

DEPARTMENT OF TRANSPORTATION**Office of the Secretary****49 CFR Part 7**

[Docket No. DOT-OST-2010-0297]

RIN 2105-AD99

**Public Availability of Information;
Freedom of Information Act**

AGENCY: Office of the Secretary (OST), U.S. Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: The U.S. Department of Transportation (DOT) is revising its regulations implementing the Freedom of Information Act (FOIA) following a period of public comment on its proposed rule. The purposes for the revision are to update the regulations to be consistent with amendments to FOIA that were signed into law on December 31, 2007, and October 28, 2009, to revise DOT's fee schedule and other charges, and to make provisions clearer and easier to locate.

DATES: This rule is effective May 27, 2014.

ADDRESSES: Comments submitted to the docket for this rulemaking are available at Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590, or electronically at <http://www.regulations.gov>. Anyone is able to search the electronic form of all comments in any one of our dockets by the name of the individual who submitted the comment (or signing the comment, if submitted on behalf of an association, business, or labor union). You may review the U.S. Department of Transportation's (DOT) complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70, Pages 19477-78).

FOR FURTHER INFORMATION CONTACT: John Allread, Attorney-Advisor, Office of the General Counsel, Department of Transportation, Washington, DC, at john.allread@dot.gov or (202) 366-1497; or Claire McKenna, Attorney-Advisor, Office of the General Counsel, Department of Transportation, Washington, DC, at claire.mckenna@dot.gov or (202) 366-0365; or Kathy Ray, Departmental FOIA Officer, Office of the General Counsel, Department of Transportation, Washington, DC, at kathy.ray@dot.gov or (202) 366-4542.

SUPPLEMENTARY INFORMATION: These regulations implementing FOIA, 5 U.S.C. 552, were published for public

comment in the **Federal Register** December 27, 2010 (75 FR 81191), the comment period ended on February 25, 2011, and two commenters provided input. One commenter addressed language in proposed 49 CFR 7.26(b) that the commenter said is inconsistent with the FOIA, court precedent, and U.S. Department of Justice (DOJ) guidance. We adopt this comment, as follows:

As originally proposed by DOT, § 7.26(b) would have included a clause stating that DOT makes a reasonable effort to search electronic records in the manner in which they are designed to be searched (i.e., without reprogramming).

The commenter objects to this clause, which does not appear in DOT's current FOIA regulations, and could be taken as an attempt by DOT to limit the flexibility we must have to re-program electronic records to meet the needs of a FOIA requester. It was not our intention to limit our required flexibility in this area, or to vary from DOJ guidance or court precedent. The commenter requests that the clause be deleted and we agree.

We also received comments from the National Archives and Records Administration's Office of Government Information Services (OGIS). In general, OGIS supported DOT's proposed regulatory revisions, emphasizing our efforts to make them consistent with the OPEN Government Act of 2007 and the OPEN FOIA Act of 2009.

The OGIS recommended that DOT reconsider language in the proposed rule that appears to require that a request for records be explicitly marked as a "FOIA Request" in order to qualify as such. It was not our intention to require that requests be explicitly identified by the requester to qualify as a FOIA request; in fact, the language of the rule states that requests "should" be marked "FOIA request," rather than stating that they "shall" be so marked. To eliminate any potential misunderstanding about this aspect of the rule, we have revised the section heading for § 7.24 from "What must a FOIA request contain?" to "How do I submit a FOIA request?". The OGIS also recommended that in cases where the requested information is publicly available, we so advise the requester and allow him/her access online or through other means. We agree and already process requests for publicly accessible information in a manner consistent with this recommendation by referring requesters to information available on the Internet or providing hard copies.

With regard to § 7.28, OGIS recommended that DOT components handle consultations and referrals received from other agencies or DOT components according to the date that the FOIA request was received by the first component or agency. We agree and added a new subsection (d) to § 7.28 to address this comment.

The OGIS recommended that DOT establish an individualized tracking number for all FOIA requests that will take longer than 10 days to process, inform requesters of the tracking number assigned to their request, and provide a mechanism for requesters to obtain information about the status of their requests. The DOT's existing FOIA processing procedures are consistent with these recommendations. We added a subsection (3)(b) to § 7.31 to publicize these procedures, as further suggested by OGIS.

The OGIS noted that § 7.32(d)(1) would mandate that FOIA appeals must be made within 30 calendar days from the date of the initial determination and suggested that this time period be extended to 45 or 60 days, as is the standard at many agencies. The OGIS further recommended that the referenced date should be the postmark date. We agree with these suggestions and have revised § 7.32(d)(1) to change the appeal period to 45 days, measured from the date that the initial determination is signed to the postmark date on the appeal letter.

The OGIS also recommended that DOT accept appeals by electronic mail. We agree and removed the language from § 7.32(d)(1) that prohibited submission of appeals by electronic mail.

The OGIS had several comments regarding DOT's procedures for FOIA appeals. Specifically, OGIS suggested that we direct requesters to work with DOT components' FOIA public liaisons to resolve disputes; to work with OGIS to resolve disputes between FOIA requesters and DOT as a non-exclusive alternative to litigation; and that DOT coordinate collaboratively with OGIS in OGIS's review of agencies' policy and procedures. The DOT not only appreciates OGIS' comments, but also the valuable service that OGIS provides to requesters and agencies. The DOT's existing FOIA processing procedures already comport with OGIS' recommendations, as documented in DOT's FOIA Reference Guide; therefore, we determined that further revisions to our regulations are unnecessary. With regard to "Subpart E—Fees," OGIS recommended that DOT direct FOIA professionals to provide each requester with a breakdown of the total fee

estimate. The DOT agrees and already processes FOIA requests consistent with this recommendation; therefore, we determined that further revisions to our regulations are unnecessary to implement this recommendation.

In addition, we removed language in § 7.33(a)(2) that noted, parenthetically, that DOT could not extend the time limit for reply to an appeal based on unusual circumstances if DOT had extended the time limit for this reason in its initial response. Upon further review, we determined that this limitation is not explicitly required by FOIA's statutory language and that it would unduly restrict DOT's ability to extend timelines when needed because of unusual circumstances, as permitted under FOIA.

On January 17, 2014, President Obama signed into law the Consolidated Appropriations Act, 2014, Division L—Transportation, Housing and Urban Development and Related Agencies Appropriations Act, 2014, Public Law 113–76 (Jan. 17, 2014), which included language transferring the previous functions of the Research and Innovative Technology Administration (RITA) to the newly formed Office of the Assistant Secretary for Research and Technology within the Office of the Secretary. Thus, the Office of the Assistant Secretary for Research and Technology is now an office within the Office of the Secretary and, as a result, we have deleted the references to RITA in §§ 7.2 and 7.15.

Finally, we have made a few other minor (non-substantive) changes to grammar or to achieve consistency in punctuation.

Regulatory Analyses and Notices

Executive Order 12866 (Regulatory Planning and Review), Executive Order 13563 (Improving Regulation and Regulatory Review), and DOT Regulatory Policies and Procedures

The DOT has considered the impact of this rulemaking action under Executive Orders 12866 and 13563 (January 18, 2011, “Improving Regulation and Regulatory Review”), and the DOT's regulatory policies and procedures (44 FR 11034; February 26, 1979). The DOT has determined that this action does not constitute a significant regulatory action within the meaning of Executive Order 12866 and within the meaning of DOT regulatory policies and procedures. Further, the Office of Management and Budget has advised us that this rule is not significant. We expect that the economic impact of this rulemaking will be minimal. The rule does not increase the

fees that DOT charges requesters for copies, and increases the threshold under which DOT will not charge fees from \$10 to \$20. In addition, although the rule alters the way that DOT charges search fees by splitting the previous search fees performed by GS–9 through GS–14 into two categories (one for GS–9 to GS–12 and a new category for GS–13 to GS–14), we do not expect that this will result in an aggregate increase in search costs to requesters. Lastly, DOT is increasing the charge associated with requests for certified copies from \$4 to \$10 based on the resources necessary to satisfy these requests. Requests for certified copies make up a very small percentage of DOT's total number of FOIA requests each year, and, therefore, we expect very few requesters to be impacted by this modest change. We believe that any increase in fees implemented in this rule will be off-set by reductions in fees also implemented in this rule, such as the increase in the threshold under which fees will not be charged from \$10 to \$20.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601–612), DOT has evaluated the effects of these changes on small entities. I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities because this rule merely clarifies and updates DOT's FOIA procedures in light of amendments to FOIA that were signed into law on December 31, 2007, and October 28, 2009, and will not result in an expenditure of funds by small entities.

