

Class E airspace extending upward from 700 feet above the surface to within a 6.5-mile radius of Ruston Regional Airport, Ruston, LA; and updating the geographic coordinates of the airport to coincide with the FAA's aeronautical database.

This action is the result of an airspace review caused by the decommissioning of the Ruston NDB which provided navigation information for the instrument procedures at this airport.

### Regulatory Notices and Analyses

The FAA has determined that this proposed 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 "significant regulatory action" under Executive Order 12866; (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 proposed rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

### Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, "Environmental Impacts: Policies and Procedures" prior to any FAA final regulatory action.

### List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

### The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

### PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(f), 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

#### § 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, is amended as follows:

*Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.*

\* \* \* \* \*

#### ASW LA E5 Ruston, LA [Amended]

Ruston Regional Airport, LA  
(Lat. 32°30'48" N, long. 92°35'18" W)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Ruston Regional Airport.

\* \* \* \* \*

Issued in Fort Worth, Texas, on May 31, 2023.

**Martin A. Skinner,**

*Acting Manager, Operations Support Group,  
ATO Central Service Center.*

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## SOCIAL SECURITY ADMINISTRATION

### 20 CFR Part 402

[Docket No. SSA–2021–0049]

RIN 0960–AI07

### Availability of Information and Records to the Public

**AGENCY:** Social Security Administration.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Social Security Administration (SSA) is proposing revisions to our existing Freedom of Information Act (FOIA) regulations to conform with the requirements of the FOIA Improvement Act of 2016. The FOIA Improvement Act of 2016 requires Federal agencies to issue regulations on procedures for disclosure of records consistent with the amendments to the FOIA by such Act. We are also proposing the reorganization of our FOIA regulation to make our FOIA procedures easier for the public to understand and use.

**DATES:** To ensure that your comments are considered, we must receive them no later than August 7, 2023.

**ADDRESSES:** You may submit comments by any one of three methods—internet, fax, or mail. Do not submit the same comments multiple times or by more than one method. Regardless of which method you choose, please state that your comments refer to Docket No. SSA–2021–0049 so that we may associate your comments with the correct regulation.

**Caution:** You should be careful to include in your comments only information that you wish to make publicly available. We strongly urge you not to include in your comments any personal information, such as Social Security numbers or medical information.

1. **Internet:** We strongly recommend that you submit your comments via the internet. Please visit the Federal eRulemaking portal at <https://www.regulations.gov>. Use the *Search* function to find docket number SSA–2021–0049. The system will issue a tracking number to confirm your submission. You will not be able to view your comment immediately because we must post each comment manually. It may take up to a week for your comment to be viewable.

2. **Fax:** Fax comments to 833–410–1631.

3. **Mail:** Address your comments to the Office of Regulations and Reports Clearance, Social Security Administration, 6401 Security Boulevard, 3rd Floor (East) Altmeyer Building, Baltimore, Maryland 21235–6401.

Comments are available for public viewing on the Federal eRulemaking portal at <https://www.regulations.gov> or in person, during regular business hours, by arranging with the contact person identified below.

**FOR FURTHER INFORMATION CONTACT:** Sarah Reagan, Office of Privacy and Disclosure, Social Security Administration, WHR G401, 6401 Security Boulevard, Baltimore, MD 21235, (410) 966–5855. For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213, or TTY 1–800–325–0778, or visit our internet site, Social Security Online, at <https://www.ssa.gov>.

**SUPPLEMENTARY INFORMATION:****I. Background**

The FOIA is a Federal statute that allows the public to request records from the Federal government. The FOIA provides that any person has a right, enforceable in court, to obtain access to federal agency records subject to the FOIA, except to the extent that any portions of such records are protected from public disclosure by one of nine exemptions. Additionally, under the FOIA, agencies must make records specified in 5 U.S.C. 552(a)(2) (e.g., instructional manuals issued to our employees, general statements of policy, other materials used in processing claims, etc.) available for public inspection in an electronic format. The FOIA also statutorily requires Federal agencies to annually report on numerous and various metrics to the Department of Justice (DOJ).

Since the time the Social Security Administration (SSA) became an agency independent of the Department of Health and Human Services, Congress enacted two significant laws. These laws, the Openness Promotes Effectiveness in our National Government Act of 2007 (OPEN Government Act of 2007)<sup>1</sup> and the FOIA Improvement Act of 2016,<sup>2</sup> guide how agencies implement the requirements of the FOIA. Within this notice of proposed rulemaking (NPRM), we are proposing updates and revisions to our regulation at 20 CFR part 402 to conform with these laws, as well as the FOIA Improvement Act of 2016's requirement to issue regulations on procedures for disclosure of records in accordance with its amendments.

Based on our experience administering the FOIA, we propose updates to our FOIA rules and regulation to clarify our FOIA processes for the public. We propose comprehensive revisions to the entirety of 20 CFR part 402 by reorganizing the content. This reorganization starts with our FOIA policies and procedures for processing FOIA requests and concludes with information on records available for public inspection. Our revisions streamline our FOIA regulations at part 402 by creating new sections, consolidating sections based on content, and revising section headings to more clearly capture the information contained therein. We also propose updates to reflect office name changes, as well as general text changes

consistent with the plain language initiative.<sup>3</sup>

Our proposed revisions to our FOIA regulation at 20 CFR part 402 underscore the guidelines on the FOIA that Attorney General Merrick Garland issued within his March 2022 *Memorandum for Heads of Executive Departments and Agencies*. As summarized by DOJ's Office of Information Policy, Attorney General Garland's memorandum "direct[s] the heads of all executive branch departments and agencies to apply a presumption of openness in administering the FOIA and make clear that the Justice Department will not defend nondisclosure decisions that fail to do so." Attorney General Garland stated that proactive disclosures are "fundamental to the faithful application of FOIA," and advised agencies of the need "to remove barriers to access and to help requesters understand the FOIA process and the nature and scope of the records the agency maintains."

In the sections that follow within this NPRM, we explain the requirements of the OPEN Government Act of 2007 and the FOIA Improvement Act of 2016. To visualize our proposed reorganization of part 402, we provide a table that identifies the old (existing) regulatory sections, the sections to which the content moved, and the names of the new sections. Following the table is a section-by-section summary wherein we identify changes we propose in compliance with the OPEN Government Act of 2007 and FOIA Improvement Act of 2016, as well as updates we propose for ease of understanding the agency's FOIA policies and procedures.

**II. The OPEN Government Act of 2007**

As described below, the OPEN Government Act of 2007 amended the FOIA by providing new procedural and reporting requirements agencies must implement in their administration of the FOIA. It also codifies existing FOIA practices, *i.e.*, (1) all FOIA requests that will take longer than 10 days to process must be assigned an individualized tracking number and (2) agencies must provide requesters with a telephone line or internet service from which requesters can receive the status of their request(s).

<sup>3</sup> The Plain Writing Act of 2010 requires Federal agencies to use clear communication that the public can understand and use. Federal agencies are required to follow plain language principles; <https://centerforplainlanguage.org/learning-training/five-steps-plain-language/>. In fiscal year 2021, the Center for Plain Language graded Federal agencies' Coronavirus Update pages and main FOIA web pages. SSA received an overall grade of B+ and received positive reviews on our FOIA main web page.

To improve transparency and openness in government, the OPEN Government Act of 2007 established the Office of Government Information Services (OGIS) within the National Archives and Records Administration that, among other duties, offers mediation services between FOIA requesters and administrative agencies as an alternative to litigation. It further directs agencies to designate a Chief FOIA Officer, who: (1) has responsibility for FOIA compliance; (2) monitors FOIA implementation; (3) makes recommendations to the agency head concerning improvements to FOIA implementation; (4) reports to the Attorney General, as requested, on the agency's FOIA implementation; (5) facilitates public understanding of the purposes of FOIA's statutory exemptions; and (6) designates one or more FOIA Public Liaisons. The FOIA Public Liaison serves as an official to whom a FOIA requester can raise concerns about service and is responsible for assisting in reducing delays in FOIA request processing, helping resolve disputes, and helping requesters understand the status of their requests.

The OPEN Government Act of 2007 also revised annual reporting obligations, mandating reports on agency compliance with the FOIA to include information on: (1) FOIA denials based upon particular statutes; (2) response times; and (3) compliance by the agency and by each principal component thereof. We are not codifying the statutory reporting requirements of the Chief FOIA Officer within our proposed revisions to part 402 because they do not affect our day-to-day administration of the FOIA.

Regarding FOIA request processing, the OPEN Government Act of 2007 establishes changes to time limits: (1) specifies that the 20-day period during which an agency must determine whether to comply with a FOIA request begins on the date the request is received by the appropriate component of the agency, but no later than 10 days after the request is received by any component designated to receive FOIA requests; (2) limits the circumstances under which the 20 business day statutory time period may be "tolled" (or, more commonly known as stopped or paused); and (3) prohibits an agency from assessing search or duplication fees under the FOIA if it fails to comply with time limits, provided that no unusual or exceptional circumstances apply.

Lastly, the OPEN Government Act of 2007 provides for the definition of "representative of the news media" and

<sup>1</sup> Public Law 110-175; <https://www.congress.gov/bill/110th-congress/senate-bill/2488/text>.

<sup>2</sup> Public Law 114-185; <https://www.congress.gov/bill/114th-congress/senate-bill/337/text>.

amends the definition of “record” to include any information maintained by an agency contractor “for the purposes of record management.”

The changes we are proposing in our revised regulation to conform with the requirements of the OPEN Government Act of 2007 are as follows:

- Within revised § 402.60, we are updating and clarifying the following business practices: our acknowledgement of FOIA requests, when a request is considered perfected, our multi-tracking procedures, unusual circumstances, and tolling of the 20 business day statutory time period;
- Within revised §§ 402.70 through 402.80, we are revising our rules concerning fees;
- Within revised §§ 402.05 and 402.100, we are introducing and providing information on the services of the FOIA Public Liaison and OGIS; and
- Within revised § 402.10, we are defining “representative of the news media,” amending the definition of “record,” and defining new terms (such as the FOIA Public Liaison, OGIS, and Chief FOIA Officer).

### III. The FOIA Improvement Act of 2016

The FOIA Improvement Act of 2016 took effect on June 30, 2016, and applies to any FOIA request made after the date of enactment. Its intent is to improve agency transparency and responsiveness in processing FOIA requests. The FOIA Improvement Act of 2016 codifies the “foreseeable harm” standard, establishing that agencies may only withhold information if the agency reasonably foresees that disclosure would harm an interest protected by a statutory exemption, or if disclosure is prohibited by existing law.<sup>4</sup> In other words, unless the record is prohibited from disclosure by law, asserting a FOIA exemption alone is not sufficient; an agency must also determine that release of the record would cause foreseeable harm to others/interests protected under the exemption.

The FOIA Improvement Act of 2016 also imposes numerous administrative and procedural requirements upon Federal agencies. It adds new elements to the annual reports that capture the number of record denials and the number of records of general interest or use to the public that are made available for public inspection. It also creates new duties for the Chief FOIA Officer, requiring the Chief FOIA Officer to (1) serve as the primary liaison between OGIS and the Office of Information Policy at DOJ and (2) offer training to staff regarding their FOIA

responsibilities. Furthermore, it creates a council of Chief FOIA Officers whose purpose is to improve agencies’ administration of the FOIA. Within our proposed revisions to part 402, we are not addressing the additional reporting requirements provided in the FOIA Improvement Act of 2016, as they do not affect our day-to-day administration of the FOIA.

The FOIA Improvement Act of 2016 requires agencies to offer the services of the FOIA Public Liaison and OGIS in all decision letters. It further increases the time for appeals, now allowing requesters 90 days to file an administrative appeal of an adverse determination (as opposed to 30 days). Additionally, the FOIA Improvement Act of 2016 codifies the “rule of three,” *i.e.*, it requires agencies to make available for public inspection in an electronic format records that are of general interest or have been requested and released three or more times.

In the realm of FOIA administration, the FOIA Improvement Act of 2016 prohibits an agency from charging search and/or duplication fees under the FOIA for providing records if the agency misses a deadline for complying with a FOIA request, unless unusual circumstances exist and the agency takes certain action to notify the requester. Additionally, it amends one of the privileges recognized under the FOIA Exemption 5, *i.e.*, the deliberative process privilege.<sup>5</sup> The FOIA Improvement Act of 2016 amended the deliberative process privilege of Exemption 5 by providing that this privilege cannot be applied to records that are 25 years or older at the time of the FOIA request.

Finally, the FOIA Improvement Act of 2016 requires the head of each agency to (1) review agency regulations and issue regulations on procedures for disclosure of records in accordance with the amendments made by the bill and (2) include in such regulations procedures for engaging in dispute resolution through the FOIA Public Liaison and OGIS.

The changes we are proposing in our revised regulation to conform with the requirements of the FOIA Improvement Act of 2016 are as follows:

- Within revised §§ 402.15(a) and 402.60(k), we are adding the foreseeable harm standard;
- Within revised § 402.105, we are updating the appeal timeframe to 90 days (from 30 days);

- Within revised §§ 402.05 and 402.100, discussed earlier, we are addressing the FOIA Public Liaison and OGIS;

- Within revised §§ 402.70 through 402.80, we are clarifying our fee charging rules, including when unusual circumstances apply;

- Within revised § 402.135(a), we are revising the deliberative process privilege to provide that this privilege cannot be applied to records that are 25 years or older at the time of the FOIA request; and,

- Within revised § 402.155(a), we are addressing our public posting of records requested three or more times.

