provisions of the FOIA (see Part 422, Subpart E of this chapter). This subpart applies only to written requests.

§ 401.501 Appeals after denial of access.

If, under the Privacy Act, we deny your request for access to your own record, those of your minor child, or those of a person for whom you are the legal guardian, we will advise you in writing of the reason for that denial, the name and title or position of the person responsible for the decision, and your right to appeal that decision. You may appeal the denial decision to the Commissioner of Social Security, 6401 Security Boulevard, Baltimore, Maryland 21235, within 30 days after you receive the notice denying all or part of your request, or, if later, within 30 days after you receive materials in partial compliance with your request. If we refuse to release a medical record because you did not designate a representative (§ 401.410) to receive the material, that refusal is not a formal denial of access and, therefore, may not be appealed to the Commissioner. If you file an appeal, either the Commissioner or a designee will review your request and any supporting information submitted and then send you a notice explaining the decision on your appeal. The decision must be made within 20 working days after your appeal is received. The Commissioner or a designee may extend this time limit up to 10 additional working days if one of the circumstances in § 422.429 is met. You will be notified in writing of any extension, the reason for the extension, and the date by which your appeal will be decided. The notice of the decision on your appeal will explain your right to have the matter reviewed in a Federal district court if you disagree with all or part of the decision.

PART 422—[AMENDED]

4. The authority citation for 20 CFR Part 422 continues to read as follows:

Authority: Secs. 205, 218, 221, 1102, 1869, and 1871, 53 Stat. 1368, as amended, 64 Stat. 514, as amended, 68 Stat. 1081, as amended, 49 Stat. 647, as amended, 79 Stat. 330, 331; sec. 5 of Reorganization Plan No. 1 of 1953, 67 Stat. 18, 631; 42 U.S.C. 405, 418, 421, 1302, 1395ff, and 1395hh, unless otherwise noted.

In 20 CFR Part 422, paragraph (e) of § 422.125 is revised to read as follows:

§ 422.125 Statement of earnings; resolving earnings discrepancies.

* * * * *

(e) *Detailed earnings statements.* (1) A more detailed statement of earnings will be furnished upon request, generally without charge, where the request is program related under § 422.440(a). See § 422.440 for possible fees.

(2) If the request for a more detailed statement of earnings is not program related under § 422.440(a), a charge will be imposed according to the schedule of fees set out in § 422.441.

* * * * *

5. In 20 CFR Part 422, the Table of Contents for Subpart E is revised as follows:

Subpart E—Availability of Information and Records to the Public

Sec.

422.401 Scope and purpose.
422.402 Record defined.
422.406 Publication.
422.408 Statements of policy and interpretations not published in the Federal Register.
422.410 Publications for sale.
422.412 Availability of administrative staff manuals.
422.416 Availability of records.
422.418 Deletion of identifying details.
422.420 Creation of records.
422.426 Who may release a record.
422.427 How to request a record.
422.428 Where to send a request.
422.429 How a request for a record is processed.
422.430 Materials available at district offices and branch offices.
422.432 Materials in field offices of the Office of Hearings and Appeals.
422.433 Health care information.
422.440 Fees for providing records and related services for program purposes.
422.441 Fees for providing information and related services for non-program purposes.
422.442 Procedure on assessing and collecting fees for providing records.
422.443 Waiver or reduction of fees in the public interest.
422.444 Officials who may deny a request.
422.445 How a request is denied.
422.447 How to appeal a decision denying all or part of a request.
422.449 U.S. district court action.

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, 42 U.S.C. 405, 1302, and 1306; section 413(b) of the Federal Coal Mine Health and Safety Act of 1969, 83 Stat. 749, 30

U.S.C. 923, 5 U.S.C. 552 (Freedom of Information Act); 5 U.S.C. 552a (Privacy Act).

6. Section 422.416 and its heading are revised to read as follows:

§ 422.416 Availability of records.

