

## § 20.20

## 21 CFR Ch. I (4–1–23 Edition)

### Subpart B—General Policy

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

(a) The Food and Drug Administration (FDA) 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 FDA records shall be made available for public disclosure. FDA will withhold requested information only if:

(1) The Agency reasonably foresees that disclosure would harm an interest protected by an exemption described in this part; or

(2) Disclosure is prohibited by law.

(c) Except as provided in paragraph (d) of this section, all nonexempt records shall be made available for public disclosure upon request regardless of 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.

(e) “Record” and any other term used in this part in reference to information includes any information that would be an Agency record subject to the requirements of this part when maintained by the Agency in any format, including an electronic format.

(f) FDA will establish procedures for identifying records of general interest or use to the public that are appropriate for public disclosure, and for

posting and indexing such records in a publicly accessible electronic format.

[87 FR 55911, Sept. 13, 2022]

#### § 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 disclosed 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.

(a) 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.

(b)(1) Whenever information is deleted from a record that contains both