### IV. The FOIA Process at SSA

SSA’s FOIA workload is centrally processed by the Office of Privacy and Disclosure (OPD), with a subset of requests processed by the agency’s Office of Central Operations, Division of Earnings and Business Services (DEBS).<sup>6</sup> As described in our proposed revisions to 20 CFR part 402, SSA categorizes FOIA requests as either simple or complex, depending on the nature of the request and the estimated processing time. All complex requests are handled by OPD. This means that to process complex FOIA requests, OPD must coordinate with agency components outside of OPD to retrieve information necessary for fee notices and to receive responsive records for disclosure review under the FOIA. Outside of OPD, each deputy commissioner component has at least one FOIA Coordinator with whom OPD works with in our administration of the FOIA.<sup>7</sup> It is important to note that our proposed revised regulation at 20 CFR part 402 does not change our established FOIA business process for the agency’s administration of the FOIA. Our proposed revisions strengthen our FOIA process by making our FOIA program administration easier for agency components outside of OPD to understand through a revised, reorganized, and streamlined FOIA regulation.

When it comes to records release, OPD conducts a thorough review to ensure proper disclosure under the FOIA. The complexity and nature of each request determines the level of required review. The agency’s FOIA Officer makes the final determination on release of records in response to initial requests. The OPD Executive Director is

<sup>5</sup> 5 U.S.C. 552(b)(5). For further information and discussion on FOIA exemptions, we recommend *Department of Justice Guide to the Freedom of Information Act* (<https://www.justice.gov/oip/doj-guide-freedom-information-act-0>).

<sup>6</sup> DEBS processes all initial request for copies of decedents’ original Applications for a Social Security Card (SS-5) and Numident records.

<sup>7</sup> The agency’s organization chart available at <https://www.ssa.gov/org/> identifies each deputy commissioner component.

<sup>4</sup> 5 U.S.C. 552(a)(8).

the final authority on appeal determinations. As further stated in our proposed revised regulations, we make available for public inspection in an electronic format records that have been

requested and released three or more times and other specified records described in revised § 402.155. SSA's FOIA Reading Room, available at [www.ssa.gov/FOIA](http://www.ssa.gov/FOIA), is where OPD

proactively posts agency records and records frequently requested under the FOIA.

**V. Section-by-Section Changes**

**20 CFR PART 402 REORGANIZATION OF SECTIONS**

Reorganization of 20 CFR part 402		
Existing section	Existing → New	New section
402.5. Scope and purpose .....	402.5 → 402.05 .....	402.05. Scope and purpose of this part.
402.10. Policy .....	402.10 → 402.15 .....	402.10. Definitions.
402.15. Relationship between the FOIA and the Privacy Act of 1974.	402.15 → 402.20 .....	402.15. SSA's FOIA policy.
402.20. Requests not handled under the FOIA .....	402.20 → 402.45 .....	402.20. Relationship between the FOIA and the Privacy Act of 1974.
402.25. Referral of requests outside of SSA .....	402.25 → 402.55 .....	402.25. Who can file a FOIA request?
402.30. Definitions .....	402.30 → 402.10 .....	402.30. Requirements of a FOIA request.
402.35. Publication .....	402.35 → 402.160 .....	402.35. Where to submit a FOIA request.
402.40. Publications for sale .....	402.40 → 402.165 .....	402.40. Requests for deceased individual's records.
402.45. Availability of records .....	402.45(a) → 402.05 .....	402.45. Requests not processed under the FOIA.
402.50. Availability of administrative staff manuals	402.50 removed .....	402.50. FOIA Officer's authority.
402.55. Materials available at district offices and branch offices.	402.55 → 402.155 .....	402.55. Referrals and consultations.
402.60. Materials in field offices of the Office of Hearings and Appeals.	402.60 → 402.155 .....	402.60. How does SSA process FOIA requests?
402.65. Health care information .....	402.65 removed .....	402.65. Expedited processing.
402.70. Reasons for withholding some records .....	402.70 → 402.95(b) .....	402.70. Fees associated with processing FOIA requests.
402.75. Exemption one for withholding records: National defense and foreign policy.	402.75 → 402.115 .....	402.75. FOIA fee schedule.
402.80. Exemption two for withholding records: Internal personnel rules and practices.	402.80 → 402.120 .....	402.80. Charging under section 1106(c) of the Social Security Act.
402.85. Exemption three for withholding records: Records exempted by other statutes.	402.85 → 402.125 .....	402.85. Waiver of fees in the public interest.
402.90. Exemption four for withholding records: Trade secrets and confidential commercial or financial information.	402.90 → 402.130 .....	402.90. Notification of fees and prepayment requirements.
402.95. Exemption five for withholding records: Internal memoranda.	402.95 → 402.135 .....	402.95. Release of records.
402.100. Exemption six: Clearly unwarranted invasion of personal privacy.	402.100 → 402.140 .....	402.100. FOIA Public Liaison and the Office of Government Information Services.
402.105. Exemption seven for withholding records: Law enforcement.	402.105 → 402.145 .....	402.105. Appeals of the FOIA Officer's determination.
402.110. Exemption eight and nine for withholding records: Records on financial institutions; records on wells.	402.110 → 402.150 .....	402.110. U.S. District Court action.
402.115. Reserved .....	Reserved → New section 402.115 .....	402.115. The FOIA Exemption 1: National defense and foreign policy.
402.120. Reserved .....	Reserved → New section 402.120 .....	402.120. The FOIA Exemption 2: Internal personnel rules and policies.
402.125. Who may release a record .....	402.125 → 402.50 .....	402.125. The FOIA Exemption 3: Records exempted under other statutes.
402.130. How to request a record .....	402.130 → 402.35 .....	402.130. The FOIA Exemption 4: Trade secrets and confidential commercial or financial information.
402.135. Where to send a request .....	402.130 → 402.30 and 402.35 .....	402.135. The FOIA Exemption 5: Internal documents.
402.140. How a request for a record is processed	402.140(a)–(c) → 402.60 .....	402.140. The FOIA Exemption 6: Clearly unwarranted invasion of personal privacy.
	402.140(d) → 402.65 .....	
402.145. Responding to your request .....	402.145(d) → 402.15(a)(2) .....	402.145. The FOIA Exemption 7: Law enforcement.
	402.145(a)–(c) → 402.60 .....	
402.150. Release of records .....	402.150 → 402.95 .....	402.150. The FOIA Exemptions 8 and 9: Records on financial institutions; records on wells.
402.155. Fees to be charged—categories of requests.	402.155 → 402.70–402.75 .....	402.155. Records available for public inspection.
402.160. Fees to be charged—general provisions	402.160 → 402.70–402.75 .....	402.160. Where records are published.
402.165. Fee schedule .....	402.165 → 402.75 .....	402.165. Publications for sale through the Government Publishing Office.
402.170. Fees for providing records and related services for program purposes pursuant to section 1106 of the Social Security Act.	402.170 → 402.80 .....	Transferred as Shown, and Unused in Revised part 402.
	402.170(b) → 402.85(d) .....	

20 CFR PART 402 REORGANIZATION OF SECTIONS—Continued

Reorganization of 20 CFR part 402		
Existing section	Existing → New	New section
402.175. Fees for providing information and related services for non-program purposes.	402.175 → 402.80 .....	Transferred as Shown, and Unused in Revised part 402.
402.180. Procedure on assessing and collecting fees for providing records.	402.180 → 402.90 .....	Transferred as Shown, and Unused in Revised part 402.
402.185. Waiver or reduction of fees in the public interest.	402.185 → 402.85 .....	Transferred as Shown, and Unused in Revised part 402.
402.190. Officials who may deny a request for records under FOIA.	402.190 → 402.50 .....	Transferred as Shown, and Unused in Revised part 402.
402.195. How a request is denied .....	402.195 → 402.60 .....	Transferred as Shown, and Unused in Revised part 402.
402.200. How to appeal a decision denying all or part of a request.	402.200 → 402.105 .....	Transferred as Shown, and Unused in Revised part 402.
402.205. U.S. District Court Action .....	402.205 → 402.110 .....	Transferred as Shown, and Unused in Revised part 402.

20 CFR 402.05

SSA is revising this section by changing the heading from “§ 402.5. Scope and purpose” to “§ 402.05. Scope and purpose of this part.” We are maintaining much of the same language located in our current regulation at § 402.5, *Scope and purpose*; however, we are revising the formatting by creating three paragraphs (a) through (c), under which we enhance the information in this section. Under revised paragraph (a) we are maintaining the first sentence of our current regulation at § 402.5, but we are further expanding on the FOIA by including the FOIA’s mandate to provide records unless exemptions apply (located in our current regulation at § 402.45(a), *Availability of records*) and the requirement to make certain records available for public inspection. In revised paragraph (b), we are revising the formatting and content so the rules that this part of our regulations will describe are provided in list form. The revised list introduces the services of the FOIA Public Liaison and OGIS. Revised paragraph (c) modifies the last sentence of our current regulation at § 402.5 by stating that nothing in part 402 supersedes the information located in parts 401 and 403 of our regulations.

20 CFR 402.10

SSA is revising this section in its entirety, in both heading and content. We are changing the heading of this section from “Policy” to “Definitions.” In addition to the definitions captured in our current regulation at § 402.30, *Definitions*, we are adding three new definitions to explain two new positions and one new entity created by the OPEN Government Act of 2007: Chief FOIA Officer, FOIA Public Liaison, and OGIS. The OPEN Government Act of 2007 also amends the definition of “records” and

provides for the definition of “representative of the news media”; therefore, both items are addressed within this revised section. To promote openness in government, we are updating existing definitions and adding definitions of terms we use regularly in our administration of the FOIA. The new terms we are including in this section are: commercial interest; component; expedited processing; exemption; fee category; fee waiver; FOIA request; Numident; Office of the General Counsel (OGC); Office of Privacy and Disclosure (OPD); online FOIA portal; other requester; production; reading room; redact; special services; SSA; SS–5; Submitter; tolling; trade secrets and commercial or financial information. Finally, we are deleting the definition of “frequently requested records”; it is no longer needed given the requirement to publicly post records requested three or more times (as stated in revised § 402.15, *SSA’s FOIA policy*).

20 CFR 402.15

We are revising this section in its entirety, in both heading and content. We are changing the heading from “Relationship between the FOIA and the Privacy Act of 1974” to “SSA’s FOIA policy.” We are deleting the language from paragraph (a)(1) as the general policy statement is extraneous. Otherwise, we are maintaining the information captured in our current regulation at § 402.10, *Policy*, with modifications. This revised section is comprised of paragraphs (a) through (d); paragraph (a) provides new information that acknowledges our presumption of openness, meaning that we will withhold information only if disclosure would cause foreseeable harm, as codified in the FOIA Improvement Act of 2016, or if the disclosure is

prohibited by law; paragraphs (b) and (c) provide new language that advises where in our revised regulation the public may find information about the FOIA Officer’s authority to release and withhold records and records that are available for public inspection; and paragraph (d) captures language located in our existing regulation at § 402.145(d), *Responding to your request*, wherein we state that the FOIA does not require us to perform research or answer questions.

20 CFR 402.20

We are revising this section in its entirety, in both heading and content. We are changing the heading from “Requests not handled under the FOIA” to “Relationship between the FOIA and the Privacy Act of 1974.” We are maintaining much of the existing information regarding the overall relationship between both laws, as captured in our existing regulation at paragraphs (a) and (b) of § 402.15, *Relationship between the FOIA and the Privacy Act of 1974*; however, we are removing paragraph (c) concerning how we process requests with consent. Within revised paragraph (b), we are clarifying when we will handle an individual’s access request under the Privacy Act and when it will be handled under the FOIA.

20 CFR 402.25

We are revising this section in its entirety, in both heading and content. We are changing the heading from “Referral of requests outside of SSA” to “Who can file a FOIA request?” For transparency, we are creating this new section to clearly address who can file a FOIA request.

**20 CFR 402.30**

We are revising this section in its entirety, in both heading and content. We are changing the heading from “Definitions” to “Requirements of a FOIA request.” To promote transparency in our procedural requirements, we are creating this new section wherein we are providing a numbered list of criteria that must be met in order for a request to be considered a FOIA request subject to the rules discussed in this part.

**20 CFR 402.35**

We are revising this section in its entirety, in both heading and content. We are changing the heading from “Publication” to “Where to submit a FOIA request.” We are updating the information in our existing regulation at § 402.135, *Where to send a request*, to reflect the correct name of the Office of Privacy and Disclosure from the Office of Public Disclosure. Furthermore, we are adding the options to submit requests online, via email, and by fax. Finally, given the high number of requests we receive for copies of deceased individual’s original Applications for a Social Security Card (SS-5) and Numident records, we are providing new information on where to submit requests of this nature.

**20 CFR 402.40**

We are revising this section in its entirety, in both heading and content. We are changing the heading from “Publications for sale” to “Requests for deceased individual’s records.” To promote openness in government and transparency in our FOIA administration, we are creating this new section so requesters are aware of our rules regarding the disclosure of decedents’ records. We list acceptable proofs of death that requesters may provide with their requests and further describe how we process requests when acceptable proofs of death are not provided or we have questions about the authenticity of the proof provided.

