

Office of the Secretary of Transportation

§ 7.17

Seventh St., SW, Washington, DC 20590.)

(f) Transportation Security Administration, 301 Seventh Street, SW. (General Services Administration Regional Office Building), Room 3624, Washington, DC (Mailing address: 400 Seventh Street, SW., Washington, DC 20590).

(g) Certain DOT components also maintain FOIA contacts at regional offices and at the offices of the Commandant and District Commanders of the United States Coast Guard. Additional information on the location of these offices can be obtained through the FOIA contact offices listed in this section.

(h) If the person making the request does not know where in DOT the record is located, he or she may make an inquiry to the Chief, FOIA Division, Office of the General Counsel (voice: 202.366.4542; facsimile: 202.366.8536).

(i) Requests for records under this part, and Freedom of Information Act inquiries generally, may be made by accessing the DOT Home Page on the Internet (www.dot.gov) and clicking on the Freedom of Information Act link (www.dot.gov/foia).

[Amdt. 1, 63 FR 38331, July 16, 1998, 67 FR 54746, Aug. 26, 2002]

§ 7.16 Requests for records of concern to more than one government organization.

(a) If the release of a record covered by this subpart would be of concern to both DOT and another Federal agency, the determination as to release will be made by DOT only after consultation with the other interested agency.

(b) If the release of the record covered by this subpart would be of concern to both DOT and a State, local, or Tribal government, a territory or possession of the United States, or a foreign government, the determination as to release will be made by DOT only after consultation with the interested government.

(c) Alternatively, DOT may refer the request (or relevant portion thereof) for decision by a Federal agency that originated or is substantially concerned with the records, but only if that agency is subject to FOIA. Such referrals will be made expeditiously

and the requestor notified in writing that a referral has been made.

§ 7.17 Consultation with submitters of commercial and financial information.

(a) If a request is received for information that has been designated by the submitter as confidential commercial information, or which DOT has some other reason to believe may contain information of the type described in § 7.13(c)(4), the submitter of such information will, except as is provided in paragraphs (c) and (d) of this section, be notified expeditiously and asked to submit any written objections to release. At the same time, the requestor will be notified that notice and an opportunity to comment are being provided to the submitter. The submitter will, to the extent permitted by law, be afforded a reasonable period of time within which to provide a detailed statement of any such objections. The submitter's statement shall specify all grounds for withholding any of the information. The burden shall be on the submitter to identify all information for which exempt treatment is sought and to persuade the agency that the information should not be disclosed.

(b) The responsible DOT component will, to the extent permitted by law, consider carefully a submitter's objections and specific grounds for non-disclosure prior to determining whether to disclose business information. Whenever a decision is made to disclose such information over the objection of a submitter, the office responsible for the decision will forward to the submitter a written notice of intent to disclose that will, to the extent permitted by law, be forwarded to the submitter a reasonable number of days prior to the specified date upon which disclosure is intended. At the same time the submitter is notified, the requestor will be notified of the decision to disclose information. The written notice will include:

(1) A statement of the reasons for which the submitter's disclosure objections were not accepted;

(2) A description of the business information to be disclosed; and

(3) A specific disclosure date.

§7.21

(c) The notice requirements of this section will not apply if:

(1) The office responsible for the decision determines that the information should not be disclosed;

(2) The information lawfully has been published or otherwise made available to the public; or

(3) Disclosure of the information is required by law (other than 5 U.S.C. 552).

(d) The procedures established in this section will not apply in the case of:

(1) Business information submitted to the National Highway Traffic Safety Administration and addressed in 49 CFR Part 512.

(2) Information contained in a document to be filed or in oral testimony that is sought to be withheld pursuant to Rule 39 of the Rules of Practice in Aviation Economic Proceedings (14 CFR 302.39).

(e) Whenever a requestor brings suit seeking to compel disclosure of confidential commercial information, the responsible DOT component will promptly notify the submitter.

Subpart D—Procedures for Appealing Decisions Not to Disclose Records and/or Waive Fees

§7.21 General.

(a) Each officer or employee of DOT who, upon a request by a member of the public for a record under this part, makes a determination that the record is not to be disclosed, either because it is subject to an exemption or not in DOT's custody and control, will give a written statement of the reasons for that determination to the person making the request; and indicate the names and titles or positions of each person responsible for the initial determination not to comply with such request, and the availability of an appeal within DOT. The denial letter will include an estimate of the volume of records or information withheld, in number of pages or in some other reasonable form of estimation. This estimate does not need to be provided if the volume is otherwise indicated through deletions on records disclosed in part, or if providing an estimate would harm an interest protected by an applicable ex-

49 CFR Subtitle A (10-1-03 Edition)

emption. Records disclosed in part will be marked or annotated to show both the amount and the location of the information deleted whenever practicable.

(b) When a request for a waiver of fees pursuant to §7.44 has been denied in whole or in part, the requestor may appeal the denial.

(c) Any person to whom a record has not been made available within the time limits established by §7.31 and any person who has been given a determination pursuant to paragraph (a) of this section that a record will not be disclosed may appeal to the responsible DOT official. Any person who has not received an initial determination on his or her request within the time limits established by §7.31 can seek immediate judicial review, which may be sought without the need first to submit an administrative appeal. Judicial review may be sought in the United States District Court for the judicial district in which the requestor resides or has his or her principal place of business, the judicial district in which the records are located, or in the District of Columbia. A determination that a record will not be disclosed and/or that a request for a fee waiver or reduction will not be granted does not constitute final agency action for the purposes of judicial review unless:

(1) It was made by the responsible DOT official; or

(2) The applicable time limit has passed without a determination on the initial request or the appeal, as the case may be, having been made.

(d) Each appeal must be made in writing within thirty days from the date of receipt of the original denial and should include the DOT file or reference number assigned to the request and all information and arguments relied upon by the person making the request. (Appeals may be submitted via facsimile and conventional mail, but not via electronic mail.) Such letter should indicate that it is an appeal from a denial of a request made under FOIA. The envelope in which a mailed appeal is sent should be prominently marked: "FOIA Appeal." If these requirements are not met, the twenty-day limit described in §7.32 will not begin to run until the appeal has been