

**§ 352.2 [Amended]**

10. In § 352.2, in paragraph (a), the first sentence, and in paragraph (b), the reference to "320," would be removed.

**§ 352.5 [Amended]**

11. In § 352.5, paragraph (d), the reference to "320," would be removed both times it appears.

**§ 352.10 [Amended]**

12. In § 352.10, the reference to "320," would be removed in the following places.

- a. Paragraph (a), third sentence.
- b. Paragraph (b)(1), sixth sentence.
- c. Paragraph (b)(2), second sentence.

**§ 352.13 [Amended]**

13. In § 352.13, the reference to "320," would be removed.

Done in Washington, DC, this 8th day of August 1997.

**Terry L. Medley,**

*Administrator, Animal and Plant Health Inspection Service.*

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**SOCIAL SECURITY ADMINISTRATION****20 CFR Part 402**

**RIN 0960-AE68**

**Electronic Freedom of Information Act Amendments of 1996**

**AGENCY:** Social Security Administration.

**ACTION:** Proposed rules.

**SUMMARY:** These rules are proposed to reflect the changes made by the Electronic Freedom of Information Act Amendments (EFOIA) of 1996, that give the public access to government information and records maintained in an electronic format, provide for expedited processing of certain requests, establish "electronic reading rooms," eliminate an agency backlog of work as a justification for delay in processing requests, require redacted material to be estimated or indicated in an agency's response, and require an agency reference guide on FOIA to be made available.

**DATES:** To be sure that your comments are considered, we must receive them no later than September 15, 1997.

**ADDRESSES:** Comments should be submitted in writing to the Acting Commissioner of Social Security, P.O. Box 1585, Baltimore, MD 21235, sent by telefax to (410) 966-2830, sent by E-mail to "regulations@ssa.gov" or delivered to 3-B-1 Operations Building, 6401 Security Boulevard, Baltimore, MD

21235, between 8:00 a.m. and 4:30 p.m. on regular business days.

The electronic file of this document is available on the Federal Bulletin Board (FBB) at 9 a.m. on the date of publication in the **Federal Register**. To download the file, modem dial (202) 512-1387. The FBB instructions will explain how to download the file and the fee. This file is in WordPerfect format and will remain on the FBB during the comment period.

**FOR FURTHER INFORMATION CONTACT:**

Henry D. Lerner, Legal Assistant, 3-B-1 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965-1762 for information about these rules.

**SUPPLEMENTARY INFORMATION:** These proposed rules will revise our existing regulations to reflect the provisions of Public Law 104-231, the Electronic Freedom of Information Act Amendments of 1996. Pub. L. No. 104-231 amended 5 U.S.C. 552, popularly known as the Freedom of Information Act (FOIA), to provide public access to information in an electronic format, provide for expedited processing of certain requests, establish "electronic reading rooms," eliminate an agency backlog of work as a justification for delay in processing requests, require redacted material to be estimated or indicated in an agency's response, and require an agency reference guide on FOIA to be made available. The proposed rules will also make technical changes to related rules.

According to the new law, the term "record" encompasses information, subject to the requirements of the FOIA, when maintained in any format, including an electronic format. The category of "reading room" records, at 5 U.S.C. 552(a)(2), is expanded to include records that the agency discloses in response to a FOIA request that have become, or are likely to become, the subject of future requests. An index of those records that are subject to multiple requests must be prepared and made available by computer telecommunications by December 31, 1999. Furthermore, agencies must create an "electronic reading room" to contain records created after November 1, 1996 that are required to be made available under 5 U.S.C. 552(a)(2). Additionally, agencies must make reasonable efforts to search for records, even when information is maintained in an electronic database, unless such efforts would significantly interfere with the operation of the agency's automated information system. If a requester requests a record in a particular format, agencies must attempt to provide the

record in that format if the record is readily reproducible in such format.

The general period for responding to requests has been changed from 10 days to 20 days. Moreover, multi-track processing may be offered as a way to provide more timely responses. Agencies and requesters may discuss alternative time frames to process requests, or modifications to the requests, when the general 20-day time for responding cannot be met. Expedited processing of requests must be done when there is a compelling need for the records. "Compelling need" means that the failure to obtain the records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual, or when a request is made by a person primarily engaged in disseminating information (e.g., the news media), and there is an urgency to inform the public concerning actual or alleged Federal Government activity.