**20 CFR 402.45**

We are revising this section in its entirety, in both heading and content. We are changing the heading from “Availability of records” to “Requests not processed under the FOIA.” We are maintaining the information captured in our existing regulation at paragraphs (a) and (b) at § 402.20, *Requests not handled under the FOIA*, with slight modifications to paragraph (a) by removing the last phrase of the first sentence and the full second sentence. We are also adding paragraphs (c) and (d). Under newly added paragraph (c),

we state that we will not handle your request under the FOIA and the rules in this part if you are seeking earnings records covered by our regulations at 20 CFR 422.125. Under newly added paragraph (d), we explain that we will not process a request under the FOIA that does not meet the requirements of a FOIA request as defined in revised § 402.30.

**20 CFR 402.50**

We are revising this section in its entirety, in both heading and content. We are changing the heading from “Availability of administrative staff manuals” to “FOIA Officer’s authority.” We are revising the language from our existing regulation at § 402.125, *Who may release a record*, by updating the name of the Office of Public Disclosure to the Office of Privacy and Disclosure. Within newly formed paragraphs (a) and (b), we are also revising and adding language that describes what determinations the FOIA Officer is authorized to make (paragraph (a)) and in paragraph (b), clarifying that the FOIA Officer’s determination is provided in writing and, if the requester disagrees with the FOIA Officer’s determination, the requester may appeal as described in revised § 402.105.

**20 CFR 402.55**

We are revising this section in its entirety, in both heading and content. We are changing the heading from “Materials available at district offices and branch offices” to “Referrals and consultations.” Within newly created paragraphs (a) through (c), we are revising the information located in our existing regulation at § 402.25, *Referral of requests outside of SSA*, by clarifying under paragraph (a)(1) that when making a referral to another Federal agency, we will ask the other agency to process the request or portion of the request for records that originated with that agency. We are also providing new information in paragraphs (a)(2), (b), and (c) to explain how we handle records that originated with another agency when that other agency is not subject to the FOIA (paragraph (a)(2)); when we will advise a requester to submit their request to another agency (paragraph (b)); and our consultations with another entity (paragraph (c)).

**20 CFR 402.60**

We are revising this section in its entirety, in both heading and content. We are changing its heading from “Materials in field offices of the Office of Hearings and Appeals” to “How does SSA process FOIA requests?” This section modifies the information

currently captured in several sections of our existing regulation, identified below, with the primary revision being to § 402.145, *Responding to your request*, of our existing regulation. This new section is comprised of paragraphs (a) through (l) that capture the following: our acknowledgment of FOIA requests (new content); when a request is considered “perfected” (new content); where to find information in our regulation concerning expedited processing; our multi-tracking procedures, *i.e.*, labeling requests as either simple or complex, which updates the tracking located in our existing regulation at § 402.140(c), *How a request for a record is processed*; what constitutes unusual circumstances, located in our existing regulation at § 402.140(a) and (b); our ability to aggregate requests, located in our existing regulation at § 402.180(c), *Procedure on assessing and collecting fees for providing records*; fee information that is discussed in separate identified sections of the revised regulation (fee information is located in our existing regulation from §§ 402.155 through 402.185); our ability to stop or “toll” the 20 business day statutory period (new content); records retrieval information, located in our existing regulation at § 402.145(a), *Responding to your request*; unproductive searches, located in our existing regulation at § 402.195(c), *How a request is denied*; and furnishing records, located in our existing regulation at § 402.145(b), *Responding to your request*. We are removing information regarding our deletion of records exempt from disclosure located in our existing regulation at § 402.145(c). We do not delete exempt records; if information within a responsive record(s) is exempt from disclosure, it is redacted and the applicable FOIA exemption(s) are noted within the redacted cell (as explained in this revised section at paragraph (k)); and burdensome requests, wherein we explain that we will not process a request when doing so would be unduly burdensome on the agency to process.

**20 CFR 402.65**

We are revising this section in its entirety, in both heading and content. We are changing the heading from “Health care information” to “Expedited processing.” We are removing the health care information from our regulation because there is no need for it. Health care information, if maintained by SSA, is considered an SSA record. Within the newly added § 402.65, we are incorporating language from § 402.140(d), *How a request for a record is processed*, with updates that

revise the formatting into two paragraphs wherein, under paragraph (a), we list and update what constitutes a “compelling need” and, under paragraph (b), we add language advising requesters of their right to appeal the FOIA Officer’s expedited processing determination.

#### 20 CFR 402.70

We are revising this section in its entirety, in both heading and content. We are changing the heading from “Reasons for withholding some records” to “Fees associated with processing FOIA requests.” This new section is comprised of paragraphs (a) and (b). These authorities include the FOIA fee categories (currently addressed in our existing regulation at § 402.155, *Fees to be charged—categories of requests*) and the fees we may charge under our authority of section 1106(c) of the Social Security Act (currently addressed in our existing regulation at § 402.175(a), *Fees for providing information and related services for non-program purposes*). We are also adding the language located in our existing regulation at § 402.160(a), *Fees to be charged—general provisions*, to the last sentence in paragraph (b) of this revised section. Under revised paragraph (b), we explain the hourly rate at which we charge requesters for performing search and review associated with processing FOIA requests (currently addressed in our existing regulation at § 402.165(a), *Fee schedule*). Within the hourly rate information, we are adding information concerning our charge when the search and/or review for records is performed by contractors. We also clarify that the hourly rate is charged in 15 minute increments, which is consistent with how agency employees accrue time and leave. In subsequent sections of the revised regulation, we expand on the FOIA fee schedule and the agency’s charging under section 1106(c) of the Social Security Act.

#### 20 CFR 402.75

We are revising this section in its entirety, in both heading and content. We are changing the heading from “Exemption one for withholding records: National defense and foreign policy” to “FOIA fee schedule.” We are maintaining much of the information from our existing regulation at § 402.155, *Fees to be charged—categories of requests*, and § 402.165, *Fee schedule*. This new section is comprised of paragraphs (a) through (e). In paragraph (a) of the revised section, we are updating the language located in our existing regulation at § 402.155 for plain language writing principles. In

paragraph (b) of the revised section, we are revising our certification information that is currently located in our existing regulation at § 402.165(e). Paragraph (c) lists information concerning records production and duplication. In paragraph (c)(1), we are providing new information describing our production and duplication of electronic records and databases. In paragraphs (c)(2) and (3), we are maintaining much of the same language regarding photocopying standard and odd-sized documents that is located in our existing regulation at § 402.165(c) and (d). In paragraph (d) of the revised section, we are maintaining the information located in our existing regulation at § 402.165(h). In paragraph (e) of the revised section, we advise where in our regulation requesters may find information regarding fee waivers (*i.e.*, revised § 402.85 regarding fee waivers). The information located in our existing regulation at § 402.160(b) and (c), *Fees to be charged—general provisions*, is no longer necessary given our revisions to this revised section.

#### 20 CFR 402.80

We are revising this section in its entirety, in both heading and content. We are changing the heading from “Exemption two for withholding records: Internal personnel rules and practices” to “Charging under section 1106(c) of the Social Security Act.” To draft this new section, we are combining the information from the existing regulation at § 402.170, *Fees for providing records and related services for program purposes pursuant to section 1106 of the Social Security Act*, and 402.175, *Fees for providing information and related services for non-program purposes*, into this one new section. This new section is comprised of one introductory paragraph followed by paragraphs (a) through (e) that explain our charging under section 1106(c) of the Social Security Act. In paragraph (a) of this new section, we expand on the language located in our existing regulation at § 402.175(c) describing in a non-inclusive list what constitutes “full cost”: search; review; production and duplication of record(s); certification; employee’s time; forwarding/delivering materials; and performing other special services. In paragraph (b) of this new section, we are adding new language explaining when the agency will not charge, *i.e.*, when the cost of the service is less than the cost of sending the bill. In paragraph (c) of this new section, we are adding new language explaining that the information in this part does not revoke, modify, or supersede the

schedule of standard administrative fees that the agency charges for specified non-program information requests. In paragraph (d)(1) of this new section, we are clarifying the criteria we use to determine if a request is program-related (located in our existing regulation at § 402.170(a)) to explain what types of programs are referenced. Under paragraph (d)(2), we are clarifying our case-by-case review process that is located in our existing regulation at § 402.170(a)(2)(D)(ii). In paragraph (e) of this new section, we provide new information describing how requesters may appeal the FOIA Officer’s non-program determination.

#### 20 CFR 402.85

We are revising this section in its entirety, in both heading and content. We are changing the heading from “Exemption three for withholding records: Records exempted by other statutes” to “Waiver of fees in the public interest.” The content of this section maintains much of the language found in our existing regulation at § 402.185, *Waiver or reduction of fees in the public interest*; however, we are clarifying the information in revised paragraphs (a) through (d). Before paragraph (a), we are providing an introductory paragraph that maintains the information captured in our existing regulation at § 402.185(a)(1) and (2); however, we are also adding new language to explain that we will consider waiver under this regulation whether the agency charges under the FOIA’s fee schedule or section 1106(c) of the Social Security Act. Under revised paragraph (a), we are providing the procedure for requesting a fee waiver or reduction that is located in our existing regulation at § 402.185(e). Within revised paragraph (b), we revised the public interest criteria that is in our existing regulation at § 402.185(b)(1) through (4). Within revised paragraph (b), we removed existing paragraph (b)(3), and now list three criteria for public interest instead of four. Under revised paragraph (c), we explain what it means to be “not primarily in the requester’s commercial interest” and provide the two factors we consider. This information is taken from our existing regulation at § 402.185(c). Under revised § 402.85(d), we are adding new language providing notice that the agency reserves the right to charge a fee if special services are needed to provide the requested records, which we transferred from our existing regulation at § 402.170(b), *Fees for providing records and related services for program purposes pursuant to section 1106 of the Social Security*



Act. Finally, revised paragraph (e) maintains the information located in our existing regulation at § 402.185(d).

#### 20 CFR 402.90

We are revising this section in its entirety, in both heading and content. We are changing the heading from “Exemption four for withholding records: Trade secrets and confidential commercial or financial information” to “Notification of fees and prepayment requirements.” Within paragraphs (a) through (e) of this new section, we are updating the procedure on assessing and collecting fees for providing records, as currently captured in our existing regulation in § 402.180, *Procedure on assessing and collecting fees for providing records*. Before paragraph (a), we have an introductory statement that advises the rules in this part apply whether we are processing your request under the FOIA fee schedule or section 1106(c) of the Social Security Act. The information in this new section explains: OPD’s issuance of fee notices (paragraph (a)); our requirement that requesters agree to pay the estimated fee and provide payment information in advance of the search (paragraph (b)); when OPD will issue revised fee notices (in paragraphs (c)(1) and (2)); when the requester will be notified of the revised fee notice and that the requester can appeal the revised fee notice (in paragraphs (c)(3) and (4)); our process of administratively closing requests if payment information is not received within 30 calendar days from the date of the fee notice (paragraph (d)); and the method of payments we accept (paragraph (e)). Regarding paragraph (e), we are updating the information located in our existing regulation at § 402.108(d) by adding credit cards as a method of payment.

#### 20 CFR 402.95

We are revising this section in its entirety, in both heading and content. We are changing the heading from “Exemption five for withholding records: Internal memoranda” to “Release of records.” This revised section modifies, in part, and combines information from various sections of our existing regulation. This revised section is comprised of paragraphs (a) through (d): in paragraph (a) we are clarifying our rules concerning records previously released, located in paragraph (a), *Records previously released*, in our existing regulation at § 402.150(a), *Release of records*; paragraph (b) maintains the information located in our existing regulation at § 402.70, *Reasons for withholding some records*; paragraph (c) clarifies the language about our FOIA

electronic reading room that is located in our existing regulation at § 402.45(d), *Availability of records*; and paragraph (d) maintains the language located in our existing regulation at § 402.150(b) concerning poor copies.

#### 20 CFR 402.100

We are revising this section in its entirety, in both heading and content. We are changing the heading from “Exemption six: Clearly unwarranted invasion of personal privacy” to “FOIA Public Liaison and Office of Government Information Services.” Under this new section, we are providing requesters with information on how to seek the services of the FOIA Public Liaison and OGIS.

#### 20 CFR 402.105

We are revising this section in its entirety, in both heading and content. We are changing the heading from “Exemption seven for withholding records: Law enforcement” to “Appeals of the FOIA Officer’s determination.” Our revisions update the information located in our existing regulation at § 402.200, *How to appeal a decision denying all or part of a request*, in newly created paragraphs (a) through (e). Paragraph (a) updates the existing paragraph (a) at § 402.200 by changing the appeal period from 30 days to 90 days and clarifying that the Executive Director for the Office of Privacy and Disclosure (OPD) responds to appeals of the FOIA Officer’s determinations. Under paragraph (b), we are adding language concerning our acknowledgement of appeals and paragraph (c) provides clarifying information located in our existing regulation at 402.200(b), concerning how long we generally take to process appeals. Under paragraph (d), we are modifying the language in our existing regulation at § 402.200(c) by adding information explaining that the Chief FOIA Officer delegated the authority to make appeal determinations to the Executive Director for OPD. Finally, paragraph (e) simplifies the language in our existing regulation at § 402.200(b) by advising requesters of their right to seek review in a U.S. District Court if they disagree with the appeal determination.