(a) *What records are available.* Section 552 of 5 U.S.C. also known as the Freedom of Information Act (FOIA), permits any person to see, and get a copy of, any Federal agency's records unless the material is exempt from mandatory disclosure as described in paragraph (b) of this section. Under the FOIA, we are also required to make available to the public the instructional manuals issued to our employees, general statements of policy, other materials, such as Social Security Rulings, which are used in processing claims and which are not published in the **Federal Register**, and an index of these manuals and materials.

(b) *What records are not available.* (1) The FOIA exempts certain classes of records from disclosure. Most of these are described at 45 CFR Part 5, Subpart F, in the regulations of the Department of Health and Human Services (HHS, formerly the Department of Health, Education, and Welfare). Those most likely to apply to information in the Social Security Administration's (SSA's) records are:

(i) Records specifically exempted from disclosure by statute;

(ii) All or part of SSA's investigative manuals or other materials the disclosure of which could materially assist in the violation of any law or regulation;

(iii) Deliberative material (and factual material which would tend to reveal such deliberative material) contained in SSA's inter-agency or intra-agency predecisional memoranda or letters the disclosure of which could adversely affect free and candid discussion within HHS or with another agency or otherwise harm the decision-making process of HHS or another agency; and

(iv) Requested information concerning a person other than the requester, the disclosure of which would not benefit the public to a degree which outweighs that person's right of privacy.

(2) However, unless a statute prohibits disclosure, we will generally supply material which is exempt from mandatory disclosure if we determine that disclosure is in the public interest and is not inconsistent with our obligations of confidentiality and the efficient administration of our programs.

7. Section 422.420 is revised to read as follows:

§ 422.420 Creation of records.

We are not required to create new records merely to satisfy a request. For example, we are not required to program computers to provide data in a particular form or to compile selected items from records, provide statistical data, ratios, proportions, percentages, etc. If these data have already been compiled and are available, we will supply the record when appropriate fees are paid, as provided in § 422.440 and 422.441. This does not mean that we will never help you get information that does not already exist in our records. However, diverting staff and equipment from other responsibilities may not always be possible.

§ 422.426 [Removed]

8. Section 422.426 is removed.

9. A new § 422.426 is added which reads as follows:

§ 422.426 Who may release a record.

Except as otherwise provided by regulation, only the Director, Office of Information, SSA, or her or his designee may determine whether to release any record in SSA's control and possession. This official is SSA's Freedom of Information Officer. Sections 422.410, 422.430, and 422.432 list some of the materials for which a determination to release has been made.

10. A new § 422.427 is added to read as follows:

§ 422.427 How to request a record.

You may request a record in person, by telephone, or by mail. (However, see §§ 422.444 through 422.449 for an explanation of your appeal rights.) Any request should reasonably describe the record you want. If you have detailed information which would assist us in identifying that record, please submit it with your request. You should mark the outside of any envelope used to submit your request as a "Freedom of Information Request", no matter how your request may be categorized for fee purposes. (Sections 422.440–422.443 explain our fees.) The staff at any Social Security office can help you prepare this request.

11. Section 422.428 is revised to read as follows:

§ 422.428 Where to send a request.

(a) You may send your request for a record to: (1) The Director, Office of Information, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235, or (2) the Public Affairs Director of the appropriate HHS Regional Office. The locations and service areas of these offices are as follows:

Region I—John F. Kennedy Federal Building, Government Center, Boston, MA 02203. Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont.

Region II—26 Federal Plaza, Federal Building, New York, NY 10007. New York, New Jersey, Puerto Rico, Virgin Islands.

Region III—3535 Market St., Philadelphia, PA 19101. Delaware, Maryland, Pennsylvania, Virginia, West Virginia, District of Columbia.

Region IV—101 Marietta Tower, Atlanta, GA 30323. Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee.

Region V—300 South Wacker Drive, Chicago, IL 60606. Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin.

Region VI—1200 Main Tower, Dallas, TX 75202. Arkansas, Louisiana, New Mexico, Oklahoma, Texas.