The amount of information deleted on a record must be indicated, unless doing so would harm an interest protected by an exemption; and, if technically feasible, the indication shall be at the place in the record where the deletion is made. If whole pages or documents are withheld, an estimate of the volume of material withheld must be provided to the requester, unless doing so would harm an interest protected by an exemption. Furthermore, a guide for requesting records, to include an index and description of major record systems, must be made available to the public.

The definition of "record" in § 402.30 will be revised to reflect the provisions of section 3 of Public Law 104-231 to include information stored in an electronic format, and the meaning of "record" in the Records Disposal Act, 44 U.S.C. 3301, as well as the Supreme Court's decision in *U.S. Dept. of Justice versus Tax Analysts*, 492 U.S. 136 (1989).

Section 402.35 will be revised to reflect the provisions of section 4 of Public Law 104-231 concerning availability of records, extent of deletions, and a general index of records.

Section 402.40 will be revised to indicate that SSA Publications on CD-ROM are available for purchase.

Section 402.45 will be revised to add a new category to reading room records. These are records which "the agency determines have become or are likely to become the subject of subsequent requests for substantially the same records." Also, we will provide an electronic index for this category of records as reflected in section 4 of the EFOIA amendments.

Section 402.100(b) will be revised to reflect the decision in *Dept. of Justice v. Reporters Committee for Freedom of the Press*, 489 U.S. 749 (1989) concerning whether personal information may be released. In that case, the Court stated that the only public interest to be considered is whether disclosure would shed light on how an agency performs its statutory duties, and that the identity of the requester or purpose for which the information is requested is not relevant.

Section 402.115, which explains the deletion of personally identifying details in requested records, and § 402.120, which explains the creation of records, will be moved for ease of reference to § 402.145, which explains what we are required to do when responding to a request for information.

Section 402.130 will be revised by adding language about the electronic availability of a guide/handbook on how to request information from the Social Security Administration (SSA). We also will describe how the public can request FOIA records.

Section 402.140 will be revised to include multi-track processing, requests for expedited processing and the changes in time limits as provided in sections 7 and 8 of the EFOIA amendments. The EFOIA amendments extended the general period of 10 days for determining whether to comply with a request to 20 days.

The EFOIA amendments encourage agencies which experience difficulties in meeting FOIA's time limits to experiment with multi-track processing. Before the enactment of the EFOIA amendments, due to increased volumes of FOIA requests and staff losses, we experimented with various processes to reduce backlogs, among them multi-tracking. The results are encouraging and we plan to institute multi-tracking procedures. We plan on establishing four tracks depending on the ease of providing an answer:

- Track 1—Requests that can be answered with readily available records or information. These are the fastest to process.

- Track 2—Requests where we need records or information from other offices throughout the Agency, but we do not expect that the decision on disclosure will be as time consuming as for requests in Track 3.

- Track 3—Requests which require a substantive decision or input from another office or agency and a considerable amount of time will be needed for that, or the request is complicated or involves a large number of records. Usually, these cases will take the longest to process.

- Track 4—Requests that will be expedited.

The EFOIA requires agencies to promulgate regulations providing expedited access for requesters who show a "compelling need" for a speedy response. The EFOIA describes compelling need as when there is "an imminent threat to the life or physical safety of an individual," or when it is a request from a member of the media, and there is an "urgency to inform the public concerning actual or alleged Federal Government activity."

Section 402.145 will be revised to include new provisions on searching for, retrieving, and furnishing records in electronic formats, and will describe how deletions on records will be indicated.

Section 402.150 will be revised to cross-refer to § 402.45 to describe the indexing of records for the new category of reading room records. This describes our procedures for releasing records for which we receive multiple requests or expect to receive multiple requests.

Section 402.160 will be revised to correct the reference to § 402.145 (b) and (c) and to clarify these paragraphs. These references should read § 402.155 (b) and (c).

#### Justification for 30-Day Public Comment Period

When required, we follow the notice of proposed rulemaking (NPRM) and public comment procedures specified in the Administrative Procedure Act (APA), 5 U.S.C. 553 and guidelines in Executive Order 12866, 58 FR 51735 (September 30, 1993). We have determined that good cause exists for a 30-day comment period because this NPRM is primarily implementing the EFOIA legislation, and the 30-day time frame will provide the public with a meaningful opportunity to comment, and issuing the new rules as soon as possible would help our agency comply with the legislative provisions of the EFOIA sooner than would a 60-day comment period, which is to the benefit of the public.