#### 20 CFR 402.110

We are revising this section in its entirety, in both heading and content. We are changing the heading from “Exemptions eight and nine for withholding records: Records on financial institutions; records on wells” to “U.S. District Court action.” We are updating the information located in our

existing regulation at § 402.205, *U.S. District Court action*, by changing the language to clarify that the Executive Director for the Office of Privacy and Disclosure makes the final decision in response to appeals. If requesters disagree with the Executive Director’s final decision, they may ask the District Court to review the decision.

#### 20 CFR 402.115

This section of our existing regulation is currently reserved. We are now utilizing this section. The new heading is “The FOIA Exemption 1: National defense and foreign policy.” We are modifying the language located in our existing regulation at § 402.75, *Exemption one for withholding records: National defense and foreign policy*, by making minor edits to the first sentence and removing the last two sentences, in full. Our edits simplify the explanation of this exemption.

#### 20 CFR 402.120

This section of our existing regulation is currently reserved. We are now utilizing this section; the new heading is “The FOIA Exemption 2: Internal personnel rules and practices.” We are updating the information about Exemption 2 located in our existing regulation at § 402.80, *Exemption two for withholding records: Internal personnel rules and practices*, by changing the examples of records generally withheld under this exemption.

#### 20 CFR 402.125

We are revising this section in its entirety, in both heading and content. We are changing the heading from “Who may release a record” to “The FOIA Exemption 3: Records exempted by other statutes.” We are updating the Exemption 3 language located in our existing regulation at § 402.85, *Exemption three for withholding records: Records exempted by other statutes*, by changing the formatting from one paragraph to two: paragraph (a) explains the exemption (using the language located in our existing regulation at § 402.85) and paragraph (b) provides two examples of the statutes that prohibit disclosure of information, one of which is a new example about disclosure of decedents’ information.

#### 20 CFR 402.130

We are revising this section in its entirety, in both heading and content. We are changing the heading from “How to request a record” to “The FOIA Exemption 4: Trade secrets and confidential commercial or financial information.” We are substantially



updating our Exemption 4 language located in our existing regulation at § 402.90, *Exemption four for withholding records: Trade secrets and confidential commercial or financial information*. This revised section is comprised of paragraphs (a) through (c): (a) *Steps of submitters notice*; (a)(1) *The submitter's notice*; (a)(2) *Submitter's opportunity to object to disclosure*; (a)(3) *Notice of intent to disclose*; (b) *Notice of FOIA lawsuit*; and (c) *Requester notification*. Paragraphs (a) through (c) of our existing regulation at § 402.90 contain definitions of terms that we relocated to the revised regulation § 402.10, *Definitions*. Our revised Exemption 4 information updates the information located in our existing regulation at § 402.90(d) through (f), making the information easier for the public to follow.

#### 20 CFR 402.135

We are revising this section in its entirety, in both heading and content. We are changing the heading from “Where to send a request” to “The FOIA Exemption 5: Internal documents.” We are revising the Exemption 5 language located in our existing regulation at § 402.95, *Exemption five for withholding records: Internal memoranda*, to reflect case law that defines the exemption more broadly to include records beyond internal government communications and notes. We are maintaining the same formatting as our existing regulation at § 402.95 wherein we describe the following privileges in paragraphs (a) through (c): paragraph (a) *Deliberative process privilege*; paragraph (b) *Attorney work product privilege*; and paragraph (c) *Attorney-client communications privilege*. In paragraph (a), we are editing the language for clarity and also adding information regarding the 25-year sunset on records exempt under the deliberative process privilege. In paragraphs (b) and (c), we are clarifying the attorney work product and attorney-client communications privileges by simplifying the language and descriptions of each.

#### 20 CFR 402.140

We are revising this section in its entirety, in both heading and content. We are changing the heading from “How a request for a record is processed” to “The FOIA Exemption 6: Clearly unwarranted invasion of personal privacy.” In this revised section, we are slightly modifying the formatting from our existing regulation at § 402.100, *Exemption six: Clearly unwarranted invasion of personal privacy*, by adding an introductory sentence and updating the language in

paragraphs (a) through (c). The introductory sentence maintains the information from paragraph (a) of the existing regulation located at § 402.100(a). Revised paragraph (a) slightly modifies the balancing test information that is located in our existing regulation at § 402.100(b), *i.e.*, we are removing the last sentence as it is extraneous. Revised paragraph (b) updates the information located in our existing regulation at § 402.45(e), *Availability of records*, concerning the disclosure of agency employees’ information. Specifically, we changed “telephone numbers” to “contact information,” when explaining what information about SSA employees is typically withheld under the FOIA Exemption 6. Under revised paragraph (c), we are updating the examples of records frequently withheld under Exemption 6.

#### 20 CFR 402.145

We are revising this section in its entirety, in both heading and content. We are changing the heading from “Responding to your request” to “The FOIA Exemption 7: Law enforcement.” We are maintaining much of the language located in our existing regulation at § 402.105, *Exemption seven for withholding records: Law enforcement*. Our revisions simply clarify the parts of Exemption 7 that correlate to paragraphs (a) through (f): paragraph (a) explains the FOIA Exemption 7(A); paragraph (b) explains the FOIA Exemption 7(B); paragraph (c) explains the FOIA Exemption 7(C); paragraph (d) explains the FOIA Exemption 7(D); paragraph (e) explains the FOIA Exemption 7(E); and, paragraph (f) explain the FOIA Exemption 7(F).

#### 20 CFR 402.150

We are revising this section in its entirety, in both heading and content. We are changing the heading from “Release of records” to “The FOIA Exemptions 8 and 9: Records on financial institutions; records on wells.” The only change to this section is its relocation. We are maintaining the same information on both of these exemptions that is currently located in our existing regulation at § 402.110, *Exemptions eight and nine for withholding records: Records on financial situations; records on wells*.

#### 20 CFR 402.155

We are revising this section in its entirety, in both heading and content. We are changing the heading from “Fees to be charged—categories of requests” to “Records available for public

inspection.” Within this new section, we are combining the information located in our existing regulation in § 402.45(b) and (c), *Availability of records*, § 402.55, *Materials available at district offices and branch offices*, and § 402.60, *Materials in field office of the Office of Hearings and Appeals*, within newly created paragraphs (a) through (c). Paragraphs (a) and (b) update the information located in our existing regulation at § 402.45(b) and (c). Under paragraph (a), we are listing the records SSA is required to make available for public inspection in electronic format. Under paragraph (b), we are clarifying the “record citation as precedent” language in our existing regulation at § 402.45(c). The newly created paragraph (c) updates information located in our existing regulation at §§ 402.55 and 402.60. We are updating the list of records that are available for public inspection and further advising that said records are available electronically rather than available for viewing at our field offices and hearings offices. Given these edits, the information located in our existing regulation at § 402.50, *Availability of administrative staff manuals*, is no longer relevant.

#### 20 CFR 402.160

We are revising this section in its entirety, in both heading and content. We are changing the heading from “Fees to be charged—general provisions” to “Where records are published.” Within this section, we are maintaining the information located in our existing regulation at § 402.35, *Publication*, paragraphs (a) and (b); however, we are removing paragraphs (c) and (d) from § 402.35, as this information is accounted for within revised § 402.155, *Records available for public inspection*.

#### 20 CFR 402.165

We are revising this section in its entirety, in both heading and content. We are changing the heading from “Fee schedule” to “Publications for sale through the Government Publishing Office.” We are revising the information located in our existing regulation at § 402.40, *Publications for sale*, by updating the name from Government Printing Office to the Government Publishing Office (GPO) and adding language to account for GPO’s electronic bookstore from which the public may order various publications that we are capturing in an updated list of documents available for sale.

#### Rulemaking Analyses and Notices

We will consider all comments we receive on or before the close of

business on the comment closing date indicated above. The comments will be available for examination in the rulemaking docket for these rules at the above address. We will file comments received after the comment closing date in the docket and will consider those comments to the extent practicable. However, we will not respond specifically to untimely comments. We may publish a final rule at any time after close of the comment period.

### Clarity of These Proposed Rules

Executive Order 12866, as supplemented by Executive Order 13563, requires each agency to write all rules in plain language. In addition to your substantive comments on these proposed rules, we invite your comments on how to make them easier to understand.

For example:

- Would more, but shorter, sections be better?
- Are the requirements in the rules clearly stated?
- Have we organized the material to suit your needs?
- Could we improve clarity by adding tables, lists, or diagrams?
- What else could we do to make the rules easier to understand?
- Do the rules contain technical language or jargon that is not clear?
- Would a different format make the rules easier to understand, e.g., grouping and order of sections, use of headings, paragraphing?

### When will we start to use this proposed rule?

We will not use this proposed rule until we evaluate public comments and publish a final rule in the **Federal Register**. All final rules include an effective date. We will continue to use our current rules until that date. If we publish a final rule, we will include a summary of those relevant comments we received along with responses and an explanation of how we will apply the new rule.

### Regulatory Procedures

*Executive Order 12866, as Supplemented by Executive Order 13563*

We consulted with the Office of Management and Budget (OMB) and determined that this rule meets the criteria for a significant regulatory action under Executive Order 12866, as supplemented by Executive Order 13563. Therefore, OMB reviewed it.

### *Anticipated Costs to Our Program*

The Office of the Chief Actuary estimates that there are no direct effects

on scheduled Old-Age, Survivors, and Disability Insurance (OASDI) benefit payments and Federal Supplemental Security Income (SSI) payments.

### *Anticipated Administrative Benefits to the Social Security Administration*

The Office of Budget, Finance, and Management estimates an administrative effect of less than 15 workyears and \$2 million annually.

### *Anticipated Qualitative Benefits*

We anticipate qualitative benefits from the proposed revisions to the FOIA regulation from streamlined and clarified FOIA policies and procedures. We expect the clarified regulations would benefit both SSA and the public because the administration of the FOIA for SSA and our public customers would be better organized and easier to follow. The purpose of the FOIA is to provide the public with access to government records, and administrative transparency is paramount to a successful FOIA program. Since the FOIA is processed centrally at SSA, our regulation must be easy for agency employees to understand so components outside of OPD understand the importance of the FOIA and their roles in the agency's administration of the FOIA. When our policies are clear for agency employees, we are able to process FOIA requests in a more efficient manner, which benefits both the agency and the public.

Our revised regulation at part 402 provides information in a cascading fashion that is easier to follow than our existing regulation, and accurately reflects amendments implemented by the FOIA Improvement Act of 2016. Our proposed revisions account for the roles of the FOIA Public Liaison and OGIS, which is useful for correct points of contact internally and for the public, increasing efficiency and lowering confusion. The proposed revisions also update inaccurate information, such as the timeframe for the public to appeal adverse decisions, which presently state 30 days, but is 90 days under the FOIA Improvement Act of 2016.

The FOIA is designed to build trust between the public and Federal agencies. SSA's revised regulation at 20 CFR part 402 strengthens this trust with transparency by explaining in plain language how SSA processes FOIA requests and appeals, and further describes our proactive posting of agency records. Clear communication with the public is paramount to our administration of the FOIA. Updating and revising our FOIA regulation serves to enhance our communication with the public, making it easier for the public to

know how to submit FOIA requests and where to review proactively posted records.

### *Executive Order 13132 (Federalism)*

We analyzed this proposed rule in accordance with the principles and criteria established by Executive Order 13132, and determined that the proposed rule will not have sufficient federalism implications to warrant the preparation of a federalism assessment. We also determined that this proposed rule will not preempt any State law or State regulation or affect the States' abilities to discharge traditional State governmental functions.

### *Regulatory Flexibility Act*

We certify that these proposed rules will not have a significant economic impact on a substantial number of small entities because they affect individuals only. Therefore, a regulatory flexibility analysis is not required under the Regulatory Flexibility Act, as amended.

### *Paperwork Reduction Act*

While these proposed rules mention the public reporting requirements for the public to submit FOIA requests to the agency, we already obtained OMB approval for these public reporting requirements under the current OMB approved information collections for 0960-0566 (SSA 3288) and 0960-0665 (SSA-711 and Online FOIA Request). As we already cover these requirements under OMB-approved information collections, and these revised rules merely move those requirements to new CFR citations but do not change them, these revised rules will not require Office of Management and Budget approval under the Paperwork Reduction Act. Rather, upon publication of the final rule, we will submit Change Requests to update the CFR citations for OMB No. 0960-0566 and 0960-0665.

(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; and 96.006, Supplemental Security Income).

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

Administrative practice and procedure, Freedom of information.

The Acting Commissioner of Social Security, Kilolo Kijakazi, Ph.D., M.S.W., having reviewed and approved this document, is delegating the authority to electronically sign this document to Faye I. Lipsky, who is the primary Federal Register Liaison for SSA, for

purposes of publication in the **Federal Register**.