National Environmental Policy Act

The agency has analyzed the environmental impacts of this proposed action pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that it is categorically excluded pursuant to DOT Order 5610.1C, Procedures for Considering Environmental Impacts (44 FR 56420, Oct. 1, 1979). Categorical exclusions are actions identified in an agency's NEPA implementing procedures that do not normally have a significant impact on the environment and therefore do not require either an environmental assessment (EA) or environmental impact statement (EIS). See 40 CFR 1508.4. In analyzing the applicability of a categorical exclusion, the agency must also consider whether extraordinary circumstances are present that would warrant the preparation of an EA or EIS. *Id.* Paragraph 3.c.5 of DOT Order 5610.1C incorporates by reference the

categorical exclusions for all DOT Operating Administrations. This action is covered by the categorical exclusion listed in the Federal Highway Administration's implementing procedures, “[p]romulgation of rules, regulations, and directives.” 23 CFR 771.117(c)(20). The purpose of this rulemaking is to revise the agency's administrative process in implementing the Freedom of Information Act. The agency does not anticipate any environmental impacts and there are no extraordinary circumstances present in connection with this rulemaking.

Executive Order 13132 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 dated August 4, 1999, and it has been determined that it does not have sufficient implications for Federalism to warrant the preparation of a Federalism Assessment.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501, *et seq.*), Federal agencies must obtain approval from the Office of Management and Budget for each collection of information they conduct, sponsor, or require through regulations. The DOT has determined that this action does not contain a collection of information requirement for the purposes of the PRA.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4, 109 Stat. 48, March 22, 1995), requires Federal agencies to assess the effects of certain regulatory actions on State, local, and tribal Governments, and the private sector. The UMRA requires a written statement of economic and regulatory alternatives for proposed and final rules that contain Federal mandates. A “Federal mandate” is a new or additional enforceable duty, imposed on any State, local, or tribal Government, or the private sector. If any Federal mandate causes those entities to spend, in aggregate, \$143.1 million or more in any one year (adjusted for inflation), an UMRA analysis is required. This rule would not impose Federal mandates on any State, local, or tribal Governments or the private sector.

List of Subjects in 49 CFR Part 7

Public availability of information.

Issued in Washington, DC, on March 12, 2014.

Kathryn B. Thomson,
Acting General Counsel.

■ In consideration of the foregoing, DOT amends Title 49, Code of Federal Regulations, chapter I, by revising part 7 to read as follows:

PART 7—PUBLIC AVAILABILITY OF INFORMATION

Subpart A—General Provisions

Sec.

- 7.1 General.
- 7.2 Definitions.

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- 7.14 Redaction of Information That is Exempt from Disclosure.
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- 7.31 What time limits apply to DOT with respect to initial determinations?
- 7.32 What time limits apply to a requester when appealing DOT's initial or final determination?
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Subpart E—Fees

- 7.41 When and how are processing fees imposed for records that are made available under subpart B or processed under subpart C of this part?
- 7.42 What is DOT's fee schedule for records requested under subpart C of this part?
- 7.43 When are fees waived or reduced for records requested under subpart C of this part?

- 7.44 How can I pay a processing fee for records requested under subpart B or subpart C of this part?
- 7.45 When are pre-payments required for records requested under subpart C of this part, and how are they handled?
- 7.46 How are late payments handled?

Authority: 5 U.S.C. 552; 31 U.S.C. 9701; 49 U.S.C. 322; E.O. 12600; E.O. 13392.

Subpart A—General Provisions

§ 7.1 General.

(a) This part implements the Freedom of Information Act, 5 U.S.C. 552, as amended, and prescribes rules governing the public availability of Department of Transportation (DOT) records.

(b) Subpart B of this part contains the DOT regulations concerning the public availability of:

- (1) Records and indices that DOT is required to publish in the **Federal Register** pursuant to 5 U.S.C. 552(a)(1) (described in § 7.11(a)); and
- (2) Records and indices that DOT is required to make available to the public in a reading room without need for a specific request, pursuant to 5 U.S.C. 552(a)(2) (described in § 7.12(a)).

(c) Subpart C of this Part contains the DOT regulations concerning records that may be requested from DOT under the FOIA, namely, records that DOT is not required to publish in the **Federal Register** or make publicly available in a reading room under 5 U.S.C. 552(a)(2)(A), (B), (C), and (E) and frequently requested records even if DOT has made them publicly available as required under 5 U.S.C. 552(a)(2)(D). Because DOT and its components make many of these records available on their Web pages (<http://www.dot.gov> or <http://www.dot.gov/foia>), requesters may find it preferable to obtain such records directly from the Web pages instead of submitting a FOIA request, if the Web pages contain records that meet their needs.

(d) Subpart D of this part contains the DOT regulations concerning time limits applicable to processing requests for records under subpart C.

(e) Subpart E of this part contains the DOT regulations concerning processing fees applicable to records made available under subpart B or requested under subpart C.

§ 7.2 Definitions.

Unless the context requires otherwise, the following definitions apply in this part:

Act and *FOIA* mean the Freedom of Information Act, 5 U.S.C. 552, as amended.

Administrator means the head of each Operating Administration.

Components—see the definition of Department in this section.

Concurrence means that the approval of the individual being consulted is required in order for the subject action to be taken.

Confidential commercial information means trade secrets and confidential, privileged, and/or proprietary business or financial information submitted to DOT by any person.

Consultation has its ordinary meaning; the approval of the individual being consulted is not required in order for the subject action to be taken.

Department or *DOT* means the Department of Transportation, including the Office of the Secretary, the Office of Inspector General, and all DOT Operating Administrations, any of which may be referred to as a DOT component. This definition specifically excludes the Surface Transportation Board, which has its own FOIA regulations at 49 CFR part 1001.

First-party request means a request by an individual for records pertaining to that individual.

Hourly rate means the actual hourly base pay for a civilian employee.

Operating Administration means one of the following components of the Department:

- (1) Federal Aviation Administration;
- (2) Federal Highway Administration;
- (3) Federal Motor Carrier Safety Administration;
- (4) Federal Railroad Administration;
- (5) Federal Transit Administration;
- (6) Maritime Administration;
- (7) National Highway Traffic Safety Administration;
- (8) Pipeline and Hazardous Materials Safety Administration; and
- (9) Saint Lawrence Seaway Development Corporation.

Reading room records are those records required to be made available to the public without a specific request under 5 U.S.C. 552(a)(2), as described in § 7.12 of subpart B of this part. DOT makes reading room records available to the public electronically through its FOIA Web pages (<http://www.dot.gov/foia>) and at the physical locations identified in § 7.12(b). Other records may also be made available at DOT's discretion through DOT Web pages (<http://www.dot.gov>).

Record includes any writing, drawing, map, recording, diskette, DVD, CD-ROM, tape, film, photograph, or other documentary material, regardless of medium, by which information is preserved. The term also includes any such documentary material stored electronically by computer.