#### Executive Order No. 12866

We have consulted with the Office of Management and Budget (OMB) and determined that these rules do not meet the criteria for a significant regulatory action under Executive Order 12866. Thus, they were not subject to OMB review.

#### Regulatory Flexibility Act

We certify that these rules will not have a significant economic impact on a substantial number of small entities since these rules affect only individuals.

Therefore, a regulatory flexibility analysis as provided in the Regulatory Flexibility Act, as amended, is not required.

#### Paperwork Reduction Act

These regulations will impose no additional reporting and recordkeeping requirements subject to OMB clearance.

(Catalog of Federal Domestic Assistance Program Nos. 96.001 Social Security-Disability Insurance; 96.002 Social Security-Retirement Insurance; 96.004 Social Security-Survivors Insurance; 96.006 Supplemental Security Income.)

#### List of Subjects in 20 CFR Part 402

Administrative practice and procedure, Archives and records, Freedom of information.

Dated: July 28, 1997.

**John J. Callahan,**

*Acting Commissioner of Social Security.*

For the reasons set out in the preamble, we are proposing to amend part 402 of 20 CFR chapter III as follows:

#### PART 402—AVAILABILITY OF INFORMATION AND RECORDS TO THE PUBLIC

1. The authority citation for 20 CFR part 402 continues to read as follows:

**Authority:** Secs. 205, 702(a)(5), and 1106 of the Social Security Act; (42 U.S.C. 405, 902(a)(5), and 1306); Section 413(b) of the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 923b), 5 U.S.C. 552 and 552a; 8 U.S.C. 1360; 18 U.S.C. 1905; 26 U.S.C. 6103; 31 U.S.C. 9701; E.O. 12600, 52 FR 23781, 3 CFR, 1987 Comp., p. 235.

2. Section 402.30 is amended by revising the definition of "records" to read as follows:

#### § 402.30 Definitions.

\* \* \* \* \*

*Records* means any information maintained by an agency, regardless of forms or characteristics, that is made or received in connection with official business. This includes handwritten, typed, or printed documents (such as memoranda, books, brochures, studies, writings, drafts, letters, transcripts, and minutes) and material in other forms, such as punchcards; magnetic tapes; cards; computer discs or other electronic formats; paper tapes; audio or video recordings; maps; photographs; slides; microfilm; and motion pictures. It does not include objects or articles such as exhibits, models, equipment, and duplication machines, audiovisual processing materials, or computer software. It does not include personal records of an employee, or books, magazines, pamphlets, or other

reference material in formally organized and officially designated SSA libraries, where such materials are available under the rules of the particular library.

\* \* \* \* \*

3. Section 402.35 is amended by adding new paragraph (d) to read as follows:

**§ 402.35 Publication.**

\* \* \* \* \*

(d) *Availability by telecommunications.* To the extent practicable, we will make available by means of computer telecommunications the indices and other records that are available for inspection.

4. Section 402.40 is amended by adding new paragraph (h) to read as follows:

**§ 402.40 Publications for sale.**

\* \* \* \* \*

(h) SSA Publications on CD-ROM.

5. Section 402.45 is amended by adding new paragraph (d) to read as follows:

**§ 402.45 Availability of records.**

\* \* \* \* \*

(d) *Electronic reading room.* We will prepare an index of records which have become or are likely to become the subject of subsequent requests. The index, and, to the extent practicable, the records will be made available on the Internet or by other computer telecommunications means.

6. Section 402.100 is amended by revising the heading and paragraph (b) to read as follows:

**§ 402.100 Exemption six: Clearly unwarranted invasion of personal privacy.**

\* \* \* \* \*

(b) *Balancing test.* In deciding whether to release records to you that contain personal or private information about someone else, we weigh the foreseeable harm of invading a person's privacy against the public interest in disclosure. In determining whether disclosure would be in the public interest, we will consider whether disclosure of the requested information would shed light on how a Government agency performs its statutory duties. However, in our evaluation of requests for records we attempt to guard against the release of information that might involve a violation of personal privacy because of a requester being able to "read between the lines" or piece together items that would constitute information that normally would be exempt from mandatory disclosure under Exemption Six.