Region VII—601 East 12th Street, Kansas City, MO 64106. Iowa, Kansas, Missouri, Nebraska.

Region VIII—19th and Stout Streets, Denver, CO 80294. Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming.

Region IX—Federal Office Building, 50 United Nations Plaza, San Francisco, CA 94102. Arizona, California, Hawaii, Nevada, Guam, Trust Territory of Pacific Islands, American Samoa.

Region X—2901 3rd Avenue, Seattle, WA 98121. Alaska, Idaho, Oregon, Washington.

(b) If you send your request to one of the offices described in paragraph (a) of this section and the record you are requesting is elsewhere, that office will forward your written request to the proper office. If you send your request to any other office and the record you are requesting is elsewhere, that office may send your request to the Director, Office of Information, a Public Affairs Director, or the proper office.

§ 422.432 [Amended]

12. In § 422.432 the word "Bureau" wherever it appears is changed to "Office".

§§ 422.433, 422.434 and 422.435 [Removed]

13. Sections 422.433, 422.434, and 422.435 are removed.

14. A new § 422.433 is added which reads as follows:

§ 422.433 Health care information.

We have some information about health care programs under titles XVIII and XIX (Medicare and Medicaid) of the Social Security Act. We follow the rules in 42 CFR Part 401 in determining whether to provide any portion of it to a requester.

15. Section 422.436 is redesignated as § 422.429 and revised to read as follows:

§ 422.429 How a request for a record is processed.

(a) Within 10 working days from the date a request is received by the appropriate official (see § 422.428(a)), we will make a determination as to whether the requested record will be provided. This 10-day period may be extended by written notice up to 10 additional working days when one or more of the following situations exist:

(1) The office processing the request needs to locate and then obtain the record from another facility;

(2) We need to locate, obtain, and appropriately examine a large number of records which are requested in a single request; or

(3) The office processing the request needs to consult with another agency or HHS office which has a substantial interest in the subject matter of the request. This consultation shall be conducted with all practicable speed.

(b) If an extension is made, we will notify you, explain why the additional time is needed, and tell you the date by which we expect to make a decision on your request.

16. Section 422.440 is revised to read as follows:

§ 422.440 Fees for providing records and related services for program purposes.

(a) *Program purposes described.* (1) We consider a request to be program related if the information must be disclosed under the Social Security Act. For example, section 205(c)(2)(A) of the Act (42 U.S.C. 405(c)(2)(A)) requires that we provide certain information upon request to a worker, her or his legal representative, her or his survivor, or the legal representative of the worker's estate. That information is the amounts of the worker's wages and self-employment income and the periods during which they were paid or derived, as shown by our records.

(2) We also consider a request to be program related if the requester indicates the needed information will be used for a purpose which is directly related to the administration of a program under the Social Security Act.

(i) The major criteria we consider in deciding whether a proposed use is so related are:

(A) Is the information needed to pursue some benefit under the Act?

(B) Is the information needed solely to verify the accuracy of information obtained in connection with a program administered under the Act?

(C) Is the information needed in connection with an activity which has been authorized under the Act?

(D) Is the information needed by an employer to carry out her or his taxpaying responsibilities under the Federal Insurance Contributions Act or section 218 of the Act?

(ii) We will consider on a case by case basis those requests which do not meet these criteria but are claimed to be program related.

(b) *When we charge.*—If we determine the request for information is program related, we may or may not charge for the information. For example, as stated in § 422.125, we generally will not charge you for information needed to assure the accuracy of our records on which your present or future Social Security benefits depend. In addition, we generally will not charge for furnishing information under section 205(c)(2)(A) of the Act. However, if we do charge for a program related request (for example, if more detailed information or special services are requested) we will use the fee schedule in 45 CFR Part 5 if information is being disclosed under the FOIA and the fee schedule in 45 CFR 5b.13 if access to the information is being granted under the Privacy Act. (Exception: If the request is for purposes of administering employee benefits covered by the Employee Retirement Income Security Act of 1974 (ERISA), even if the request is covered by section 205(c)(2)(A) of the Act, we will charge under § 422.441.)