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 the raw materials into a distinct work, and distributes that work to an audience. "News" means information that is about current events or that would be of current interest to the public.

Responsible DOT official means the head of the DOT Operating Administration concerned, or the General Counsel or the Inspector General, as the case may be, or the designee of any of them authorized to take an action under this Part.

Secretary means the Secretary of Transportation or any individual to whom the Secretary has delegated authority in the matter concerned.

Toll means temporarily stop the running of a time limit.

Subpart B—Information Required To Be Made Public by DOT

§ 7.11 What records are published in the Federal Register, and how are they accessed?

(a) *General.* Pursuant to 5 U.S.C. 552(a)(1), DOT publishes the following records in the **Federal Register** and makes an index of the records publicly available. For purposes of this paragraph, material that is reasonably available to the class of persons affected by the material is considered to be published in the **Federal Register** when the material is incorporated by reference with the approval of the Director of the Federal Register.

(1) Descriptions of DOT's organization and the established places at which, the officers from whom, and the methods by which, the public may secure information and make submittals or obtain decisions;

(2) Statements of the general course and methods by which DOT's functions are channeled and determined, including the nature and requirements of all formal and informal procedures available;

(3) Rules of procedure, descriptions of forms available or the places at which forms may be obtained, and instructions as to the scope and contents of all papers, reports, or examinations;

(4) Substantive rules of general applicability adopted as authorized by law and statements of general policy or interpretations of general applicability formulated and adopted by DOT; and

(5) Each amendment, revision, or repeal of any material listed in paragraphs (a)(1) through (4) of this section.

(b) *Federal Register locations.* DOT makes its **Federal Register** publications and indices publicly available at the

physical locations identified in § 7.12(b). The publications and indices can be accessed online at <http://www.federalregister.gov>.

§ 7.12 What records are available in reading rooms, and how are they accessed?

(a) *General.* Pursuant to 5 U.S.C. 552(a)(2), unless the following records are promptly published and offered for sale or published in the **Federal Register**, DOT and its components make the following records, and an index to the records, available in a reading room, including an electronic reading room if the records were created by DOT on or after November 1, 1996:

(1) Final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases;

(2) Statements of policy and interpretations that have been adopted by DOT and are not published in the **Federal Register**;

(3) Administrative staff manuals and instructions to staff that affect a member of the public; and

(4) Copies of all records, regardless of form or format, that have been released to any person under subpart C of this Part and that, because of the nature of their subject matter, DOT determines have become or are likely to become the subject of subsequent requests for substantially the same records.

(5) A general index of the records listed in paragraph (a)(4) of this section.

(b) *Reading room locations.* DOT makes its reading room records and indices (in the form of lists or links) available at <http://www.dot.gov/foia> and at the following physical locations:

(1) DOT Dockets Office, 1200 New Jersey Avenue SE., Room W12-140, Washington, DC 20590; hours of operation: 9 a.m. to 5 p.m. ET, Monday through Friday except Federal holidays; telephone: (202) 366-9322, (202) 366-9826, or (800) 647-5527. DOT provides a computer terminal and printer at this location for accessing electronic reading room records.

(2) National Highway Traffic Safety Administration (NHTSA) Technical Information Services public record unit: 1200 New Jersey Avenue SE., Room W12-300, Washington, DC 20590; hours of operation: 9:30 a.m. to 5 p.m. ET, Monday through Friday except Federal holidays; telephone (202) 366-2588. NHTSA provides a computer terminal and printer at this location for accessing electronic reading room records.

(3) Other public record units maintained by DOT components (e.g., at regional offices): Information concerning the availability of a

computer terminal and printer at such units, and the location and hours of operation of such units, can be obtained through the DOT Dockets Office at (202) 366-9322, (202) 366-9826, or (800) 647-5527.

§ 7.13 How are copies of publicly available records obtained?

(a) *Copies of materials covered by this subpart that are published and offered for sale.* Records that are ordinarily made available to the public as a part of an information program of the Government, such as news releases and pamphlets, may be obtained upon request by contacting the appropriate DOT location identified in § 7.12(b) or the sources identified in § 7.41(g), and paying the applicable duplication fee or purchase price. Whenever practicable, DOT also makes the publications available at the appropriate physical locations identified in § 7.12(b).

(b) *Copies of materials covered by this subpart that are not published and offered for sale.* Such records may be ordered, upon payment of the appropriate fee (if any fee applies), through the applicable FOIA Requester Service Center or through the DOT Dockets Office identified in § 7.12(b):

(1) Per copy of each page (not larger than 8.5 x 14 inches) reproduced by photocopy or similar means—US \$0.10.

(2) Per copy prepared by any other method of duplication—actual direct cost of production.

(3) Copies are certified upon request by contacting the applicable FOIA Requester Service Center listed in § 7.27 and paying the fee prescribed in § 7.41(e).

§ 7.14 Redaction of information that is exempt from disclosure.

Whenever DOT determines it to be necessary to prevent the disclosure of information required or authorized to be withheld by FOIA or another Federal statute (such as, to prevent a clearly unwarranted invasion of personal privacy), DOT redacts such information from any record covered by this subpart that is published or made available. A full explanation of the justification for the deletion accompanies the record published or made available.

§ 7.15 Protection of records.

Records made available to the public under this subpart may not be removed, altered, destroyed, or mutilated (this excludes duplicate copies that are provided to a member of the public to take and keep). 18 U.S.C. 641 provides for criminal penalties for embezzlement or theft of Government records. 18 U.S.C. 2071 provides for criminal

penalties for the willful and unlawful concealment, mutilation or destruction of, or the attempt to conceal, mutilate, or destroy, Government records.

Subpart C—Availability of Reasonably Described Records Under the Freedom of Information Act

§ 7.21 What does this subpart cover?

(a) Except as otherwise provided in paragraph (b) of this section, this subpart applies to reasonably described records that are made available in response to written requests under FOIA.

(b) This subpart does not apply to:

(1) Records published in the **Federal Register**.

(2) Records published and offered for sale.

(3) Records (other than frequently requested records) made available in a reading room.

(4) Records or information compiled for law enforcement purposes and covered by the disclosure exemption described in § 7.23(c)(7)(A) if—

(i) The investigation or proceeding involves a possible violation of criminal law; and

(ii) There is reason to believe that—

(A) The subject of the investigation or proceeding is not aware of its pendency; and

(B) Disclosure of the existence of the records could reasonably be expected to interfere with enforcement proceedings.

(5) Informant records maintained by any criminal law enforcement component of DOT under an informant's name or personal identifier, if requested by a third party according to the informant's name or personal identifier, unless the informant's status as an informant has been officially confirmed.

§ 7.22 Who administers this subpart?

(a) A Chief FOIA Officer is appointed by the Secretary to oversee DOT's compliance with the Act pursuant to 5 U.S.C. 552(k). The DOT Chief FOIA Officer is designated at 49 CFR 1.27a as the Career Deputy General Counsel.

(b) Each DOT FOIA Requester Service Center listed in § 7.27 is the initial point of contact for providing information about its processing of requests.

(c) One or more Public Liaisons are designated by the Chief FOIA Officer for each DOT FOIA Requester Service Center listed in § 7.27. Public Liaisons assist requesters in reducing delays and resolving disputes, as described in 5 U.S.C. 552(k)(6).

(d) Authority to administer this subpart and to issue determinations with respect to initial requests and

appeals of initial denials has been delegated as follows:

(1) To the General Counsel for the records of the Office of the Secretary by 49 CFR 1.27.

(2) To the Inspector General for records of the Office of Inspector General by 49 CFR 1.74.

(3) To the Administrator of each DOT Operating Administration for records of that component by 49 CFR 1.81.