\* \* \* \* \*

**§ 402.115 [Removed]**

7. Section 402.115 is removed.

**§ 402.120 [Removed]**

8. Section 402.120 is removed.

**§ 402.130 [Removed]**

9. Section 402.130 is revised to read as follows:

**§ 402.130 How to request a record.**

You may request a record in person or by mail or by electronic telecommunications. To the extent practicable, and in the future, we will attempt to provide access for requests by telephone, fax, Internet, and e-mail. 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. We may charge fees for some requests (§§ 402.145–402.175 explain our fees). You should identify the request as a Freedom of Information Act request and mark the outside of any envelope used to submit your request as a "Freedom of Information Request." The staff at any Social Security office can help you prepare this request.

10. Section 402.140 is revised to read as follows:

**§ 402.140 How a request for a record is processed.**

(a) In general, we will make a determination as to whether a requested record will be provided within 20 days (excepting Saturdays, Sundays, and legal public holidays) after receipt of a request by the appropriate official (see § 402.135). This 20-day period may be extended in unusual circumstances by written notice to you, explaining why we need additional time, and the extension may be for up to 10 additional working days when one or more of the following situations exist:

(b) If we cannot process your request within 10 additional days, we will notify you and provide you an opportunity to limit the scope of the request so that it may be processed within the additional 10 days, or we will provide you with an opportunity to arrange with us an alternative time frame for processing the request, or for processing a modified request.

(c) *Multi-tracking procedures.* We will establish four tracks for handling requests and the track to which a request is assigned will depend on the nature of the request and the estimated processing time:

(1) Track 1. Requests that can be answered with readily available records or information. These are the fastest to process.

(2) Track 2. Requests where we need records or information from other

offices throughout the Agency but we do not expect that the decision on disclosure will be as time consuming as for requests in Track 3.

(3) Track 3. Requests which require a decision or input from another office or agency and a considerable amount of time will be needed for that, or the request is complicated or involves a large number of records. Usually, these cases will take the longest to process.

(4) Track 4. Requests that will be expedited.

(d) We will provide for expedited access for requesters who show a "compelling need" for a speedy response. The EFOIA describes compelling need as when the failure to obtain the records on an expedited basis could reasonably be expected to pose "an imminent threat to the life or physical safety of an individual," or when the request is from a person primarily engaged in disseminating information (such as a member of the news media), and there is an "urgency to inform the public concerning actual or alleged Federal Government activity." We also will expedite processing of a request if the requester explains in detail to our satisfaction that a prompt response is needed because the requester may be denied a legal right, benefit, or remedy without the requested information, and that it cannot be obtained elsewhere in a reasonable amount of time. We will respond within 10 days to a request for expedited processing and, if we decide to grant expedited processing, we will then notify you of our decision whether to disclose the records requested or not as soon as practicable.

11. Section 402.145 is revised to read as follows:

**§ 402.145 Responding to your request.**

(a) *Retrieving records.* We are required to furnish copies of records only when they are in our possession or we can retrieve them from storage. We will make reasonable efforts to search for records manually or by automated means, including any information stored in an electronic form or format, except when such efforts would significantly interfere with the operation of our automated information system. If we have stored the records you want in the National Archives or another storage center, we will retrieve and review them for possible disclosure. However, the Federal Government destroys many old records, so sometimes it is impossible to fill requests. Various laws, regulations, and manuals give the time periods for keeping records before they may be destroyed. For example, there is information about retention of records

in the Records Disposal Act of 1944, 44 U.S.C. 3301 through 3314; the Federal Property Management Regulations, 41 CFR 101-11.4; and the General Records Schedules of the National Archives and Records Administration.

(b) *Furnishing records.* We will furnish copies only of records that we have or can retrieve. We are not required to create new records or to perform research for you. We may decide to conserve Government resources and at the same time supply the records you need by consolidating information from various records rather than copying them all. For instance, we could extract sections from various similar records instead of providing repetitious information. We generally will furnish only one copy of a record. We will make reasonable efforts to provide the records in the form or format you request if the record is readily reproducible in that form or format.

(c) *Deletions.* When we publish or otherwise make available any record, we may delete information that is exempt from disclosure. For example, in an opinion or order, statement of policy, or other record which relates to a private party or parties, the name or names and other identifying details may be deleted. When technically feasible, we will indicate the extent of deletions on the portion of the record that is released or published at the place of the deletion unless including that indication would harm an interest protected by an exemption. If we deny a request, in whole or in part, we will make a reasonable effort to estimate the volume of any requested matter that is not disclosed, unless such an estimate would harm an interest protected by an exemption.