(c) *Fee schedule.* Our fee schedule for providing records and related services for program purposes under the FOIA is the same as that in 45 CFR Part 5.

(d) *If billing would cost more than the service.* Generally we will not charge you a fee when the cost of the service is less than the cost of sending you a bill. However, where an individual, organization, or governmental unit makes multiple separate requests, we will total the costs incurred and periodically bill the requester for the services rendered.

(e) *Fee for copies of printed materials.* When extra copies of printed material are available, the charge is generally 1 cent per page. If the material may be purchased from the Superintendent of Documents, the charge is that set by the Superintendent. The Superintendent's address is in § 422.410.

17. New §§ 422.441 through 422.443 are added to read as follows:

§ 422.441 Fees for providing information and related services for non-program purposes.

(a) *General.* Section 1106(c) of the Social Security Act permits the Secretary to require requesters of information to pay the full cost of supplying the information where the information is requested to comply with the Employee Retirement Income Security Act of 1974 (ERISA), or ". . . for any other purpose not directly related to the administration of the program or programs under . . ." the Social Security Act. This may be done notwithstanding the fee provisions of the FOIA and the Privacy Act or any other provision of law. As used in this section—

(1) Full cost includes the direct and indirect costs to SSA (including costs of duplication) of providing information and related services under section 1106(c) of the Act; and

(2) Full cost of an employee's time includes fringe benefits and overhead costs such as rent and utilities.

(b) *Non-program related requests.* We consider a request for information which does not meet or equal any of the criteria in § 422.440 to be non-program related. (Whether a request for information about an individual is made by that individual or by someone else is not a factor.) In responding to these requests, or requests for ERISA purposes, we will charge the full cost of our services as described in paragraph (c) of this section.

(c) *Fee schedule.* Our fee schedule for non-program related requests is:

(1) *Manual searching for records.* Full cost of the employee's time.

(2) *Photocopying, or reproducing records such as magnetic tapes or punch cards.* Full cost of the operator's time plus the full cost of the machine time and the materials used.

(3) *Use of electronic data processing equipment to obtain records.* Our full cost for the service, including computer search time, computer runs and printouts, and the time of computer programmers and operators and other employees.

(4) *Certification or authentication of records.* Full cost of certification or authentication.

(5) *Forwarding materials to destination.* If you request special arrangements for forwarding the material, we will charge you the full cost of this service (e.g., you request express mail or a commercial delivery service). If no special forwarding arrangements are requested, we will charge you the full cost of the service including the U.S. Postal Service cost.

(6) *Performing other special services.* If we agree to provide any special services you request, we will charge you the full cost of the time of the employee who performs the service, plus the full cost of any machine time and materials that the employee uses.

(7) *If billing would cost more than the service.* Generally we will not charge you a fee when the cost of the service is

less than the cost of sending you a bill. However, where an individual, organization, or governmental unit makes multiple separate requests, we will total the costs incurred and bill the requester for the services rendered.

(d) *Fee for copies of printed materials.* When extra copies of printed material are available, the charge is generally 1 cent per page. If the material may be purchased from the Superintendent of Documents, the charge is that set by the Superintendent. The Superintendent's address is in § 422.410.

(e) *Charging when requested record not found.* We may charge you for search time, even though we fail to find the records, if you request that we continue the search after we have informed you that it is unlikely to be productive. We may also charge you for search time if the records we locate are exempt from disclosure.

§ 422.442 Procedure on assessing and collecting fees for providing records.

(a) We will generally assume that when you send us a request, you agree to pay for the services needed to locate and send that record to you. You may specify in your request a limit on the amount you are willing to spend. If you do that or include with your request a payment that does not cover our fee, we will notify you if it appears that the fee will exceed that amount and ask whether you want us to continue to process your request. Also, before we start work on your request under § 422.441 we will generally notify you of our exact or estimated charge for the information, unless it is clear that you have a reasonable idea of the cost.

