

## Food and Drug Administration, HHS

## §21.61

### §21.54 Amended or disputed records received from other agencies.

Whenever the Food and Drug Administration is notified that a record that it received from another agency was amended or is the subject of a statement of disagreement, the Food and Drug Administration shall:

(a) Discard the record, or clearly note the amendment or the fact of disagreement in its copy of the record, and

(b) Refer persons who subsequently request the record to the agency that provided it.

(c) If an accounting was made under §21.71 (d) and (e) of the disclosure of the record under §21.71(a), inform all previous recipients of the record about the amendment or provide to them the statement of disagreement and the agency statement, if any.

## Subpart F—Exemptions

### §21.60 Policy.

It is the policy of the Food and Drug Administration that record systems should be exempted from the Privacy Act only to the extent essential to the performance of law enforcement functions under the laws that are administered and enforced by the Food and Drug Administration or that govern the agency.

### §21.61 Exempt systems.

(a) Investigatory records compiled for law enforcement purposes, including criminal law enforcement purposes, in the Food and Drug Administration Privacy Act Record Systems listed in paragraph (b) of this section are exempt from the following provisions of the Privacy Act (5 U.S.C. 552a) and of this part:

(1) Such records are exempt from 5 U.S.C. 552a(c)(3) and §21.71(e)(4), requiring that an individual be provided with the accounting of disclosures of records about himself from a Privacy Act Record System.

(2) Except where access is required under 5 U.S.C. 552a(k)(2) and §21.65(a)(2), (such records are exempt from 5 U.S.C. 552a(d)(1) through (4) and (f) and §§21.40 through 21.54, requiring procedures for an individual to be given notification of and access to records

about himself in a Privacy Act Record System and to be allowed to challenge the accuracy, relevance, timeliness, and completeness of such records.

(3) Such records are exempt from 5 U.S.C. 552a(e)(4)(G) and (H) and §21.20(b)(1) requiring inclusion in the notice for the system of information about agency procedures for notification, access, and contest.

(4) Such records are exempt from 5 U.S.C. 552a(e)(3) requiring that individuals asked to supply information be provided a form outlining the authority for the request, the purposes for which the information will be used, the routine uses in the notice for the Privacy Act Record System, and the consequences to the individual of not providing the information, but only with respect to records compiled by the Food and Drug Administration in a criminal law enforcement investigation where the conduct of the investigation would be prejudiced by such procedures.

(b) Records in the following Food and Drug Administration Privacy Act Record Systems that concern individuals who are subject to Food and Drug Administration enforcement action and consist of investigatory records compiled for law enforcement purposes, including criminal law enforcement purposes, are exempt under 5 U.S.C. 552a(j)(2) and (k)(2) from the provisions enumerated in paragraph (a) of this section:

(1) Bio-research Monitoring Information System—HHS/FDA/09-10-0010.

(2) Regulated Industry Employee Enforcement Records—HHS/FDA/ACMO/09-10-002.

(3) Employee Conduct Investigative Records—HHS/FDA/ACMO/09-10-0013.

(c) The system described in paragraph (b)(3) of this section includes investigatory records compiled solely for the purpose of determining suitability, eligibility, or qualification for Federal civilian employment, military service, Federal contracts, and access to classified information. These records are exempt from disclosure under 5 U.S.C. 552a(k)(5) to the extent that the disclosure would reveal the identity of a source who furnished information to the Government under a promise of

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confidentiality, which must be an express promise if the information was furnished after September 27, 1975. Any individual who is refused access to a record that would reveal a confidential source shall be advised in a general way that the record includes information that would reveal a confidential source.

[42 FR 15626, Mar. 22, 1977, as amended at 46 FR 8459, Jan. 27, 1981; 50 FR 52278, Dec. 23, 1985]

### § 21.65 Access to records in exempt systems.

(a) Where a Privacy Act Record System is exempt and the requested records are unavailable under § 21.61, an individual may nevertheless make a request under § 21.40 for notification concerning whether any records about him exist and request access to such records where they are retrieved by his name or other personal identifier.

(b) An individual making a request under paragraph (a) of this section;

(1) May be given access to the records where available under part 20 of this chapter (the public information regulations) or the Commissioner may, in his discretion, entertain a request under any or all of the provisions of §§ 21.40 through 21.54; and

(2) Shall be given access upon request if the records requested are subject to 5 U.S.C. 552a(k)(2) and not to 5 U.S.C. 552a(j)(2) (i.e., because they consist of investigatory material compiled for law enforcement purposes other than criminal law enforcement purposes) and maintenance of the records resulted in denial to the individual of any right, benefit, or privilege to which he would otherwise be entitled by Federal law, or for which he would otherwise be eligible. An individual given access to a record under this paragraph (b)(2) is not entitled to seek amendment under subpart E of this part. The FDA may refuse to disclose a record that would reveal the identity of a source who furnished information to the Government under a promise of confidentiality, which must be an express promise if the information was furnished on or after September 27, 1975. Any individual refused access to a record that would reveal a confidential source shall be advised in a general

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way that the record contains information that would reveal a confidential source.

(c) The Commissioner shall not make available any record that is prohibited from public disclosure under § 20.82(b) of this chapter.

(d) Discretionary disclosure of a record pursuant to paragraph (b)(1) of this section shall not set a precedent for discretionary disclosure of a similar or related record and shall not obligate the Commissioner to exercise his discretion to disclose any other record in a system that is exempt under § 21.61.

### Subpart G—Disclosure of Records in Privacy Act Record Systems to Persons Other Than the Subject Individual

#### § 21.70 Disclosure and intra-agency use of records in Privacy Act Record Systems; no accounting required.

(a) A record about an individual which is contained in a Privacy Act Record System may be disclosed:

(1) To the individual who is the subject of the record, or his legal guardian under § 21.75;

(2) To a third party pursuant to a written request by, or within a written consent of, the individual to whom the record pertains, or his legal guardian under § 21.75;

(3) To any person:

(i) Where the names and other identifying information are first deleted, and under circumstances in which the recipient is unlikely to know the identity of the subject of the record;

(ii) Where disclosure is required by part 20 of this chapter (the public information regulations); or

(4) Within the Department of Health and Human Services to officers and employees who have a need for the record in the performance of their duties in connection with the laws administered and enforced by the Food and Drug Administration or that govern the agency. For purposes of this section, officers or employees of the Department shall include the following categories of individuals, who shall thereafter be subject to the same restrictions with respect to disclosure as any Food and