(4) Each responsible DOT official may redelegate the authority to issue final determinations of appeals of initial denials to that official's deputy or to not more than one other officer who reports directly to the official and who is located at the headquarters of that DOT component.

(5) Any such final determination by an Administrator or an Administrator's designee (following an appeal of an initial denial) is subject to concurrence by the General Counsel or the General Counsel's designee, if the final determination is not to disclose a record or portion of a record under this part, or not to grant a request for a fee waiver or reduction.

(6) The Inspector General or the Inspector General's designee must consult with the General Counsel or the General Counsel's designee before issuing a final determination following an appeal of an initial denial, if the final determination is not to disclose a record or portion of a record under this part, or not to grant a request for a fee waiver or reduction.

§ 7.23 What limitations apply to disclosure?

(a) *Policy*. It is DOT policy to make its records available to the public to the greatest extent possible, in keeping with the spirit of FOIA. This includes releasing reasonably segregable and meaningful nonexempt information in a document from which exempt information is withheld.

(b) *Statutory disclosure requirement*. As provided in 5 U.S.C. 552(a)(3)(A), DOT makes reasonably described records available upon request from a member of the public, when the request is submitted in accordance with this subpart, except to the extent that the records contain information exempt from FOIA's mandate of disclosure as provided in 5 U.S.C. 552(b).

(c) *Statutory exemptions*. Exempted from FOIA's statutory disclosure requirement are matters that are:

(1) 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;

(2) Related solely to the internal personnel rules and practices of an agency;

(3) Specifically exempted from disclosure by statute (other than the Privacy Act, 5 U.S.C. 552a, or Open Meetings Act, 5 U.S.C. 552b, as amended), in that the statute:

(i) Requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, establishes particular criteria for withholding, or refers to particular types of matters to be withheld; or

(ii) Specifically allows withholding from release under FOIA by citation to 5 U.S.C. 552;

(4) Trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) Inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;

(6) Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(7) Records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information—

(i) Could reasonably be expected to interfere with enforcement proceedings;

(ii) Would deprive a person of a right to a fair or an impartial adjudication;

(iii) Could reasonably be expected to constitute an unwarranted invasion of personal privacy;

(iv) Could reasonably be expected to disclose the identity of a confidential source, including a State, local, tribal, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source;

(v) Would disclose techniques and procedures for law enforcement investigations or prosecutions or would disclose guidelines for law enforcement investigations or prosecutions, if such disclosure could reasonably be expected to risk circumvention of the law; or

(vi) Could reasonably be expected to endanger the life or physical safety of any individual;

(8) Contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the

regulation or supervision of financial institutions; or

(9) Geological and geophysical information and data, including maps, concerning wells.

(d) *Redacted information.* DOT indicates the amount of information redacted from records released under the FOIA and the exemption(s) relied upon in redacting the information, at the place in the record where the redaction is made, when technically feasible and when doing so does not harm an interest protected by the exemption concerned.

(e) *Non-confidentiality of requests.* DOT releases the names of FOIA requesters and descriptions of the records they have sought, as shown on DOT FOIA logs, except to the extent that a statutory exemption authorizes or requires withholding of the log information.

§ 7.24 How do I submit a FOIA request?

(a) Each person desiring access to or a copy of a record covered by this subpart must make a written request (via paper, facsimile or electronic mail) for the record. The request should—

(1) Indicate that it is being made under FOIA;

(2) Display the word “FOIA” prominently on the envelope or on the subject line of the email or facsimile;

(3) Be addressed to the appropriate FOIA Requester Service Center as set forth in § 7.27;

(4) State the format (e.g., paper, compact disc) in which the information is sought, if the requester has a preference (see § 7.26(c)); and

(5) Describe the record or records sought to the fullest extent possible. In this regard, the request should describe the subject matter of the record and, if known, indicate the date when it was made, the place where it was made, and the individual or office that made it. If the description does not enable the office handling the request to identify or locate the record sought, that office will contact the requester for additional information. So that the office may contact the requester for additional information, the request should provide the requester's complete contact information, including name, address, telephone number, and email address, if any.

(b) With respect to fees, the request must—

(1) Specify the fee category (commercial use, news media, educational institution, noncommercial scientific institution, or other; see § 7.42(g)) in which the requester claims the request falls and the basis of this

claim (see subpart E of this Part for fees and fee waiver requirements);

(2) Support any request for fee waiver by addressing, to the fullest extent possible, how the criteria set out in § 7.43(c) for establishing that the request is in the public interest have been met, if relevant;

(3) State the maximum amount of fees that the requester is willing to pay and/or include a request for a fee waiver or reduction (if a maximum amount is not stated by the requester, DOT will assume the requester is willing to pay up to US \$25);

(c) If the requester seeks expedited processing at the time of the initial request, the request must include a statement supporting expedited processing, as set forth in § 7.31(c);

(d) A request is not considered to be a FOIA request if the record or records sought are insufficiently described such that DOT is unable to respond as required by FOIA. The twenty Federal working day limit for responding to requests, described in § 7.31(a)(2), will not start to run until the request is determined by DOT to be sufficiently understood to enable DOT to respond as contemplated under FOIA (or would have been so determined with the exercise of due diligence by an employee of DOT) and is considered received (see paragraph (e)); and

(e) Provided the request is considered to be a FOIA request (see paragraph (d)), the request is considered received when it is first received by the FOIA office to which it should have been originally sent, as shown in § 7.27, but in any event not later than ten Federal working days after it is first received by any DOT FOIA Requester Service Center identified in § 7.27.

(f) As provided in § 7.35, DOT's time limit for responding to a FOIA request as set forth in subpart D may be tolled one time to seek additional information needed to clarify the request and as often as necessary to clarify fee issues with the requester.

§ 7.25 How does DOT handle first-party requests?

(a) DOT processes FOIA requests from first-party requesters in accordance with this regulation. DOT also processes such requests in accordance with the Privacy Act (5 U.S.C. 552a) if the records reside in a Privacy Act system of records (defined in 5 U.S.C. 552a(a)(5) as a system from which information is retrieved by the individual's name or some other personal identifier). Whichever statute provides greater access is controlling.

(b) First party requesters must establish their identity to DOT's

satisfaction before DOT will process the request under the Privacy Act. DOT may request that first party requesters authenticate their identity to assist with our evaluation of the application of FOIA exemptions, such as FOIA Exemption 6, 5 U.S.C. 552(b)(6), to the requested records. Acceptable methods of authenticating the requester's identity include those outlined in DOT's Privacy Act regulations at 49 CFR 10.37.

§ 7.26 To what extent and in what format are records searched and made available?

(a) *Existing records.* A request may seek only records that are in existence at the time of the request. In determining which records are responsive to a request, DOT ordinarily will include only records in its possession as of the date it begins its search for them. If any other date is used, DOT will inform the requester of that date. DOT considers records created after the beginning of the search to be non-responsive to a request. A request made under this subpart may not require that new records be created in response to the request by, for example, combining or compiling selected items from manual files, preparing a new computer program, or calculating proportions, percentages, frequency distributions, trends, or comparisons. DOT may, in its discretion, create a new record as an alternative to disclosing existing records, if DOT determines that creating a new record will be less burdensome than disclosing large volumes of unassembled material and if the requester consents to accept the newly-created record in lieu of the existing records.

(b) *Electronic records.* DOT makes a reasonable effort to search electronic records without significantly interfering with the operation of the affected information system.

(c) *Format of production.* DOT provides records in the form or format sought by the requester, if the records are readily reproducible in that form or format.

(d) *Photocopying of records.* Original records ordinarily are copied except where, in DOT's judgment, copying would endanger the quality of the original or raise the reasonable possibility of irreparable harm to the record. Original records are not released from DOT custody. DOT may make records requested under this subpart available for inspection and copying during regular business hours at the place where the records are located.