(b) In most cases, where we charge you a fee under § 422.440, we will send your bill along with or following release of the requested records.

(c) If the fee will be unusually large, if you have failed to pay previous bills, or if we are charging you a fee under § 422.441, we may ask you to pay the estimated fee, or a deposit, before we continue searching for the requested records or before we send them to you. If so, we will notify you shortly after receiving your request. In such cases the administrative time limits in §§ 422.429 and 422.447 will begin only after we have reached an agreement over payment of the fee.

(d) Payment of fees will be made by check or money order payable to "Social Security Administration".

§ 422.443 Waiver or reduction of fees in the public interest.

We may waive or reduce the fees provided for by §§ 422.440 and 422.441 if we determine it is in the public interest to do so. This will generally be done if furnishing the record can be considered as primarily benefiting the general public. This determination may be made only by one of the officials described in §§ 422.444 and 422.447(b). If we deny all or part of your request for a fee waiver or reduction, you may appeal that decision under § 422.447. When appealing a decision, you should specify the manner in which release of the record will benefit the general public.

§§ 422.444, 422.448, and 422.452 [Removed]

18. Sections 422.444, 422.448, and 422.452 are removed.

19. New §§ 422.444, 422.445, 422.447, and 422.449 are added to read as follows:

§ 422.444 Officials who may deny a request.

Except as provided by regulation, only the Director, Office of Information, SSA, or her or his designee is authorized to deny a written request to obtain, inspect, or copy any Social Security record. However, for instances in which the request may involve records of SSA and another part of HHS the determination is made by the HHS FOIA Officer.

§ 422.445 How a request is denied.

(a) *Oral requests.* If we cannot comply with your oral request because the Director of the Office of Information (or designee) has not previously made a determination to release the record you want, we will tell you that fact. If you still wish to pursue your request, you must put your request in writing.

(b) *Written requests.* If you make a written request and the information or record you requested will not be released, you will receive an official denial in writing. The denial notice will explain why the request was denied (for example, the reasons why the requested document is subject to one or more clearly described exemptions), will include the name and title or position of the person who made the decision, and will explain your appeal rights.

§ 422.447 How to appeal a decision denying all or part of a request.

(a) *How to appeal.* If all or part of your written request was denied, you may request that the Commissioner of Social Security, 6401 Security Boulevard, Baltimore, Maryland 21235 review that determination. Your request for review:

(1) Must be in writing;

(2) Must be mailed within 30 days after you received notification that all or part of your request was denied or, if later, 30 days after you received materials in partial compliance with your request; and

(3) May include additional information or evidence to support your request.

(b) *How the review is made.* After reviewing the prior decision and considering anything else submitted, the Commissioner or designee will affirm or revise all or part of that decision. The Commissioner (or a designee) will affirm a denial only after consulting with the appropriate SSA official(s) and the Office of the General Counsel and obtaining the approval of the Assistant Secretary for Public Affairs, HHS, or a designee. The decision must be made within 20 working days after your appeal is received. The Commissioner or a designee may extend this time limit up to 10 additional working days if one of the situations in § 422.429(a) exists, provided that, if a prior extension was used to process this request, the sum of the extensions may not exceed 10 working days. You will be notified in writing of any extension, the reason for the extension, and the date by which your appeal will be decided.

(c) *How you are notified of the Commissioner's decision.* The Commissioner or a designee will send you a written notice of the decision explaining the basis of the decision (e.g., the reasons why an exemption applies) and including the name and title or position of the person who made the decision. If any part of your request remains unsatified the notice will also advise you of your right to seek court review.

§ 422.449 U.S. district court action.

If the Commissioner or a designee, upon review, affirms the denial of your request for records, in whole or in part, you may ask a U.S. district court to review that denial. See 5 U.S.C. 552(a)(4)(B). If we fail to act on your request for a record or for review of a denial of such a request within the time limits in § 422.429(a) or in § 422.447(b), that is equivalent to denial of your request by the Commissioner or a designee for purposes of this section.

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