

## Food and Drug Administration, HHS

## § 20.3

- 20.112 Voluntary drug experience reports submitted by physicians and hospitals.
- 20.113 Voluntary product defect reports.
- 20.114 Data and information submitted pursuant to cooperative quality assurance agreements.
- 20.115 Product codes for manufacturing or sales dates.
- 20.116 Drug and device listing information.
- 20.117 New drug information.
- 20.118 Advisory committee records.
- 20.119 Lists of names and addresses.

AUTHORITY: 5 U.S.C. 552; 18 U.S.C. 1905; 19 U.S.C. 2531-2582; 21 U.S.C. 321-393, 1401-1403; 42 U.S.C. 241, 242, 242a, 242i, 242n, 243, 262, 263, 263b-263n, 264, 265, 300u-300u-5, 300aa-1.

SOURCE: 42 FR 15616, Mar. 22, 1977, unless otherwise noted.

### Subpart A—Official Testimony and Information

#### § 20.1 Testimony by Food and Drug Administration employees.

(a) No officer or employee of the Food and Drug Administration or of any other office or establishment in the Department of Health and Human Services, except as authorized by the Commissioner of Food and Drugs pursuant to this section or in the discharge of his official duties under the laws administered by the Food and Drug Administration, shall give any testimony before any tribunal pertaining to any function of the Food and Drug Administration or with respect to any information acquired in the discharge of his official duties.

(b) Whenever a subpoena, in appropriate form, has been lawfully served upon an officer or employee of the Food and Drug Administration commanding the giving of any testimony, such officer or employee shall, unless otherwise authorized by the Commissioner, appear in response thereto and respectfully decline to testify on the grounds that it is prohibited by this section.

(c) A person who desires testimony from any employee may make written request therefor, verified by oath, directed to the Commissioner setting forth his interest in the matter sought to be disclosed and designating the use to which such testimony will be put in the event of compliance with such request: *Provided*, That a written request therefor made by a health, food, or

drug officer, prosecuting attorney, or member of the judiciary of any State, Territory, or political subdivision thereof, acting in his official capacity, need not be verified by oath. If it is determined by the Commissioner, or any other officer or employee of the Food and Drug Administration whom he may designate to act on his behalf for the purpose, that such testimony will be in the public interest and will promote the objectives of the act and the agency, the request may be granted. Where a request for testimony is granted, one or more employees of the Food and Drug Administration may be designated to appear, in response to a subpoena, and testify with respect thereto.

#### § 20.2 Production of records by Food and Drug Administration employees.

(a) Any request for records of the Food and Drug Administration, whether it be by letter or by a subpoena duces tecum or by any other writing, shall be handled pursuant to the procedures established in subpart B of this part, and shall comply with the rules governing public disclosure established in subparts C, D, E, and F of this part and in other regulations cross-referenced in § 20.100(c).

(b) Whenever a subpoena duces tecum, in appropriate form, has been lawfully served upon an officer or employee of the Food and Drug Administration commanding the production of any record, such officer or employee shall appear in response thereto, respectfully decline to produce the record on the ground that it is prohibited by this section, and state that the production of the record(s) involved will be handled by the procedures established in this part.

#### § 20.3 Certification and authentication of Food and Drug Administration records.

(a) Upon request, the Food and Drug Administration will certify the authenticity of copies of records that are requested to be disclosed pursuant to this part or will authenticate copies of records previously disclosed.

(b) A request for certified copies of records or for authentication of records shall be sent in writing to the Freedom

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of Information Staff (HFI-35), Food and Drug Administration, Room 12A-16, 5600 Fishers Lane, Rockville, MD 20857.

[42 FR 15616, Mar. 22, 1977, as amended at 46 FR 8456, Jan. 27, 1981]

### Subpart B—General Policy

#### § 20.20 Policy on disclosure of Food and Drug Administration records.

(a) The Food and Drug Administration will make the fullest possible disclosure of records to the public, consistent with the rights of individuals to privacy, the property rights of persons in trade secrets and confidential commercial or financial information, and the need for the agency to promote frank internal policy deliberations and to pursue its regulatory activities without disruption.

(b) Except where specifically exempt pursuant to the provisions of this part, all Food and Drug Administration records shall be made available for public disclosure.

(c) Except as provided in paragraph (d) of this section, all nonexempt records shall be made available for public disclosure upon request regardless whether any justification or need for such records have been shown.

(d) Under § 21.71 of this chapter, a statement of the purposes to which the record requested is to be put, and a certification that the record will be so used, may be requested when:

(1) The requested record is contained in a Privacy Act Record System as defined in § 21.3(c) of this chapter;

(2) The requester is a person other than the individual who is the subject of the record that is so retrieved or a person acting on his behalf; and

(3) The disclosure is one that is discretionary, i.e., not required under this part.

#### § 20.21 Uniform access to records.

Any record of the Food and Drug Administration that is disclosed in an authorized manner to any member of the public is available for disclosure to all members of the public, except that:

(a) Data and information subject to the exemptions established in § 20.61 for trade secrets and confidential commercial or financial information, and in § 20.63 for personal privacy, shall be dis-

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closed only to the persons for the protection of whom these exemptions exist.

(b) The limited disclosure of records permitted in § 7.87(c) of this chapter for section 305 hearing records, in § 20.80(b) regarding certain limitations on exemptions, in § 20.103(b) for certain correspondence, and in § 20.104(b) for certain summaries of oral discussions, shall be subject to the special rules stated therein.

(c) Disclosure of a record about an individual, as defined in § 21.3(a) of this chapter, that is retrieved by the individual's name or other personal identifier and is contained in a Privacy Act Record System, as defined in § 21.3(c) of this chapter, shall be subject to the special requirements of part 21 of this chapter. Disclosure of such a record to an individual who is the subject of the record does not invoke the rule established in this section that such records shall be made available for disclosure to all members of the public.

[42 FR 15616, Mar. 22, 1977, as amended at 54 FR 9037, Mar. 3, 1989]

#### § 20.22 Partial disclosure of records.

If a record contains both disclosable and nondisclosable information, the nondisclosable information will be deleted and the remaining record will be disclosed unless the two are so inextricably intertwined that it is not feasible to separate them or release of the disclosable information would compromise or impinge upon the nondisclosable portion of the record.

#### § 20.23 Request for existing records.

(a) Any written request to the Food and Drug Administration for existing records not prepared for routine distribution to the public shall be deemed to be a request for records pursuant to the Freedom of Information Act, whether or not the Freedom of Information Act is mentioned in the request, and shall be governed by the provisions of this part.

(b) Records or documents prepared by the Food and Drug Administration for routine public distribution, e.g., pamphlets, speeches, and educational materials, shall be furnished free of charge upon request as long as the supply lasts. The provisions of this part shall