**Faye I. Lipsky,**

*Federal Register Liaison, Office of Legislation and Congressional Affairs, Social Security Administration.*

■ For the reasons set forth in the preamble, the Social Security Administration proposes to revise 20 CFR part 402 to read as follows:

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

Sec.	
402.05	Scope and purpose of this part.
402.10	Definitions.
402.15	SSA's FOIA policy.
402.20	Relationship between the FOIA and the Privacy Act of 1974.
402.25	Who can file a FOIA request?
402.30	Requirements of a FOIA request.
402.35	Where to submit a FOIA request.
402.40	Requests for deceased individual's records.
402.45	Requests not processed under the FOIA.
402.50	FOIA Officer's authority.
402.55	Referrals and consultations.
402.60	How does SSA process FOIA requests?
402.65	Expedited processing.
402.70	Fees associated with processing FOIA requests.
402.75	FOIA fee schedule.
402.80	Charging under section 1106(c) of the Social Security Act.
402.85	Waiver of fees in the public interest.
402.90	Notification of fees and prepayment requirements.
402.95	Release of records.
402.100	FOIA Public Liaison and the Office of Government Information Services.
402.105	Appeals of the FOIA Officer's determination.
402.110	U.S. District Court action.
402.115	The FOIA Exemption 1: National defense and foreign policy.
402.120	The FOIA Exemption 2: Internal personnel rules and practices.
402.130	The FOIA Exemption 4: Trade secrets and confidential commercial or financial information.
402.135	The FOIA Exemption 5: Internal documents.
402.140	The FOIA Exemption 6: Clearly unwarranted invasion of personal privacy.
402.145	The FOIA Exemption 7: Law enforcement.
402.150	The FOIA Exemptions 8 and 9: Records on financial institutions; records on wells.
402.155	Records available for public inspection.
402.160	Where records are published.
402.165	Publications for sale through the Government Publishing Office.

**Authority:** 42 U.S.C. 405, 902(a)(5), and 1306; 5 U.S.C. 552 and 552a; 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.

**§ 402.05 Scope and purpose of this part.**

(a) The purpose of this part is to describe the Social Security Administration's (SSA) policies and procedures for implementing the requirements of the Freedom of Information Act (FOIA) 5 U.S.C. 552. The FOIA mandates disclosure to the public of Federal agency records unless specific exemptions apply. The FOIA also requires an agency to proactively disclose records and make certain records available for public inspection.

(b) The rules in this part describe how SSA makes records available to the public, including:

- (1) What constitutes a proper request for records;
  - (2) How to make a FOIA request;
  - (3) Who has the authority to release and withhold records;
  - (4) What fees may be charged to process a request for records;
  - (5) The timing of determinations regarding release;
  - (6) The exemptions that permit the withholding of records;
  - (7) Requesters' right to seek assistance from the FOIA Public Liaison;
  - (8) Requesters' right to appeal the agency's FOIA determination;
  - (9) Requesters' right to seek assistance from the Office of Government Information Services and then go to court if they still disagree with our release determination; and
  - (10) The records available for public inspection.
- (c) The rules in this part do not revoke, modify, or supersede SSA's regulations relating to disclosure of information in part 401 or 403 of this chapter.

**§ 402.10 Definitions.**

As used in this part:  
*Agency* means the Social Security Administration (SSA). Agency may also refer to any executive department, military department, government corporation, government-controlled corporation, or other establishment in the executive branch of the Federal Government, or any independent regulatory agency. A private organization is not an agency even if it is performing work under contract with the Government or is receiving Federal financial assistance.

*Chief FOIA Officer* means a senior official of SSA who has an agency-wide responsibility for ensuring efficient and appropriate compliance with the FOIA, monitoring implementation of the FOIA throughout the agency, and making recommendations to the head of the agency to improve the agency's implementation of the FOIA. The Commissioner of SSA designated the

General Counsel as the Chief FOIA Officer for SSA. The Chief FOIA Officer or the Chief FOIA Officer's designee is authorized to make final decisions in response to appeals of the FOIA Officer's determinations.

*Commercial interest* includes interests relating to business, trade, and profit, as well as non-profit corporations, individuals, unions, and other associations. The interest of a representative of the news media in using the information for news dissemination purposes will not be considered a commercial interest.

*Component* means each separate office, division, commission, service, center, or administration within SSA that may maintain agency records subject to a request under the FOIA.

*Duplication* means the process of reproducing a copy of a record, or of the information contained in it, to the extent necessary to respond to a request. Copies include paper, electronic records, audiovisual materials, and other formats of agency records.

*Educational institution* means a preschool, elementary or secondary school, institution of undergraduate or graduate higher education, or institution of professional or vocational education, which operates a program of scholarly research. To qualify for this category, a requester must show that FOIA request is authorized by, and is made under the auspices of, a qualifying institution and that the records are sought to further a scholarly research goal of the institution, and not for a commercial use or purpose, or for individual use or benefit.

*Exemption* means one of the nine exemptions to the mandatory disclosure of records permitted under section 552(b) of the FOIA.

*Expedited processing* means the process set forth in the FOIA that allows requesters to request faster processing of their FOIA request, if they meet specific criteria noted in § 402.65.

*Fee category* means one of the three categories established by the FOIA to determine whether a requester will be charged fees under FOIA for search, review, and duplication. The categories are: commercial use requests; non-commercial scientific or educational institutions and news media requests; and all other requests.

*Fee waiver* means the waiver or reduction of fees if a requester is able to demonstrate the requirements set forth in § 402.85.

*FOIA Officer* means an SSA official whom the Commissioner of Social Security delegated the authority to release or withhold records; to assess, waive, or reduce fees in response to

FOIA requests; and to make all other determinations regarding the processing of a FOIA request. In this capacity, the FOIA Officer is authorized to request and receive responsive records that may be maintained by other agency components. Except for records subject to proactive disclosure pursuant to subsection (a)(2) of the FOIA, only the FOIA Officer has the authority to release or withhold records or to waive fees in response to a FOIA request.

*FOIA Public Liaison* means an agency official who reports to the agency Chief FOIA Officer and serves as a supervisory official to whom a requester can raise concerns about the service the requester received concerning the processing of the FOIA request. This individual is responsible for increasing transparency in the agency's FOIA business process, helping requesters understand the status of requests, and assisting in the resolution of disputes. The FOIA Public Liaison may be contacted via email to [FOIA.Public.Liaison@ssa.gov](mailto:FOIA.Public.Liaison@ssa.gov).

*FOIA request* means a written request that meets the criteria in § 402.30.

*Freedom of Information Act* or *FOIA* means the law codified at 5 U.S.C. 552 that provides the public with the right to request agency records from the Federal executive branch agencies.

*Non-commercial scientific institution* means an institution that does not further the commercial, trade, or profit interests of any person or entity and is operated for the purpose of conducting scientific research whose results are not intended to promote any particular product or industry.

*Numident* refers to the "Numerical Identification System," the SSA system that contains information available on an Application for a Social Security Card (Form SS-5). The Numident record contains the name of the applicant, place of birth, and other information.

*OGC* means the Office of the General Counsel.

*Online FOIA portal* means the electronic application that SSA uses to process FOIA requests. The public may also submit requests directly to SSA via the online FOIA portal.

*Other requester* means any individual or organization whose FOIA request does not qualify as a commercial-use request, representative of the news media request (including a request made by a freelance journalist), or an educational or non-commercial scientific institution request.

*OPD* means the Office of Privacy and Disclosure.

*Production* means the process of preparing the records for duplication, including the time spent in preparing

the records for duplication (*i.e.*, materials used, records/database retrieval, employee and contractor time, as well as systems processing time).

*Reading room* means an electronic location(s) that SSA uses to post records that are made available to the public without a specific request. SSA makes reading room records electronically available to the public through our website, [ssa.gov](http://ssa.gov), including at [ssa.gov/foia](http://ssa.gov/foia).

*Record(s)* means any information maintained by an agency, regardless of format, that is made or received in connection with official agency business that is under the agency's control at the time of the FOIA request. Record(s) includes any information maintained for an agency by a third party.

(1) Record(s) does not include personal records of an employee, or other information in formally organized and officially designated SSA libraries and reading rooms, where such materials are available under the rules of the particular library.

(2) Record(s) includes information maintained by the State Disability Determination Services related to performing the disability determination function and medical source information pertaining to consultative examinations performed for the Social Security program when obtained by, created on behalf of, or otherwise, in the control of SSA.

*Redact* means delete or mark over.

*Representative of the news media* means any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn raw materials into a distinct work, and distributes that work to an audience. The term "news" means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations that broadcast news to the public at large and publishers of periodicals, including print and online publications that disseminate news and make their products available through a variety of means to the general public. We do not consider FOIA requests for records that support the news-dissemination function of the requester to be a commercial use. We consider "freelance" journalists who demonstrate a solid basis for expecting publication through a news media entity as working for that entity. A publishing contract provides the clearest evidence that a journalist expects publication; however, we also consider a requester's past publication record. We decide whether to grant a requester media status on a case-by-case basis, based on the

requester's intended use of the requested records.

*Request* means asking for records, whether or not the requester refers specifically to the FOIA. Requests from Federal agencies, subpoenas, and court orders for documents are not included within this definition.

*Review*, unless otherwise specifically defined in this part, means examining records responsive to a request to determine whether any portions are exempt from disclosure. Review time includes processing a record for disclosure (*i.e.*, doing all that is necessary to prepare the record for disclosure), including redacting the record and marking the appropriate FOIA exemptions. It does not include the process of resolving general legal or policy issues regarding exemptions.

*Search* means the process of identifying, locating, and retrieving records responsive to a request, whether in hard copy or in electronic form or format, or by manual or automated/electronic means.

*Special services* means performing additional services outside of that required under the FOIA to respond to a request. Examples include using an overnight mail service to send the agency's response to a FOIA request.

*SSA* means the Social Security Administration.

*SS-5* means an Application for a Social Security Card. It is used to request an original, different, or replacement Social Security Card.

*Submitter* means any person or entity that provides trade secrets or commercial or financial information to the agency, and includes individuals, corporations, other organizational entities, and state and foreign government.

*Tolling* means temporarily stopping the running of a time limit. We may toll a FOIA request to seek clarification from the requester or to address fee issues, as further described in § 402.60(h).

*Trade secrets and commercial or financial information* means trade secrets and commercial or financial information that is confidential, and is obtained by the agency from a submitter, such that it may be protected from disclosure under Exemption 4 of the FOIA, 5 U.S.C. 552(b)(4).

#### § 402.15 SSA's FOIA policy.

(a) *Presumption of openness.* We will withhold information only if we reasonably foresee that disclosure would harm an interest protected by a FOIA exemption or if disclosure is prohibited by law.

(b) *Authority to release and withhold records.* As described in § 402.50, the

agency's FOIA Officer, or the FOIA Officer's designee, has the authority to:

(1) Release or withhold records in response to initial requests;

(2) Grant or deny expedited processing; and

(3) Reduce or waive fees.

(c) *Records publicly available.* We make available for public inspection in an electronic format records that are final and have been requested and released three or more times and other specified records described in § 402.155. We do not make available for public inspection records that are not static, such as the Open Access Death Master File.

(d) *Required record production.* The FOIA does not require an agency to give opinions, conduct research, answer questions, or create records.

#### **§ 402.20 Relationship between the FOIA and the Privacy Act of 1974.**

(a) *Coverage.* The FOIA and the rules in this part apply to all SSA records. The Privacy Act, 5 U.S.C. 552a, applies to records that are about individuals, but only if the records are in a system of records.

(b) *Requesting your own records.* If you have filed a FOIA request and are an individual requesting your own records that are maintained in a system of records, or if you are a parent or legal guardian authorized to act under § 401.75 of this chapter who is seeking the records about a minor or individual who has been declared incompetent, we will handle your request under the Privacy Act. See § 401.40 of this chapter. If we handle your request under the Privacy Act, we will provide you with written notification with further processing instructions. If the Privacy Act prohibits disclosure, we will process your request under the FOIA. You must verify your identity in accordance with our regulations. See § 401.45 of this chapter.

#### **§ 402.25 Who can file a FOIA request?**

Any member of the public may submit a FOIA request to SSA. Under the FOIA, "member of the public" includes requests from individuals, corporations, State and local agencies, as well as foreign entities. Requests from Federal agencies and Federal or State courts are not covered by the FOIA.

#### **§ 402.30 Requirements of a FOIA request.**

(a) To be considered a FOIA request under this part, the following must occur:

(1) The request must be written (either by hand or electronically);

(2) The request must be submitted in accordance with § 402.35;

(3) The requester must provide the following required contact information: requester's name, U.S. or foreign postal address, description of records sought, and fee willing to pay. While not required, we encourage requesters to provide us with their email address and phone number; and

(4) The request must clearly state and reasonably describe what SSA records are being requested. Broad, sweeping requests and vague requests are not reasonably described. The requester must describe the records sought in sufficient detail to enable OPD to locate the records with a reasonable amount of effort. When known, requests should identify the records sought by providing the name/title of the record, applicable date range, subject matter, offices or employees involved, and record type. If the request is for electronic communications, such as email records, the request should identify the names, position titles, or other identifying information about the agency employees involved, as well as the applicable timeframe. Absent sufficient details, the agency may be unable to search for or locate the records sought. The greater the date range, the longer it may take to process the request and the greater amount of fees that may be charged.

(b) Requests that do not meet the required criteria above are not considered proper FOIA requests.

#### **§ 402.35 Where to submit a FOIA request.**

(a) *Submission of requests.* Except as specified in paragraph (b) of this section, requesters must submit FOIA requests in writing to OPD through the following options:

(1) *Online FOIA portal:* link available from the agency's [www.ssa.gov/foia](http://www.ssa.gov/foia) website.