(e) *If no responsive record is located.* If DOT cannot locate a requested record in agency files after a reasonable search (e.g., because the record was never

created or was disposed of), DOT so notifies the requester.

§ 7.27 What are the designated DOT FOIA Requester Service Centers?

(a) A request for a record under this subpart may be submitted via paper, facsimile, or electronic mail to the FOIA Requester Service Center designated for the DOT component where the records are located, at the electronic mail addresses or facsimile numbers identified at <http://www.dot.gov/foia> or the mailing addresses indicated below (unless a more up-to-date mailing address has been designated at <http://www.dot.gov/foia>):

(1) FOIA Requester Service Centers at 1200 New Jersey Avenue SE., Washington, DC 20590:

(i) FOIA Requester Service Center at Federal Highway Administration, Room E64-302 (unless a more specific address has been designated by FHWA at <http://www.fhwa.dot.gov/foia>);

(ii) FOIA Requester Service Center at Federal Motor Carrier Safety Administration, Room W66-458;

(iii) FOIA Requester Service Center at Federal Railroad Administration, Room W33-437;

(iv) FOIA Requester Service Center at Federal Transit Administration, Room E42-315;

(v) FOIA Requester Service Center at Maritime Administration, Room W24-233;

(vi) FOIA Requester Service Center at National Highway Traffic Safety Administration, Room W41-311;

(vii) FOIA Requester Service Center at Office of the Secretary of Transportation, Room W94-122;

(viii) FOIA Requester Service Center at Office of Inspector General, Room W70-329;

(ix) FOIA Requester Service Center at Pipeline and Hazardous Materials Safety Administration, Room E23-306; and

(2) FOIA Requester Service Center at Federal Aviation Administration, 800 Independence Avenue SW., Room 306, Washington, DC 20591 (unless a more specific address has been designated by FAA at <http://www.faa.dot.gov/foia>).

(3) FOIA Requester Service Center at Associate Administrator's Office, Saint Lawrence Seaway Development Corporation, 180 Andrews Street, P.O. Box 520, Massena, NY 13662-0520.

(b) If the person making the request does not know where in DOT the records are located, the person may submit the request to the FOIA Requester Service Center at Office of the Secretary of Transportation, 1200 New Jersey Avenue SE., Room W94-122, Washington, DC 20590 or by facsimile: 202-366-8536. Requesters also may

contact the FOIA Requester Service Center at the Office of the Secretary of Transportation at 202-366-4542 with questions about how to submit a FOIA request or to confirm the mailing addresses indicated in this part.

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

§ 7.28 How does DOT handle requests that concern more than one Government agency?

(a) If the release of a DOT-created record covered by this subpart would be of concern to DOT and one or more other Federal agencies, the determination as to release is made by DOT, but only after consultation with the other concerned agency.

(b) If the release of a DOT-created record covered by this subpart would be of concern to 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 is made by DOT, but only after consultation with the other concerned Governmental jurisdiction.

(c) DOT refers a request for a non-DOT-created record covered by this subpart (or the relevant portion thereof) for decision by the Federal agency that is best able to determine the record's exemption status (usually, this is the agency that originated the record), but only if that agency is subject to FOIA. DOT makes such referrals expeditiously and notifies the requester in writing that a referral has been made. DOT informs the requester that the Federal agency to which DOT referred the request will respond to the request, unless DOT is precluded from attributing the record in question to that agency.

(d) DOT components will handle all consultations and referrals they receive from other agencies or DOT components according to the date the FOIA request initially was received by the first agency or DOT component, not any later date.

§ 7.29 When and how does DOT consult with submitters of commercial information?

(a) If DOT receives a request for a record that includes information designated by the submitter of the information as confidential commercial information, or that DOT has some other reason to believe may contain information of that type (see § 7.23(c)(4)), DOT notifies the submitter expeditiously and asks the submitter to submit any written objections to release (unless paragraphs (c) and (d) of this

section apply). At the same time, DOT notifies the requester that notice and an opportunity to comment are being provided to the submitter. To the extent permitted by law, DOT affords the submitter a reasonable period of time to provide a detailed statement of any such objections. The submitter's statement must specify all grounds for withholding any of the information. The burden is on the submitter to identify with specificity 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, to the extent permitted by law, considers carefully a submitter's objections and specific grounds for nondisclosure prior to determining whether to disclose commercial information. Whenever DOT decides to disclose such information over the objection of a submitter, the office responsible for the decision provides the submitter with a written notice of intent to disclose, which is sent to the submitter a reasonable number of days prior to the specified date upon which disclosure is intended. The written notice to the submitter includes:

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

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

(3) A specific disclosure date.

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

(1) DOT 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 do not apply in the case of:

(1) 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 12 of the Rules of Practice in Aviation Economic Proceedings (14 CFR 302.12).

(e) Whenever a requester brings suit seeking to compel disclosure of confidential commercial information, the responsible DOT component promptly notifies the submitter. The submitter may be joined as a necessary party in any suit brought against DOT or a DOT component for nondisclosure.

Subpart D—Time Limits

§ 7.31 What time limits apply to DOT with respect to initial determinations?

(a) *In general.* (1) DOT ordinarily responds to requests according to their order of receipt.

(2) DOT makes an initial determination whether to release a record requested pursuant to subpart C of this Part within twenty Federal working days after the request is received by the appropriate FOIA Requester Service Center designated in § 7.27, except that DOT may extend this time limit by up to ten Federal working days, or longer, in accordance with § 7.34. In addition, DOT may toll this time limit one time to seek additional information needed to clarify the request and as often as necessary to clarify fee issues with the requester (see § 7.35).

(3) DOT notifies the requester of DOT's initial determination. If DOT decides to grant the request in full or in part, DOT makes the record (or the granted part) available as promptly as possible. If DOT denies the request in full or in part, because the record (or the denied part) is subject to an exemption, is not within DOT's custody and control, or was not located following a reasonable search, DOT notifies the requester of the denial in writing and includes in the notice the reason for the determination, the right of the requester to appeal the determination, and the name and title of each individual responsible for the initial determination to deny the request. The denial letter includes an estimate of the volume of records or information withheld, in number of pages or 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 exemption. DOT marks or annotates records disclosed in part to show both the amount and location of the information deleted whenever practicable (see § 7.23(d)).

(b) *Multi-track processing of initial requests.* (1) A DOT component may use two or more processing tracks by distinguishing between simple and more complex requests based on the amount of work and/or time needed to process the request, or based on the number of pages involved.

(2) A DOT component using multi-track processing may provide requesters in its slower track(s) with an opportunity to limit the scope of their requests in order to qualify for faster processing within the specified limits of

the component's faster track(s). In that event, the component contacts the requester either by telephone, letter, facsimile, or electronic mail, whichever is most efficient in each case.

(3) Upon receipt of a request that will take longer than ten days to process, a DOT component shall assign an individualized tracking number to the request and notify the requester of the assigned number. Requesters may contact the appropriate DOT component FOIA Requester Service Center to determine the status of the request.

(c) *Expedited processing of initial requests.* (1) Requests are processed out of order and given expedited treatment whenever a compelling need is demonstrated and DOT determines that the compelling need involves:

(i) Circumstances in which the lack of expedited treatment could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or

(ii) A request made by a person primarily engaged in disseminating information, with a time urgency to inform the public of actual or alleged Federal Government activity.

(2) A request for expedited processing may be made at the time of the initial request for records or at any later time. For a prompt determination, the request for expedited processing must be received by the FOIA office for the component that maintains the records requested, as identified in § 7.27.