(d) *Creation of records.* We are not required to create new records merely to satisfy a request. However, we will search manually or by automated means to locate information that is responsive to the request. If extensive computer programming is needed to respond to a request, we may decline to commit such resources, or if we agree to do so, we may charge you for the reasonable cost of doing so. We do not mean that we will never help you get information that does not already exist in our records. However, diverting staff and equipment from our other responsibilities may not always be possible.

12. Section 402.150 is amended by revising paragraph (a), removing paragraph (b), and redesignating paragraph (c) as new paragraph (b) to read as follows:

**§ 402.150 Release of records.**

(a) *Records previously released.* If we have released a record, or a part of a record, to others in the past, we will ordinarily release it to you also. However, we will not release it to you if a statute forbids this disclosure, and we will not necessarily release it to you if an exemption applies in your situation and it did not apply, or applied differently, in the previous situation(s) or if the previous release was unauthorized. See § 402.45(d) regarding records in electronic reading rooms.

\* \* \* \* \*

13. Section 402.160 is amended by revising paragraphs (b) and (c) to read as follows:

**§ 402.160 Fees to be charged—general provisions.**

\* \* \* \* \*

(b) If we are not charging you for the first two hours of search time, under paragraph (c) of § 402.155, and those two hours are spent on a computer search, then the two free hours are the first two hours of the time needed to access the information in the computer.

(c) If we are not charging you for the first 100 pages of duplication, under paragraph (b) or (c) of § 402.155, then those 100 pages are the first 100 pages of photocopies of standard size pages, or the first 100 pages of computer printout.

\* \* \* \* \*

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 141**

[FRL-5874-7]

**Stakeholders Meeting on Drinking Water Regulation Action**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Announcement of Stakeholders meeting on EPA's revision to the public notification rule under the 1996 Safe Drinking Water Act (SDWA) amendments.

**SUMMARY:** The U.S. Environmental Protection Agency (EPA) will hold a public meeting on August 27, 1997. The purpose of the meeting will be to gather information and collect opinions from parties who will be affected by provisions of the Public Notification Rule of the new Safe Drinking Water Act (SDWA), amended in 1996. Comments and views expressed will be used to

help develop the new Federal and state program requirements. EPA is seeking input from State drinking water programs, the regulated community (public water systems), public health and safety organizations, environmental and public interest groups, and other stakeholders on a number of issues related to developing the drinking water regulation. EPA encourages the full participation of all stakeholders throughout this process.

**DATES:** The stakeholder meeting on the drinking water regulation for public notification will be held on August 27, 1997, from 10 a.m. to 3:30 p.m. Central Daylight Savings Time.

**ADDRESSES:** The meeting will be held at the Rice Auditorium, Indiana State Department of Health, 1330 West Michigan Street, Indianapolis, Indiana. For information on meeting logistics or if you want to register for the meeting, please contact the EPA Safe Drinking Water Hotline at 1-800-426-4791, or Stacy Jones of the Indiana Department of Environmental Management at (317) 308-3292. Participants registering in advance will be mailed a packet of materials before the meeting.

**FOR FURTHER INFORMATION CONTACT:** Carl Reeverts, U.S. EPA, at (202) 260-7273; or Linda Selmer, U.S. EPA, Region 5 Office, at (312) 886-6197.

**SUPPLEMENTARY INFORMATION:** The Environmental Protection Agency is developing revised Public Notification regulations (under existing 40 CFR 141.32) to incorporate the new provisions enacted under the 1996 Safe Drinking Water Amendments (SDWA), specifically the amended sections 1414 (c)(1) and (c)(2) of the SDWA. The 1996 SDWA amendments completely replaced the language in the statute under 1414(c). There is no statutory deadline for implementing the amended sections 1414(c)(1) and (c)(2).

The Administrator is required by statute to prescribe by regulation the manner, frequency, form, and content that public water systems must follow for giving public notice. The 1996 SDWA amendments amended this EPA obligation to require consultation with the States prior to rulemaking. Public Water Systems are currently required to notify their customers whenever: (1) A violation of any drinking water regulation occurs (including MCL, treatment technique, and monitoring/reporting requirements); (2) a variance or exemption (V&E) to those regulations is in place or the conditions of the V&E are violated; or (3) results from unregulated contaminant monitoring required under section 1445 of the SDWA are received. This coverage was