(2) *Email:* [FOIA.Public.Liaison@ssa.gov](mailto:FOIA.Public.Liaison@ssa.gov).

(3) *Mail:* SSA Office of Privacy and Disclosure, ATTN: Freedom of Information Officer, 6401 Security Boulevard, Baltimore, MD 21235.

(4) *Fax:* 410-966-0869.

(b) *Requests for copies of Deceased Individual's Application for a Social Security Card (SS-5) or Numident record.* Requesters may use the Form SSA-711, *Request for a Deceased Individual's Social Security Record*, to request a copy of a deceased individual's original SS-5 or Numident record. When the Form SSA-711 is used, it may be submitted to the office listed on the form or as directed in paragraph (a) of this section.

#### **§ 402.40 Requests for deceased individual's records.**

(a) The agency will disclose the records concerning a deceased

individual when we have acceptable proof of death unless Federal law or regulations prohibits the disclosure.

(b) Proof of death includes:

(1) A copy of a public record of death of the number holder;

(2) A statement of death by the funeral home director;

(3) A statement of death by the attending physician or the superintendent, physician, or intern of the institution where the person died;

(4) A copy of the coroner's report of death or the verdict of the coroner's jury;

(5) An obituary that we determine has sufficient identifying information; or

(6) Other certified record of death that we determine within our discretion is acceptable.

(c) If upon review of the provided proof of death, we cannot determine that the individual is deceased or we have questions about the authenticity of the proof, then the proof is not acceptable. When we do not have acceptable proof of death, we will treat the request in accordance with § 402.20(b), requests for information about a living person.

#### **§ 402.45 Requests not processed under the FOIA.**

(a) We will not process a request under the FOIA and the regulations in this part to the extent it asks for records that are currently publicly available, either from SSA or from another part of the Federal Government. See § 402.155.

(b) We will not process a request under the FOIA and the regulations in this part if the records sought are distributed by SSA as part of its regular program activity, for example, public information leaflets distributed by SSA. See §§ 402.155 through 402.165.

(c) We will not handle a process under the FOIA and the regulations in this part if the records sought are earnings records covered by § 422.125 of this chapter.

(d) We will not process a request under the FOIA that does not meet the requirements of a FOIA request as defined in § 402.30. We will send written correspondence to the requester:

(1) Providing instructions for how to submit a proper FOIA request; or

(2) Asking for additional information to make the request a proper FOIA request.

#### **§ 402.50 FOIA Officer's authority.**

(a) *Release determination.* Only the Deputy Executive Director for OPD or their designee is authorized to make determinations about:

(1) Release or withholding of records;

(2) Expedited processing;

(3) Charging or waiver of fees; and  
 (4) Other matters relating to processing a request for records under this part.

(b) *Determination provided in writing.* The FOIA Officer's determination is provided in writing to the requester via emailed communication or, in the absence of the requester's email address, via U.S. postal mail. If the requester disagrees with the FOIA Officer's determination in response to items identified in paragraph (a) of this section, the requester may appeal the determination to the Executive Director for OPD, as described in § 402.105.

#### § 402.55 Referrals and consultations.

(a) *Referral of FOIA request to an outside agency.* (1) If a request is for records that were created by, or provided to us by, another Federal agency that is subject to the FOIA, and if that agency asserts control over the records, we may refer the records and the request to that agency. We may likewise refer requests for classified records to the agency that classified them. In these cases, we will ask the other agency to process and respond to the request to the extent it concerns records under that agency's regulation. We will notify the requester in writing when we refer their request to another agency.

(2) If a request is for records that were created by, or provided to us by, another agency that is not subject to the FOIA, we may consult with that agency, as described in paragraph (c) of this section.

(b) *Referral of requester to another agency.* If a request is for records that are not SSA records for purposes of the FOIA, and we believe the records may be maintained by another agency, we will advise the requester to submit their request to that other agency. We will provide the requester with the other agency's name in our response letter. Our recommendation that the requester submit their request to the other agency is not a guarantee the other agency will have or disclose the records requested.

(c) *Consultation with another agency or entity.* If a request is for records that contain information of interest to another agency or entity, we may consult with the other agency or entity prior to issuing our release determination to the requester.

#### § 402.60 How does SSA process FOIA requests?

(a) *Acknowledgement.* (1) We make good faith efforts to acknowledge all FOIA requests in writing within 10 business days after OPD's receipt of the request. The acknowledgement email or

letter restates the FOIA request and provides the requester with the request's tracking number.

(2) If we require clarification to process the FOIA request, we will contact the requester either via email, U.S. postal mail, or phone call. We attempt to contact requesters twice. If we do not receive a response to our clarification attempts within 30 calendar days from the date of our first contact to the requester, we will close the FOIA request due to insufficient information.

(b) *Perfected requests.* FOIA requests are considered "perfected," *i.e.*, the 20-business day statutory time begins, when the request meets the requirements of the proper FOIA request listed in § 402.30. There may be times that we require more information from the requester after perfecting a request. The 20 business day period may be extended in unusual circumstances by written notice to the requester. See paragraph (e) of this section.

(c) *Expedited processing.* Unless granted expedited processing, we process FOIA requests according to a first-in, first-out basis. See § 402.65 for information on expedited processing.

(d) *Multi-tracking procedures.* FOIA requests are categorized as either simple or complex, depending on the nature of the request and the estimated processing time:

(1) *Simple.* For most non-expedited requests, we make a determination about release of the record(s) requested within 20 business days.

(2) *Complex.* We will place into a complex processing queue any request that cannot be completed within 20 business days due to unusual circumstances. We make good faith efforts to notify requesters in writing if it is necessary for us to take additional time to process a request and of the requester's right to seek dispute resolution services with the Office of Government Information Services. See § 402.100.

(e) *Unusual circumstances.* (1) Unusual circumstances exist when there is a need to:

(i) Search for and collect records from SSA components or field locations that are separate from OPD;

(ii) Search for, collect, and review a voluminous number of records that are part of a single request; and/or

(iii) Consult with two or more SSA components or another agency having substantial interest in the request before releasing the records.

(2) Within the unusual circumstances letter to the requester, we will provide an estimated date that we will contact the requester with the applicable fee

notice and/or further correspondence. We will also advise the requester that they may modify or narrow the scope of their request.

(f) *Aggregating requests.* We may aggregate requests in cases where it reasonably appears that multiple requests, submitted either by a requester or by a group of requesters acting in concert, constitute a single request, involving clearly related matters, which would otherwise involve unusual circumstances. In the event requests are aggregated, they will be treated as one request for estimating response time and calculating fees.

(g) *Fee notice.* FOIA requesters are issued a fee notice that informs them of the estimated search and review time associated with processing their FOIA request. For more information on fees, see §§ 402.70 through 402.80.

(h) *Tolling.* (1) We may stop or toll the 20 business days in two circumstances:

(i) We may stop the clock once if we require additional information regarding the specifics of the request; and

(ii) We may stop the clock as many times as needed regarding fee assessments.

(2) The processing time will resume upon our receipt of the requester's response. There may be instances when we require multiple clarifications on a FOIA request. After the first request for clarification, any additional clarifications are performed without tolling the clock. Should the requester not respond to any correspondence wherein we request clarification, or should the correspondence be returned as undeliverable, we reserve the right to administratively close the FOIA request if we do not receive a response within 10 business days of the date of our correspondence requesting clarification.

(i) *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 except when such efforts would significantly interfere with the operation of our automated information system(s). The Federal Government follows National Archives and Records Administration rules on record retention. Records are retained or destroyed under the guidelines of the Federal Records Act.

(j) *Unproductive searches.* We will search for records to satisfy a request using methods that can be reasonably expected to produce the requested records. Nevertheless, we may not be able to always find the records requested using the information provided by the requester, or they may not exist. If we advise that we have been

unable to find the records despite a diligent search, the requester may appeal the no records determination to the Executive Director for OPD, as described in § 402.105.

(k) *Furnishing records.* We will furnish copies only of records in whole or in-part, unless we reasonably foresee that disclosure would harm an interest protected by a FOIA exemption or if disclosure is prohibited by law. When information within a responsive record(s) is exempt from disclosure, the information is redacted and the applicable FOIA exemption(s) are noted within the redacted cell. We will make reasonable efforts to provide the records in the form or format requested if the record is readily reproducible in that form or format. We may provide individual records as we process them on a rolling basis, or we may release all responsive records once the request is completed. See § 402.95 for more information on SSA's release of records.

(l) *Burdensome requests.* The FOIA requires an agency to provide the record in any form or format requested by the person if the record is readily reproducible by the agency in that form or format. We will not search or produce records in response to a FOIA request that we determine would be unduly burdensome to process. FOIA requests are determined to be unreasonably burdensome when processing the FOIA request would significantly interfere with the ongoing operation of the agency's programs.

#### § 402.65 Expedited processing.

(a) Expedited processing must be requested at the same time as the FOIA request. We provide expedited processing when the requester can demonstrate a "compelling need" for the requested information, such as:

- (1) When there is an imminent threat to the life or safety of a person;
- (2) When the request is from the media, or others primarily engaged in disseminating information, and shows an immediate urgency to inform the public about actual or alleged government activities; or
- (3) When the requester can show, in detail and 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.

(b) Only the FOIA Officer may make the decision to grant or deny expedited processing. Requests that do not meet the "compelling need" criteria, will be processed normally. If we do not grant the request for expedited processing, the

requester may appeal the denial to the Executive Director for OPD. In the appeal letter, the requester should explain why they believe their request demonstrates a "compelling need," such as describing how the request meets the criteria in paragraphs (a)(1) through (3) of this section. The process described in § 402.105 will also apply to these appeals.

#### § 402.70 Fees associated with processing FOIA requests.

(a) *Charging authorities*—(1) *Section 1106(c).* Section 1106(c) of the Social Security Act (42 U.S.C. 1306(c)) allows the agency to charge for FOIA requests that are not directly related to SSA's administration of the Social Security Act. See § 402.80 for information on the agency's authorization under section 1106(c) to charge requesters. Requesters may request a fee waiver, as described in § 402.85.

(2) *FOIA fee categories.* The FOIA establishes three fee categories of requesters, *i.e.*, commercial use, non-commercial scientific or educational institutions and representatives of the news media; and other requesters. The category of the requester determines the fees that may be charged; see § 402.75 for the FOIA fee schedule. Requesters may request a fee waiver, as described in § 402.85.

(b) *Hourly rate when charging under section 1106(c) and the FOIA fee categories.* (1) When we search for and review records, we charge an hourly rate, based in 15-minute increments, depending on the grade(s) of the employee(s) and/or contractors performing the search and review. The hourly rate is the same when charging under the FOIA fee provisions or section 1106(c) of the Social Security Act. SSA uses the current General Schedule (GS) salary table for the locality pay area of Washington-Baltimore-Arlington, DC-MD-VA-WV-PA. We use the following criteria to compute our hourly rates for search or review:

- (i) When performed by employees at grade GS-1 through GS-8, SSA will charge an hourly rate based on the salary of a GS-5, step 7, employee;
- (ii) When performed by a GS-9 through GS-14, SSA will charge an hourly rate based on the salary of a GS-12, step 4, employee; and
- (iii) When performed by a GS-15 or above, SSA will charge an hourly rate based on the salary of a GS-15, step 7, employee.

(2) When work is performed by a contractor, we will charge an hourly rate based on the GS equivalent of the contractor's hourly pay rate. We

compute the hourly rate by taking the current hourly rate for the specified grade and adding 16 percent of that rate to cover benefits and rounding to the nearest whole dollar. These rates are adjusted as Federal salaries change. Federal salary rates are available from the Office of Personnel Management. When a search and review involves employees at more than one of these GS levels, we will charge the rate appropriate for each. We may charge a fee for search time even if we are unable to locate any responsive records or the records are exempt from disclosure.

#### § 402.75 FOIA fee schedule.

(a) *Fee schedule category.* Requesters whom SSA charges under the FOIA fee schedule are subject to the following fees dependent upon their fee category:

(1) *Commercial.* Commercial use requesters are charged for search, review, and duplication.

(2) *Non-commercial educational or scientific institutions and representative of the news media.* Requesters that fit this category are charged for the duplication of documents. We will not charge requesters the copying costs for the first 100 pages of duplication.

(3) *Other.* If the FOIA request does not fall within a category described in paragraph (a)(1) or (2) of this section, we will charge for search and duplication; however, we will not charge for the first two hours of search time or for the duplication costs of the first 100 pages.

(b) *Certification.* If a requester asks for certification of the record(s) responsive to their FOIA request and OPD agrees to provide it, we will notify the requester of the appropriate certification fee via written correspondence.

(c) *Record(s) production and duplication*—(1) *Electronic records.* We will charge the actual costs for producing and duplicating the record and the time spent by the employees or contractors in production, duplication, or otherwise processing the FOIA request, at the rates given in § 402.70(c).

(2) *Photocopying standard size pages.* For noncommercial requesters, we will charge \$0.10 per page after the first 100 pages, which are free. The FOIA Officer may charge lower fees for particular documents where:

- (i) The document has already been printed in large numbers;
- (ii) The program office determines that using existing stock to answer this request, and any other anticipated FOIA requests, will not interfere with program requirements; and
- (iii) The FOIA Officer determines that the lower fee is adequate to recover the prorated share of the original printing costs.