(3) A requester who seeks expedited processing must submit a statement, certified to be true and correct to the best of that individual's knowledge and belief, explaining in detail the basis for requesting expedited processing. A requester within the category in paragraph (c)(1)(ii) of this section must establish a particular urgency to inform the public about the Government activity involved in the request, beyond the public's right to know about Government activity generally.

(4) Within ten calendar days of receipt of a request for expedited processing, the proper component decides whether to grant it and notifies the requester of the decision. If DOT grants a request for expedited treatment, the request is given priority and is processed as soon as practicable. If DOT denies a request for expedited processing, any appeal of that denial is acted on expeditiously.

§ 7.32 What time limits apply to a requester when appealing DOT's initial or final determination?

(a) *Denial of records request.* When the responsible DOT official determines that a record request will be denied, in whole or in part, because the record is

subject to an exemption, is not in DOT's custody and control, or was not located following a reasonable search, DOT provides the requester with a written statement of the reasons for that determination, as described in § 7.31(a)(3), and of the right to appeal the determination within DOT.

(b) *Denial of fee waiver.* When the responsible DOT official denies, in whole or in part, a request for a waiver of fees made pursuant to § 7.24(b) or § 7.43(c), DOT provides the requester with written notification of that determination and of the right to appeal the determination within DOT.

(c) *Denial of expedited processing.* When the responsible DOT official denies a request for expedited processing made pursuant to § 7.31(c), DOT provides the requester with written notice of that determination and of the right to appeal the determination within DOT.

(d) *Right to administrative appeal.*

Any requester to whom a record has not been made available within the time limits established by § 7.31 and any requester who has been provided a written determination pursuant to paragraphs (a), (b), or (c) of this section may appeal to the responsible DOT official.

(1) Each appeal must be made in writing to the appropriate DOT appeal official and postmarked or, in the case of electronic or facsimile transmissions transmitted, within forty-five calendar days from the date the initial determination is signed 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. The contact information for all DOT component appeal officials is identified in the DOT FOIA Reference Guide. The envelope in which a mailed appeal is sent or the subject line of an appeal sent electronically or by facsimile should be prominently marked: "FOIA Appeal." The twenty Federal working day limit described in § 7.33(a) will not begin to run until the appeal has been received by the appropriate office and identified as an appeal under FOIA, or would have been so identified with the exercise of due diligence, by a DOT employee.

(2) Whenever the responsible DOT official determines it is necessary, the official may require the requester to furnish additional information, or proof of factual allegations, and may order other proceedings appropriate in the circumstances. DOT's time limit for responding to an appeal may be extended as provided in § 7.34. The decision of the responsible DOT official as to the availability of the record, the

appropriateness of a fee waiver or reduction, or the appropriateness of expedited processing, constitutes final agency action for the purpose of judicial review.

(3) The decision of the responsible DOT official to deny a record request, to deny a request for a fee waiver or reduction, or to deny a request for expedited processing is considered to be a denial by the Secretary for the purpose of 5 U.S.C. 552(a)(4)(B).

(4) When the responsible DOT official denies an appeal, the requester is informed in writing of the reasons for the denial of the request and the names and titles or positions of each person responsible for the determination, and that judicial review of the determination is available in the United States District Court for the judicial district in which the requester resides or has his or her principal place of business, the judicial district in which the requested records are located, or the District of Columbia.

(e) *Right to judicial review.* Any requester 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 to first submit an administrative appeal. Any requester who has received a written determination denying his or her administrative appeal or who has not received a written determination of his or her administrative appeal within the time limits established by § 7.33 can seek judicial review. A determination that a record request is denied, that a request for a fee waiver or reduction is denied, and/or that a request for expedited processing is denied does not constitute final agency action for the purpose of judicial review unless it is made by the responsible DOT official. Judicial review may be sought in the United States District Court for the judicial district in which the requester resides or has his or her principal place of business, the judicial district in which the requested records are located, or the District of Columbia.

§ 7.33 What time limits apply to DOT with respect to administrative appeals (final determinations)?

(a) *In general.* (1) DOT ordinarily processes appeals according to their order of receipt.

(2) DOT issues a determination with respect to any appeal made pursuant to § 7.32(d) within twenty Federal working days after receipt of such appeal, except that in unusual circumstances DOT may extend this time limit by up to ten Federal working days in accordance with § 7.34(a) or for more than ten

Federal working days in accordance with § 7.34(b). DOT notifies the requester making the appeal immediately, in writing, if the agency takes an extension of time. DOT may inform the requester making the appeal, at any time, of exceptional circumstances delaying the processing of the appeal (see § 7.34(c)).

(b) *Multi-track processing of appeals.*

(1) A DOT component may use two or more processing tracks by distinguishing between simple and more complex appeals based on the amount of work and/or time needed to process the appeal, or based on the amount of information involved.

(2) A DOT component using multi-track processing may provide persons making appeals in its slower track(s) with an opportunity to limit the scope of their appeals in order to qualify for faster processing within the specified limits of the component's faster track(s). A component doing so will contact the person making the appeal either by telephone, letter, facsimile, or electronic mail, whichever is most efficient in each case.

(c) *Expedited processing of appeals.*

(1) An appeal is processed out of order and given expedited treatment whenever a compelling need is demonstrated and DOT determines that the compelling need involves:

(i) Circumstances in which the lack of expedited treatment could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or

(ii) A request made by a person primarily engaged in disseminating information, with a time urgency to inform the public of actual or alleged Federal Government activity.

(2) A request for expedited processing may be made at the time of the appeal or at a later time. For a prompt determination, a request for expedited processing must be received by the component that is processing the appeal for the records requested.

(3) A requester who seeks expedited processing must submit a statement, certified to be true and correct to the best of that individual's knowledge and belief, explaining in detail the basis for requesting expedited processing. A requester within the category in paragraph (c)(1)(ii) of this section must establish a particular time urgency to inform the public about the Government activity involved in the request, beyond the public's right to know about Government activity generally. A person granted expedited processing under § 7.31(c) need merely certify that the same circumstances apply.

(4) Within ten calendar days of receipt of a request for expedited processing, the proper component will decide whether to grant it and will notify the requester of the decision. If a request for expedited treatment is granted, the appeal will be given priority and will be processed as soon as practicable. If a request for expedited processing of an appeal is denied, no further administrative recourse is available.

§ 7.34 When and how are time limits applicable to DOT extended?

(a) In unusual circumstances as specified in this section, DOT may extend the time limits prescribed in §§ 7.31 and 7.33 by written notice to the person making the request or appeal, setting forth the reasons for the extension and the date on which a determination is expected to be issued. Such notice may not specify a date that would result in a cumulative extension of more than ten Federal working days without providing the requester an opportunity to modify the request as noted in this section. As used in this paragraph, "unusual circumstances" means, but only to the extent reasonably necessary to the proper processing of the particular request:

(1) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

(2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records that are demanded in a single request; and/or

(3) The need for consultation, which will be conducted with all practicable speed, with any other agency having a substantial interest in the determination of the request or among two or more DOT components having substantial interest therein.

(b) When the extension is for more than ten Federal working days, the written notice provides the requester with an opportunity to either modify the request (e.g., by narrowing the record types or date ranges) so that it may be processed within the extended time limit, or arrange an alternative time period with the DOT component for processing the request (e.g., by prioritizing portions of the request).

(c) The DOT component may inform the requester, at any time, of exceptional circumstances that apply to the processing of the request or appeal (e.g., if the component is reducing a backlog of requests or appeals in addition to processing current requests, or is experiencing an unexpected deluge of

requests or appeals), as provided in 5 U.S.C. 552(a)(6)(C).