(3) *Photocopying odd-size documents.* For photocopying documents, such as punch cards or blueprints, or duplicating other records, such as tapes, we will charge the actual costs of operating the machine, plus the actual cost of the materials used, plus charges for the time spent by the operator, at the rates given in § 402.70(c).

(d) *Cost of service less than cost of issuing a bill.* We will not charge a fee when the cost of the service is less than the cost of sending the requester 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.

(e) *Fee waiver.* We may waive or reduce the fee if we find that waiver is in the public interest. See § 402.85 for fee waiver information.

#### **§ 402.80 Charging under section 1106(c) of the Social Security Act.**

Section 1106(c) of the Social Security Act permits the agency to charge the full cost to process requests for information for purposes not directly related to the administration of program(s) under the Social Security Act. This may be done notwithstanding the fee provisions in FOIA, the Privacy Act, or any other provision of law. In responding to FOIA requests for non-program purposes, we will charge the full cost (both direct and indirect costs) of our services, regardless of the requester's fee categorization, unless the cost of the service is less than the cost of issuing a bill as stated in paragraph (b) of this section.

(a) *Full costs.* The agency may charge full costs for processing records or information requests, including but not limited to:

(1) *Search.* We may charge for search time even if we are unable to locate any responsive records or the records are exempt from disclosure. We will notify the requester in writing if the records estimated as responsive are determined unreasonably burdensome for the agency to process and/or the search would cause significant interference with the operation of SSA's automated information systems.

(2) *Review.* Review includes the reviews performed at any level (staff through executive), including but not limited to review by multiple people and offices.

(3) *Production and duplication of record(s).* We may charge the full cost of the systems' processing (e.g., computer search time, computer processing database retrieval), materials used to produce and duplicate the requested record(s), and time spent by agency employee(s) and/or contractor(s) in

production, duplication, or otherwise processing the FOIA request.

(4) *Certification.* We will charge the full costs for certification.

(5) *Employee's time.* The full cost of an employee's time includes fringe benefits and overhead costs, such as rent and utilities.

(6) *Forwarding/delivering materials.* If special arrangements for forwarding material are requested, we will charge the requester the full cost of this service (e.g., if express mail or a commercial delivery service is requested). If no special forwarding arrangements are requested, we will charge the requester the full cost of the service, including the U.S. Postal Service cost.

(7) *Performing other special services.* If we agree to provide any special services requested, we will charge the full cost of the time of the employee(s) or contractor(s) who perform the service, plus the full cost of any systems processing time and materials that the employee or contractor uses.

(b) *Cost of service less than cost of issuing a bill.* We will not charge a fee when the cost of the service is less than the cost of sending the requester 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.

(c) *Standard administrative fees for non-program information.* The information in this part does not revoke, modify, or supersede the schedule of standard administrative fees the agency charges for specified non-program information requests.

(d) *Non-program purpose.* Non-program purposes constitute any purpose that is not program related.

(1) We consider a request to be program related if:

(i) The information must be disclosed under the Social Security Act (Act); or

(ii) The Information will be used for a purpose which is directly related to the administration of a program under the Act for which SSA has responsibility. In deciding whether this paragraph (d)(1)(ii) applies, the major criteria SSA considers is whether the information is:

(A) Needed to pursue a benefit under a program that SSA administers under the Act.

(B) Needed solely to verify the accuracy of information obtained in connection with a program that SSA administers under the Act.

(C) Needed in connection with an activity under SSA's purview which is authorized under the Act.

(D) Needed by an employer to carry out taxpaying responsibilities under the

Federal Insurance Contributions Act or section 218 of the Act.

(2) We will consider each request on a case-by-case basis when the criteria in this paragraph (d) are not met but the requester claims a request is for a program-related purpose for another reason. We will not conclude a request is program-related solely because the records sought are about programs administered by SSA or are claimed to be of public interest.

(e) *Disagreement with program or non-program determination.* Only the FOIA Officer has the authority to make the program/non-program decision. If a requester disagrees with the FOIA Officer's non-program determination, they may appeal the decision to the Executive Director for OPD. In the appeal letter, the requester should explain why they believe the request meets the requirements in paragraph (c) of this section. The process described in § 402.105 will also apply to these appeals.

#### **§ 402.85 Waiver of fees in the public interest.**

A requester may request waiver or reduction of fees, whether charged under § 402.75 or § 402.80, if the release of the requested records is in the public interest. We will waive or reduce the fees we would otherwise charge if disclosure of the requested information:

(a) Is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government; and

(b) Is not primarily in the commercial interest of the requester.

(1) *Procedure for requesting a waiver or reduction.* A requester must make the request for a fee waiver or reduction at the same time they make their request for records. The requester should explain with reasonable specificity why they believe a waiver or reduction is proper under the analysis in paragraphs (b)(2) and (3) of this section. Only the FOIA Officer may make the decision whether to waive, or reduce, the fees. If we do not completely grant the request for a waiver or reduction, the requester may appeal the denial to the Executive Director for OPD. In the appeal letter, the requester should explain why they believe the request meets the requirements in paragraphs (b)(2) and (3) of this section. The process prescribed in § 402.105 will also apply to these appeals.

(2) *Public interest.* We consider the factors below when analyzing whether disclosure is in the public interest:

(i) How the records pertain to the Federal Government's operations or activities;

(ii) Whether disclosure would reveal any meaningful information about Government operations or activities not already known to the public; and

(iii) Whether the contribution to public understanding would be significant.

(3) *Not primarily in requester's commercial interest.* If the disclosure is determined to be in the public interest as described in paragraph (b)(2) of this section, we will then determine whether it also furthers the requester's commercial interest and, if so, whether this effect outweighs the advancement of that public interest. We consider the following factors when analyzing whether disclosure is not primarily in the requester's commercial interest:

(i) Would the disclosure further a commercial interest of the requester, or of someone on whose behalf the requester is acting?

(ii) If disclosure would further a commercial interest of the requester, would that effect outweigh the advancement of the public interest defined in paragraph (b)(2) of this section? Which effect is primary?

(4) *Burden on SSA to produce the record(s).* If the disclosure meets the requirements in paragraphs (b)(2) and (3) of this section, we reserve the right to charge a fee if special services are needed to provide the records.

(5) *Deciding between waiver and reduction.* If the disclosure meets the requirements in paragraphs (b)(2) and (3) of this section, we will normally waive fees. However, in some cases we may decide only to reduce the fees. For example, we may do this when disclosure of some but not all of the requested records meet the fee waiver criteria.

#### **§ 402.90 Notification of fees and prepayment requirements.**

Requesters must agree to pay the fee, whether charged under § 402.75 or § 402.80, before we will begin the search for record(s).

(a) *Cost estimate.* OPD will issue a fee notice to the requester for the processing of their request for records that includes an estimated fee based on the time we estimate it will take to process the record(s) requested. We issue fee notices via email or, when the requester does not provide an email address, via U.S. postal mail.

(b) *Advanced payment information required.* The requester must agree to pay the estimated fee provided within the fee notice and provide the agency with payment information within 30 calendar days from the date of our fee notice. Payment information is required before OPD will begin the search for the

requested record(s). Unless otherwise specified in the schedule of standard administrative fees the agency charges for specified non-program information requests, OPD will process payment when the request is closed, *i.e.*, when the FOIA Officer issues a decision on records release. If the payment information provided by the requester expires during the course of OPD's processing of the FOIA request, the requester must provide updated payment information. If updated payment information is not provided within 30 calendar days of our written request for the payment information, we reserve the right to administratively close the request.

(c) *Changes in estimated fee.* (1) If the time spent to search for records is more or less than the time estimated in the fee notice, OPD will issue the requester a revised fee notice after the responsive component(s) performs the records search and retrieval.

(2) If the record(s) provided to OPD for review are more or less than those from which OPD estimated search and review time, OPD will issue the requester a revised fee notice after the responsive component(s) perform the records search and retrieval.

(3) OPD will return the payment information to the requester when OPD issues the revised fee notice.

(4) The requester must agree to pay the revised fee before we will continue processing the request. If the requester disagrees with the revised fee, the requester may appeal to the Executive Director for OPD. Appeals will be processed as described in § 402.105.

(d) *Prompt payment.* We will administratively close the FOIA request if we do not receive a response or appeal within 30 calendar days from the date of the fee notice. "Response" includes:

(1) Requesting to narrow the scope of the request; or

(2) Providing payment in response to the fee notice. Appeals will be processed as described in § 402.105.

(e) *Methods of payment.* We accept payment by check or money order made payable to the Social Security Administration (SSA), as well as by credit card (MasterCard, Visa, Discover, American Express, or Diner's Club).

#### **§ 402.95 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 the requester, as well. However, we will not release it to a requester if a statute forbids this disclosure; an exemption applies that

was not previously applicable; or if the previous release was unauthorized.

(b) *Withholding records.* Section 552(b) of the FOIA explains the nine exemptions under which we may withhold records requested under the FOIA. Within §§ 402.115 through 402.150, we describe the FOIA exemptions and explain how we apply them to disclosure determinations. In some cases, more than one exemption may apply to the same document. Section 552(b) of the FOIA, while providing nine exemptions from mandatory disclosure, does not itself provide any assurance of confidentiality by the agency.

(c) *Reading room.* If the record(s) requested are already publicly available, either in our electronic reading room or elsewhere online, such as at [www.ssa.gov](http://www.ssa.gov), we will direct the requester to the publicly available record(s).

(d) *Poor copy.* If we cannot make a legible copy of a record to be released, we do not attempt to reconstruct it. Instead, we furnish the best copy possible and note its poor quality in our reply.

#### **§ 402.100 FOIA Public Liaison and the Office of Government Information Services.**

We notify requesters of their right to seek dispute resolution from the FOIA Public Liaison or the Office of Government Information Services (OGIS) within our fee notices, responses to determinations identified in § 402.50(a), and responses to appeals.

(a) *FOIA Public Liaison.* If requesters have questions about the response to their request or wish to seek dispute resolutions services within SSA, the requester may contact the FOIA Public Liaison via email to [FOIA.Public.Liaison@ssa.gov](mailto:FOIA.Public.Liaison@ssa.gov).

(b) *OGIS.* OGIS is an entity outside of SSA that offers mediation services to resolve disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. OGIS' contact information will be provided in any decision letter issued by the FOIA Officer and Executive Director for OPD.

#### **§ 402.105 Appeals of the FOIA Officer's determination.**

(a) *Appeal requirements.* If a requester disagrees with the FOIA Officer's determination in response to items specified in § 402.50(a), the requester may appeal the decision. The appeal must meet the following requirements:

- (1) Be submitted in writing via the avenues identified in § 402.35(a);
- (2) Be received within 90 days from the date of the determination the requester is appealing; and

(3) Explain what the requester is appealing and include additional information to support the appeal.

(b) *Acknowledgement.* We make a good faith effort to acknowledge all appeals in writing within 10 business days after OPD's receipt of the appeal. The acknowledgement is provided via email or, when the requester does not provide an email address, via U.S. postal mail. The acknowledgement email or letter restates the FOIA appeal and provides the requester with the appeal's tracking number.

(c) *Processing timeframe.* FOIA appeals are categorized as either simple or complex, based on the designation of the initial request.

(1) *Simple.* Generally, we make a determination about release of the requested record(s) within 20 business days.

(2) *Complex.* Appeals of complex requests cannot be completed within 20 business days due to unusual circumstances. During OPD's processing of the appeal, OPD will need to consult with appropriate SSA component(s), including legal counsel; therefore, we generally require more than 20 business days to issue a final decision on the appeal.

(d) *Final decision.* The Chief FOIA Officer delegated to the Executive Director for OPD the authority to make decisions on appeals of the FOIA Officer's determinations.

(1) The final decision is provided in writing to the requester via email or, in the absence of the requester's email address, via U.S. postal mail.

(2) The final decision letter will explain the basis of the decision (for example, the reasons why an exemption applies).

(e) *Disagreement with final decision.* If a requester disagrees with the final decision issued by the Executive Director for OPD, they may seek assistance from OGIS, as described in § 402.100. Requesters may also ask a U.S. District Court to review our final decision. See 5 U.S.C. 552(a)(4)(B).

#### **§ 402.110 U.S. District Court action.**

If the Executive Director for OPD or the Executive Director for OPD's designee, upon review, affirms the denial of the FOIA Officer's determination of items specified in § 402.50(a), requesters may ask a U.S. District Court to review that denial. See 5 U.S.C. 552(a)(4)(B).

#### **§ 402.115 The FOIA Exemption 1: National defense and foreign policy.**

We are not required to release records that are specifically authorized under criteria established by an Executive

order to be kept secret in the interest of national defense or foreign policy and are in fact properly classified pursuant to such Executive order.

#### **§ 402.120 The FOIA Exemption 2: Internal personnel rules and practices.**

We are not required to release records that are related solely to the internal personnel rules and practices of an agency. For example, we may withhold personnel rules and practices dealing with employee relations or human resources.

#### **§ 402.125 The FOIA Exemption 3: Records exempted by other statutes.**

(a) *Required record release.* We are not required to release records if another statute specifically allows or requires us to withhold them. We may use another statute to justify withholding only if it prohibits disclosure or if it sets forth criteria to guide our decision on releasing or identifies particular types of material to be withheld.

(b) *Examples.* (1) We often use this exemption to withhold information regarding a worker's earnings which is tax return information under section 6103 of the Internal Revenue Code.

(2) We also use this exemption to withhold death information about decedents:

(i) When the date of death is within three calendar years from the current date, the requested information about the decedent is protected under section 203 of the Bipartisan Budget Act of 2013 (Pub. L. 113-67).

(ii) When the agency's source of death is the state, the requested information is protected under section 205(r) of the Social Security Act.

#### **§ 402.130 The FOIA Exemption 4: Trade secrets and confidential commercial or financial information.**

SSA will allow submitters to designate information as trade secrets and confidential commercial or financial information at the time of submission or within a reasonable time thereafter. Submitters must use good faith efforts to designate, by appropriate markings, any portion of its submission that it considers to be protected from disclosure under the FOIA exemptions. These designations expire ten years after the due date of the submission unless the submitter requests a longer designation period.

(a) *Steps of submitters notice*—(1) *The submitter's notice.* When trade secrets or confidential commercial or financial information is requested under the FOIA, SSA will provide written submitter's notice if we have substantial reason to believe that information in the records could reasonably be considered

exempt under the FOIA Exemption 4. The submitter's notice will describe and include a copy of the trade secret or commercial or financial information requested. In cases involving many submitters, SSA may publish a submitter's notice to inform the submitters of the proposed disclosure instead of sending individual notifications. The submitter's notice requirements of this section do not apply if:

(i) SSA determines the information is fully exempt under the FOIA, and therefore will not be disclosed;

(ii) The information has been previously published or made generally available; or

(iii) Disclosure of the information is required by statute other than the FOIA.

(2) *Submitter's opportunity to object to disclosure.* (i) The submitter must respond to the notice within five business days of SSA issuing the submitter's notice or the information may be released in accordance with these regulations and the FOIA. A submitter who fails to respond within five business days will be considered to have no objection to the disclosure of the information. SSA is not required to consider any information received after the date of any disclosure decision. Any information provided by a submitter under this subpart may itself be subject to disclosure under the FOIA.

(ii) If a submitter objects to disclosure, the submitter should provide SSA with a detailed written statement that specifies all grounds for withholding the particular information under any exemption of the FOIA. In order to rely on Exemption 4 as basis for non-disclosure, the submitter must explain why the information constitutes a trade secret or commercial or financial information that is confidential.

(iii) SSA will consider a submitter's timely made objections and specific grounds for nondisclosure in deciding whether to disclose the requested information.

(3) *Notice of intent to disclose.* Whenever SSA decides to disclose information over the objection of a submitter, SSA provides the following to the submitter:

(i) A Release Over Objection letter explaining the reasons why each of the submitter's disclosure objections did not meet the requirements for withholding under the FOIA.

(ii) A copy of the information as SSA intends to release it.

(iii) A statement of our intent to disclose the information five business days from the date on the Release Over Objection letter unless the submitter

files an action in a U.S. District Court to prevent the release.

(b) *Notice of FOIA lawsuit.* When a submitter's notice is issued for a request that is the subject of a lawsuit, SSA notifies the submitter of the lawsuit within the notice.

(c) *Requester notification.* To the extent SSA expects substantial delays in the processing of FOIA requests due to the agency's communications with the submitter, we will notify the requester in writing via email, or when the requester's email is not provided, via U.S. postal mail.

**§ 402.135 The FOIA Exemption 5: Internal documents.**

This exemption covers inter-agency or intra-agency government documents that fall within an evidentiary privilege recognized in civil discovery. Such internal government communications include an agency's communications with an outside consultant or other outside person, with a court, or with Congress, when those communications are for a purpose similar to the purpose of privileged intra-agency communications. Some of the most commonly applicable privileges are described in the following paragraphs:

(a) *Deliberative process privilege.* This privilege protects the decision-making processes of government agencies. Information is protected under this privilege if it is predecisional and deliberative. The purpose of the privilege is to prevent injury to the quality of the agency decision-making process by encouraging open and frank internal discussions, by avoiding premature disclosure of decisions not yet adopted, and by avoiding the public confusion that might result from disclosing reasons that were not in fact the ultimate grounds for an agency's decision. Purely factual material in a deliberative document is within this privilege only if it is inextricably intertwined with the deliberative portions so that it cannot reasonably be segregated, if it would reveal the nature of the deliberative portions, or if its disclosure would in some other way make possible an intrusion into the decision-making process. We will release purely factual material in a deliberative document unless that material is otherwise exempt. The privilege continues to protect predecisional documents even after a decision is made; however, we will release predecisional deliberative communications that were created 25 years or more before the date on which the records are requested.

(b) *Attorney work product privilege.* This privilege protects records prepared

by or for an attorney in anticipation of or for litigation. It includes documents prepared for purposes of administrative and court proceedings. This privilege extends to information directly prepared by an attorney, as well as materials prepared by non-attorneys working for an attorney.

(c) *Attorney-client communication privilege.* This privilege protects confidential communications between an attorney and the attorney's client where legal advice is sought or provided.

**§ 402.140 The FOIA Exemption 6: Clearly unwarranted invasion of personal privacy.**

We may withhold records about individuals if disclosure would constitute a clearly unwarranted invasion of their personal privacy.

(a) *Balancing test.* When we decide whether to release records 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. When we determine 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.

(b) *Agency employees.* To protect the safety of agency employees, we will not disclose information when the information sought is contact information and/or duty stations of one or more Federal employees if the disclosure would place employee(s) at risk of injury or other harm.

(c) *Examples.* We generally withhold the personally identifiable information of individuals if we do not have the consent (consistent with § 401.100 of this chapter) of the number holder, including but not limited to the number holder's home address, age, Social Security number, claims file, and other personal information. If the information requested concerns agency employees, we will determine disclosure on a case-by-case basis. For example, our redaction of management officials' information may be treated differently depending on how the balancing test applies in a given circumstance.

**§ 402.145 The FOIA Exemption 7: Law enforcement.**

We are not required to disclose information or records that the government has compiled for law enforcement purposes. The records may apply to actual or potential violations of either criminal or civil laws or regulations. We can withhold these records only to the extent that releasing

them would cause harm in at least one of the following situations:

(a) *Enforcement proceedings.* Pursuant to the FOIA Exemption 7(A) (5 U.S.C. 552(b)(7)(a)), we may withhold information whose release could reasonably be expected to interfere with prospective or ongoing law enforcement proceedings. Investigations of fraud and mismanagement, employee misconduct, and civil rights violations may fall into this category. In certain cases—such as when a fraud investigation is likely—we may refuse to confirm or deny the existence of records that relate to the violations in order not to disclose that an investigation is in progress, or may be conducted.

(b) *Fair trial or impartial adjudication.* Under the FOIA Exemption 7(B) (5 U.S.C. 552(b)(7)(b)), we may withhold records whose release would deprive a person of a fair trial or an impartial adjudication because of prejudicial publicity.

(c) *Personal privacy.* Under the FOIA Exemption 7(C) (5 U.S.C. 552(b)(7)(c)), we may withhold the personally identifiable information of individuals when the disclosure could reasonably be expected to constitute an unwarranted invasion of personal privacy. When a name surfaces in an investigation, that person is likely to be vulnerable to innuendo, rumor, harassment, and retaliation.

(d) *Confidential sources and information.* Pursuant to the FOIA Exemption 7(D) (5 U.S.C. 552(b)(7)(d)), we may withhold the identity of confidential sources, as well as the records obtained from the confidential sources in criminal investigations or by an agency conducting a lawful national security investigation. A confidential source may be an individual; a State, local, or foreign government agency; or any private organization. The exemption applies whether the source provides information under an express promise of confidentiality or under circumstances from which such an assurance could be reasonably inferred; however, inferred confidentiality is determined in a case-by-case analysis. Also protected from mandatory disclosure is any information which, if disclosed, could reasonably be expected to jeopardize the system of confidentiality that assures a flow of information from sources to investigatory agencies.

(e) *Techniques and procedures.* Under the FOIA Exemption 7(E) (5 U.S.C. 552(b)(7)(e)), we may withhold records reflecting special techniques or procedures of investigation or prosecution, not otherwise generally known to the public. In some cases, it

is not possible to describe even in general terms those techniques without disclosing the very material to be withheld. We may also withhold records whose release would disclose guidelines for law enforcement investigations or prosecutions if this disclosure could reasonably be expected to create a risk that someone could circumvent requirements of law or of regulation.

(f) *Life and physical safety.* Under the FOIA Exemption 7(F) (5 U.S.C. 552(b)(7)(f)), we may withhold records whose disclosure could reasonably be expected to endanger the life or physical safety of any individual. This protection extends to threats and harassment, as well as to physical violence.

**§ 402.150 The FOIA Exemptions 8 and 9: Records on financial institutions; records on wells.**

Exemption 8 permits us to withhold records about regulation or supervision of financial institutions. Exemption 9 permits the withholding of geological and geophysical information and data, including maps, concerning wells.

**§ 402.155 Records available for public inspection.**

(a) Under the FOIA, SSA is required to make available for public inspection in an electronic format:

- (1) Final opinions made in the adjudication of cases;
- (2) An agency's statements and interpretations of policy that have been adopted but are not published in the **Federal Register**;
- (3) Administrative staff manuals and instructions that affect the public; and
- (4) Copies of records, regardless of form or format, that an agency determines will likely become the subject of subsequent requests, as well as records that have been requested and released three or more times, unless said materials are published and copies are offered to sale.

(b) SSA will not use or cite instructional manuals issued to our employees, general statements of policy, and other materials which are used in processing claims as a precedent for an action against a person unless we have indexed the record and published it or made it available, or unless the person has timely notice of the record.

(c) Records that the FOIA requires SSA to make available for public inspection in an electronic format may be accessed through [www.ssa.gov](http://www.ssa.gov) free of charge. Such records include:

- (1) Compilation of Social Security Laws and Regulations;
- (2) SSA regulations under the retirement, survivors, disability, and

supplemental security income programs, *i.e.*, 20 CFR parts 401, 402, 404, 416, and 422;

- (3) Social Security Handbook;
- (4) Social Security Rulings and Acquiescence Rulings;
- (5) SSA's Public Programs Operations Manual System;
- (6) SSA's Organizational Structure;
- (7) State and Local Coverage Handbook for State Social Security Administrators; and
- (8) Hearings, Appeals, and Litigation Law Manual.

**§ 402.160 Where records are published.**

(a) *Methods of publication.* Materials we are required to publish pursuant to the provisions of 5 U.S.C. 552(a)(1) and (a)(2), we publish in one of the following ways:

- (1) By publication in the **Federal Register** of Social Security Administration regulations, and by their subsequent inclusion in the Code of Federal Regulations;
- (2) By publication in the **Federal Register** of appropriate general notices;
- (3) By other forms of publication, when incorporated by reference in the **Federal Register** with the approval of the Director of the Federal Register; and
- (4) By publication in the "Social Security Rulings" of indexes of precedential social security orders and opinions issued in the adjudication of claims, statements of policy and interpretations that have been adopted but have not been published in the **Federal Register**.

(b) *Publication of rulings.* Although not required pursuant to 5 U.S.C. 552(a)(1) and (a)(2), we publish the following rulings in the **Federal Register** and by other forms of publication:

- (1) We publish Social Security Rulings in the **Federal Register** under the authority of the Commissioner of Social Security. They are binding on all components of SSA. These rulings represent precedent final opinions and orders and statements of policy and interpretations that we have adopted.
- (2) We publish Social Security Acquiescence Rulings in the **Federal Register** under the authority of the Commissioner of Social Security. They are binding on all components of SSA, except with respect to claims subject to the relitigation procedures established in 20 CFR 404.985(c) and 416.1485(c). For a description of Social Security Acquiescence Rulings, see 20 CFR 404.985(b) and 416.1485(b).

**§ 402.165 Publications for sale through the Government Publishing Office.**

The public may purchase publications containing information pertaining to the

program, organization, functions, and procedures of SSA from the electronic U.S. Government Bookstore maintained by the Government Publishing Office. The publications for sale include but are not limited to:

- (a) Title 20, parts 400 through 499, of the Code of Federal Regulations;
- (b) **Federal Register** issues; and
- (c) Compilation of the Social Security Laws.

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**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 100**

[Docket Number USCG-2023-0429]

RIN 1625-AA08

**Special Local Regulation; Henderson Bay, Henderson Bay, NY**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard is proposing to establish a special local regulation for certain waters of Henderson Bay. This action is necessary to provide for the safety of life on these navigable waters near Henderson Bay, Henderson Bay, NY, during the swimming portion of a triathlon on July 8, 2023. This proposed rulemaking would prohibit persons and vessels from being in the regulated area unless authorized by the Captain of the Port Sector Buffalo or a designated representative. We invite your comments on this proposed rulemaking.

**DATES:** Comments and related material must be received by the Coast Guard on or before July 6, 2023.

**ADDRESSES:** You may submit comments identified by docket number USCG-2023-0429 using the Federal Decision-Making Portal at <https://www.regulations.gov>. See the "Public Participation and Request for Comments" portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** If you have questions about this proposed rulemaking, call or email MST2 Andrew Nevenner, Waterways Management Division, MSD Massena, U.S. Coast Guard; telephone 315-769-5483, email [SMB-MSDMassena-WaterwaysManagement@uscg.mil](mailto:SMB-MSDMassena-WaterwaysManagement@uscg.mil).