(d) When a DOT component reasonably believes that multiple requests submitted by a requester, or by a group of requesters acting in concert, constitute a single request that would otherwise involve unusual circumstances, and the requests involve clearly related matters, DOT may aggregate the requests for the purposes of fees and processing activities, which may result in an extension of the processing time. Multiple requests involving unrelated matters are not aggregated.

§ 7.35 When and how is the twenty day time limit for rendering an initial determination tolled?

The twenty Federal working day time period in which to render an initial determination will proceed without interruption except as provided in the following circumstances:

(a) DOT may toll the initial twenty Federal working day time period one time for the purpose of seeking additional information needed to clarify the request. Examples of such instances include but are not limited to:

(1) When clarification is needed with regard to the scope of a request; or

(2) When the description of the record(s) being sought does not enable the component handling the request to identify or locate the record(s).

(b) DOT may toll the initial twenty Federal working day time period as often as necessary to clarify fee issues with the requester. Examples of such instances include but are not limited to:

(1) When the requester has not sufficiently identified the fee category applicable to the request;

(2) When the requester has not stated a willingness to pay fees as high as anticipated by DOT; or

(3) When a fee waiver request is denied and the requester has not included an alternative statement of willingness to pay fees as high as anticipated by DOT.

Subpart E—Fees

§ 7.41 When and how are processing fees imposed for records that are made available under subpart B or processed under subpart C of this part?

(a) DOT imposes fees for services that DOT performs for the public under subparts B and C of this part. Fees apply to all required and special services performed by DOT employees, including employees of non-appropriated fund activities, and contractors, if utilized.

(b) DOT may assess a fee for time spent searching for records requested

under subpart C even if the search fails to locate records or the records located are determined to be exempt from disclosure. In addition, if records are requested for commercial use, DOT may assess a fee for time spent reviewing any responsive records located to determine whether they are exempt from disclosure.

(c) When a request is made under subpart C by a first-party requester and DOT processes the request under both FOIA and the Privacy Act, DOT determines the fees for records in DOT Privacy Act systems of record in accordance with the Privacy Act (as implemented by DOT regulations at 49 CFR part 10) rather than the FOIA.

(d) When DOT aggregates requests made under subpart C (see § 7.34(d)), DOT apportions fees as set forth in § 7.43(b).

(e) As a special service, DOT may certify copies of records made available under subpart B or released under subpart C, upon request and payment of the applicable fee: with the DOT seal (where authorized)—US \$10; or true copy, without seal—US \$5. Certified copies can be requested by contacting the applicable FOIA Requester Service Center (see § 7.27) or the DOT Dockets Office identified in § 7.12(b)(1).

(f) DOT makes transcripts of hearings or oral arguments available for inspection only. If transcripts are prepared by a nongovernmental contractor and the contract permits DOT to handle the reproduction of further copies, DOT assesses duplication fees as set forth in § 7.42(d). If the contract for transcription services reserves the sales privilege to the reporting service, any duplicate copies must be purchased directly from the reporting service.

(g) In the interest of making documents of general interest publicly available at as low a cost as possible, DOT arranges alternative sources whenever possible. In appropriate instances, material that is published and offered for sale may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402–0001; U.S. Department of Commerce's National Technical Information Service (NTIS), Springfield, VA 22151; or National Audio-Visual Center, National Archives and Records Administration, Capital Heights, MD 20743–3701.

§ 7.42 What is DOT's fee schedule for records requested under subpart C of this part?

(a) DOT calculates the hourly rates for manual searching, computer operator/programmer time, and time spent reviewing records, when performed by

employees, based on the grades and rates in the General Schedule Locality Pay Table for the Locality of Washington-Baltimore-Northern Virginia, DC-MD-VA-WV-PA, or equivalent grades, plus 16% to cover fringe benefits, as follows:

(1) GS–1 through GS–8 (or equivalent)—Hourly rate of GS–5 step 7 plus 16%;

(2) GS–9 through GS–12 (or equivalent)—Hourly rate of GS–10 step 7 plus 16%;

(3) GS–13 through GS–14 (or equivalent)—Hourly rate of GS–13 step 7 plus 16%; and

(4) GS–15 and above (or equivalent)—Hourly rate of GS–15 step 7 plus 16%.

(b) DOT determines the standard fee for a manual or electronic search to locate records by multiplying the searcher's hourly rate as set forth in paragraph (a) of this section by the time spent conducting the search.

(c) DOT's standard fee for review of records is the reviewer's rate set forth in paragraph (a) of this section, multiplied by the time the reviewer spent determining whether the located records are responsive to the request and whether the responsive records or segregable portions are exempt from disclosure, as explained in paragraphs (h), (i), and (j) of this section.

(d) DOT determines the standard fee for duplication of records as follows:

(1) Per copy of each page (not larger than 8.5 × 14 inches) reproduced by photocopy or similar means (includes costs of personnel and equipment)—US \$0.10.

(2) Per copy prepared by any other method of duplication—actual direct cost of production.

(e) If DOT utilizes a contractor to perform any services described in this section, the standard fee is based on the equivalent hourly rate(s). DOT does not utilize contractors to discharge responsibilities that only DOT may discharge under the FOIA.

(f) In some cases, depending upon the category of requester and the use for which the records are requested, the fees computed in accordance with the standard fee schedule in paragraphs (a) through (e) of this section are either reduced or not charged, as prescribed by other provisions of this subpart.

(g) For purposes of fees only, there are four categories of FOIA requests:

(1) Requests submitted by a commercial entity and/or for a commercial use;

(2) Requests submitted by an educational or noncommercial scientific institution whose purpose is scholarly or scientific research (and not for a commercial use);

(3) Requests submitted by a representative of the news media; and
(4) All other requests.

(h) When records are requested by a commercial requester and/or for a commercial use, the fees assessed are reasonable standard charges for document search, duplication, and review.

(i) When records are requested by an educational or noncommercial scientific institution whose purpose is scholarly or scientific research or by a representative of the news media (i.e., for a non-commercial use), fees are limited to reasonable standard charges for document duplication.

(j) For any request not described in paragraph (h) or (i) of this section, fees are limited to reasonable standard charges for document search and duplication.

(k) Fees under this subpart do not apply to any special study, special statistical compilation, table, or other record requested under 49 U.S.C. 329(c). The fee for the performance of such a service is the actual cost of the work involved in compiling the record. All such fees received by DOT in payment of the cost of such work are deposited in a separate account administered under the direction of the Secretary, and may be used for the ordinary expenses incidental to providing the information.

§ 7.43 When are fees waived or reduced for records requested under subpart C of this part?

(a) DOT does not charge fees to any requester making a request under subpart C of this part for the following services:

(1) Services for which the total amount of fees that could be charged for the particular request (or aggregation of requests) is less than US \$20, after taking into account all services that must be provided free of charge or at a reduced charge.

(2) The first two hours of search time, unless the records are requested for commercial use.

(3) Duplication of the first 100 pages (standard paper, not larger than 8.5 × 14 inches) of records, unless the records are requested for commercial use.

(4) Review time spent determining whether a record is exempt from disclosure, unless the record is requested for commercial use. DOT does not charge for review time except with respect to an initial review to determine the applicability of a particular exemption to a particular record or portion of a record. DOT does not charge for review at the administrative appeal level. However, when records or portions of records withheld under an

exemption that is subsequently determined not to apply are reviewed again to determine the applicability of other exemptions not previously considered, this is considered an initial review for purposes of assessing a review charge.

(b) When DOT aggregates requests as provided in § 7.34(d), DOT charges each requester a ratable portion of the fees charged for combined services rendered on behalf of all requesters.

(c) DOT waives or reduces the fees described in § 7.42(i) and (j) when the requester makes a fee waiver or reduction request as provided in § 7.24(b) and establishes that disclosure of the information is in the public interest as provided in 5 U.S.C. 552 and this paragraph, and the DOT official having initial denial authority determines that disclosure of the information is in the public interest and is not primarily in the commercial interest of the requester. The requester must establish all of the following factors to DOT's satisfaction to show that the request is in the public interest:

(1) That the subject matter of the requested records concerns the operations or activities of the Federal Government;

(2) That the disclosure is likely to contribute to an understanding of Federal Government operations or activities;

(3) That disclosure of the requested information will contribute to the understanding of the public at large, as opposed to the understanding of the individual requester or a narrow segment of interested persons (to establish this factor, the requester must show an intent and ability to disseminate the requested information to a reasonably broad audience of persons interested in the subject);

(4) That the contribution to public understanding of Federal Government operations or activities will be significant; and

(5) That the requester does not have a commercial interest that would be furthered by the requested disclosure or that the magnitude of any identified commercial interest to the requester is not sufficiently large in comparison with the public interest in disclosure to render the disclosure one that is primarily in the commercial interest of the requester.

(d) DOT furnishes documents without charge or at a reduced charge when the official having initial denial authority determines that the request concerns records related to the death of an immediate family member who was, at the time of death, a DOT employee.

(e) DOT furnishes documents without charge or at a reduced charge when the official having initial denial authority determines that the request is by the victim of a crime who seeks the record of the trial at which the requester testified.

(f) DOT does not assess the following fees when DOT fails to comply with the time limits under § 7.31 or § 7.33 and no unusual or exceptional circumstances (see § 7.34(a) and (c)) apply to the processing of the request or appeal:

(1) Search fees otherwise chargeable under § 7.42(h) and (j); and

(2) Duplication fees otherwise chargeable under § 7.42(i).

§ 7.44 How can I pay a processing fee for records requested under subpart B or subpart C of this part?

Fees typically should be paid online, using a credit card, debit card, or electronic check. The DOT FOIA page (<http://www.dot.gov/foia>) has direct links to the electronic payment site. Any fees paid with a paper check, draft, or money order must be made payable to the U.S. Treasury and delivered as directed by the applicable FOIA Requester Service Center identified in § 7.27 (if the fees are for records made available under subpart C) or the DOT Dockets Office identified in § 7.12(b)(1) (if the fees are for records made available under subpart B).

§ 7.45 When are pre-payments required for records requested under subpart C of this part, and how are they handled?

(a) When DOT estimates that the search charges, review charges, duplication fees, or any combination of fees that could be charged to the requester will likely exceed US \$25, DOT notifies the requester of the estimated amount of the fees, unless the requester has previously indicated a willingness to pay fees as high as those anticipated. In cases where DOT notifies the requester that actual or estimated fees may amount to more than US \$25, the time limit for responding to the request is tolled until the requester has agreed to pay the anticipated total fee (see § 7.35). The notice also informs the requester how to consult with the appropriate DOT officials with the object of reformulating the request to meet his or her needs at a lower cost.

(b) DOT may require payment of fees prior to actual duplication or delivery of any releasable records to a requester. However, advance payment, i.e., before work is commenced or continued on a request, is not required unless:

(1) Allowable charges that a requester may be required to pay are likely to exceed US \$250; or

(2) The requester has failed to pay within 30 days of the billing date fees charged for a previous request to any part of the U.S. Government.

(c) When paragraph (b)(1) of this section applies, DOT notifies the requester of the estimated cost. If the requester has a history of prompt payment of FOIA fees, the requester must furnish satisfactory assurance of full payment of the estimated charges. Otherwise, the requester may be required to make advance payment of any amount up to the full estimated charges.

(d) When paragraph (b)(2) of this section applies, DOT requires the requester to either demonstrate that the fee has been paid or pay the full amount owed, including any applicable interest, late handling charges, and penalty charges as discussed in § 7.46. DOT also requires such a requester to make an advance payment of the full amount of the estimated fee before DOT begins processing a new request or continues processing a pending request.

(e) In the event that a DOT component is required to refund a prepayment, the processing of the refund may necessitate collection of the requester's Taxpayer Identification Number or Social Security Number and direct deposit information (bank routing number and bank account number) under 31 U.S.C. 3325, 31 U.S.C. 3332, and 31 CFR Part 208.

§ 7.46 How are late payments handled?

(a) DOT assesses interest on an unpaid bill starting on the 31st day following the day on which the notice of the amount due is first mailed to the requester. Interest accrues from the date of the notice of amount due at the rate prescribed in 31 U.S.C. 3717. Receipt by DOT of a payment for the full amount of the fees owed within 30 calendar days after the date of the initial billing stops the accrual of interest, even if the payment has not been processed.

(b) If DOT does not receive payment of the fees charged within 30 calendar days after the date the initial notice of the amount due is first mailed to the requester, DOT assesses an administrative charge to cover the cost of processing and handling the delinquent claim. In addition, DOT applies a penalty charge with respect to any principal amount of a debt that is more than 90 days past due. Where appropriate, DOT uses other steps permitted by Federal debt collection statutes, including disclosure to consumer reporting agencies and use of collection agencies, to encourage payment of amounts overdue.

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DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 272

[Docket No. FRA-2008-0131, Notice No. 2]

RIN 2130-AC00

Critical Incident Stress Plans

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: FRA issues this final rule in accordance with a statutory mandate that the Secretary of Transportation (Secretary) require certain major railroads to develop, and submit to the Secretary for approval, critical incident stress plans that provide for appropriate support services to be offered to their employees who are affected by a "critical incident" as defined by the Secretary. The final rule contains a definition of the term "critical incident," the elements appropriate for the rail environment to be included in a railroad's critical incident stress plan, the type of employees to be covered by the plan, a requirement that a covered railroad submit its plan to FRA for approval, and a requirement that a railroad adopt and comply with its FRA-approved plan.

DATES: This final rule is effective on June 23, 2014. Petitions for reconsideration must be received by May 27, 2014.

ADDRESSES: Petitions for reconsideration and comments on petitions for reconsideration: Any petitions for reconsideration or comments on petitions for reconsideration related to this Docket No. FRA-2008-0131, Notice No. 2 may be submitted by any of the following methods:

- **Federal eRulemaking Portal:** Go to www.Regulations.gov. Follow the online instructions for submitting comments.
- **Mail:** Docket Management Facility, U.S. Department of Transportation, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590-0001.
- **Hand Delivery:** Docket Management Facility, U.S. Department of Transportation, West Building, Ground floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.
- **Fax:** 202-493-2251.

Instructions: All submissions must include the agency name and docket number or Regulatory Identification Number (RIN) for this rulemaking.

Please note that all comments received will be posted without change to www.Regulations.gov, including any personal information provided. Please see the discussion under the Privacy Act heading in the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to www.Regulations.gov at any time or visit the Docket Management Facility, U.S. Department of Transportation, West Building, Ground floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: For program issues: Dr. Bernard J. Arseneau, Medical Director, Office of Railroad Safety, FRA, 1200 New Jersey Avenue SE., Washington, DC 20590 (telephone: (202) 493-6232), Bernard.Arseneau@dot.gov; or Ronald Hynes, Director, Office of Safety Assurance and Compliance, Office of Railroad Safety, FRA, 1200 New Jersey Avenue SE., Washington, DC 20590 (telephone: (202) 493-6404), Ronald.Hynes@dot.gov. For legal issues: Veronica Chittim, Trial Attorney, Office of Chief Counsel, FRA, 1200 New Jersey Avenue SE., Washington, DC 20950 (telephone: (202) 493-0273), Veronica.Chittim@dot.gov; or Gahan Christenson, Trial Attorney, Office of Chief Counsel, FRA, 1200 New Jersey Avenue SE., Washington, DC 20950 (telephone: (202) 493-1381), Gahan.Christenson@dot.gov.

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