

ORDER

1270.1

FREEDOM OF INFORMATION ACT PROGRAM



June 13, 2000

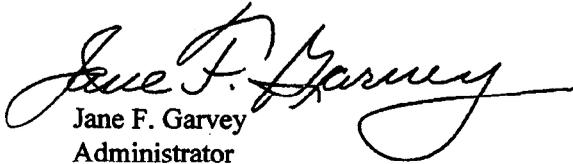
**DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION**

FOREWORD

This order provides for the administration of the Freedom of Information Act (FOIA), 5 U.S.C. 552, within the Federal Aviation Administration (FAA). It states the authorities, requirements, and responsibilities for administering the FOIA.

This order provides direction and guidance for the administration of the FOIA at all levels within the FAA. The heads of offices, services, regions, and centers are required to designate a FOIA Coordinator. Procedures and administrative questions should be referred to the National Freedom of Information Act Staff (ARC-40) in the Office of the Assistant Administrator for Region and Center Operations.

The contents of this order have been prepared on an agencywide basis; therefore, individual organizations may supplement this broad coverage with specific guidelines and instructions specific to their needs. Supplementation that may have agencywide application should be coordinated with ARC-40.



Jane F. Garvey
Administrator

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**APPENDIX 1. DOT FINAL RULE, 49 CFR PART 7,
PUBLIC AVAILABILITY OF INFORMATION;
ELECTRONIC FOIA AMENDMENT. 1-1**

APPENDIX 2. FOIA CHECKLIST/FEE WORKSHEET 2-1

CHAPTER 1. GENERAL

1. PURPOSE. This order provides guidance governing processing of requests for agency records under the Freedom of Information Act (FOIA), 5 U.S.C. 552, and implements the Department of Transportation (DOT) regulations found in part 7, title 49 of the Code of Federal Regulations (CFR). **Note: For the purposes of this order, FOIA (pronounced "foi-ya") is used throughout as an acronym, rather than an abbreviation.**

2. DISTRIBUTION. This order is being distributed to the branch level in Washington headquarters, regions, and centers and field offices and facilities.

3. CANCELLATION. Order 1200.23, Public Availability of Information, dated November 1, 1977, is canceled.

4. BACKGROUND. The FOIA, enacted in 1966, established a statutory right of access to agency records, unless those records are specifically exempted from disclosure or specifically excluded in the FOIA. In implementing the FOIA, it is the policy of the DOT to make information available to the public to the greatest extent possible in keeping with the spirit of the statute. Each officer and employee of the Federal Aviation Administration (FAA) is directed to cooperate fully by making records available to the public in a timely manner and to the fullest extent consistent with this policy.

5. EXPLANATION OF CHANGES. This revision:

- a. Changes the title of the order to the Freedom of Information Act Program.
- b. Changes the subject classification series of the order from 1200 to 1270.
- c. Updates the organizational responsibility with the Freedom of Information Act function being transferred from the Office of Public Affairs to the Office of the Assistant Administrator for Region and Center Operations. The National Freedom of Information Act Staff performs the FOIA function.
- d. Incorporates the delegations of authority to release records, to withhold records, and to make "no records" determinations.
- e. Requires identification of the exemption relied on to be placed on any redacted document so the requester is notified of which exemption applies to each redaction.
- f. Adds definitions.
- g. Replaces the former Chapter 3, Release of Information by FAA Employees, with a new Chapter 3, Disclosure and Access to FAA Records, for consistency with internal policies and procedures as well as with Departmental regulations, Executive Orders, Department of Justice policy, and case law.
- h. Adds Chapter 4, Fees and Fee Waivers, to explain the categories of requesters, chargeable services, and fee reductions or waivers.

- i. Adds Chapter 5, Decision Letters, to address preparation of FOIA responses.
- j. Adds Chapter 6, Reports, to address reporting requirements.
- k. Adds Chapter 7, Document Inspection Facilities, to address the document inspection facilities, the type of documents available at these facilities, and the FAA FOIA Reading Room.
- l. Adds DOT final rule, 49 CFR Part 7, Public Availability of Information; Electronic FOIA Amendment, in Appendix 1.
- m. Adds Appendix 2, FOIA Checklist/Fee Worksheet.

6. RELATED PUBLICATIONS. The latest edition of the following publications are to be used in conjunction with this order in the implementation of the FOIA program:

- a. FAA Order 1280.1, Protecting Privacy of Information About Individuals.
- b. FAA Order 1600.2, Safeguarding Controls and Procedures for Classified National Security Information and Sensitive Unclassified Information.
- c. FAA Order 7210.3, Facility Operation and Administration.
- d. FAA Order 8020.11, Aircraft Accident and Incident Notification, Investigation, and Reporting.
- e. FAA Order 8120.10, Suspected Unapproved Parts Program.
- f. 14 CFR Part 107, Sensitive Security Information.
- g. Finding the DOT Records You Want (Internet address: <http://www.dot.gov/ost/ogc/subject/consumer/foia/index.html>).

7. DEFINITIONS. These definitions apply to carrying out the intent of the FOIA.

a. **Adequate searches** are conducted in a manner reasonably calculated to locate responsive documents maintained in a paper or electronic form or format by agency personnel familiar with the subject matter and with the likely location of responsive documents. A search should be conducted in all places where responsive records would likely be found. Electronic searches should be conducted in a manner that would not significantly interfere with the operation of the agency's automated information system.

b. **Agency records** are existing documents that are:

- (1) Created or obtained by the agency; and
- (2) Under the agency's control at the time of the FOIA request.

c. **Program office** is any office in headquarters, regions, or centers that has records responsive to the FOIA request.

d. **Perfected request** is a FOIA request for records which adequately describes the records sought, which has been assigned to and received by the FOIA office of the agency or agency components in possession of the records, and for which there is no remaining question about the payment of applicable fees.

e. **Records** include any existing writing, drawing, map, recording, tape, film, photograph, or other documentary material used to preserve information by the agency. Records also include existing documentary material stored in an electronic form or format.

f. **Use of Shall, Must, Should, and May.**

(1) Shall and/or must in the second or third person means that an action is mandatory/required. Shall not or must not means that the action is prohibited.

(2) Should means that an action is desirable or preferred but not mandatory.

(3) May means an action is permissive.

8. **FORMS.** FOIA Checklist/Fee Worksheet (FAA Form 1270-1). Paragraph 53b explains the checklist and fee worksheet accompanying each FOIA request. FAA Form 1270-1 is available electronically and is not stocked. Contact your FOIA coordinator or ARC-40 for copies of the form.

9. **REPORTS.** The following reports are used in conjunction with the FOIA program.

a. FOIA Annual Report. See paragraph 60 for more detail.

b. Overdue Report. See paragraph 61 for more detail.

c. Status Report. See paragraph 62 for more detail.

10. **SUPPLEMENTS.** Heads of offices, services, regions, and centers are authorized to issue supplements to implement this order. A copy of each supplement should be furnished to the National Freedom of Information Act Staff (ARC-40). Additionally, supplements which may have agencywide application should be coordinated with ARC-40.

11. **AUTHORITY TO ISSUE CHANGES TO THIS ORDER.** The Assistant Administrator for Region and Center Operations may issue changes to this order. The Administrator reserves the authority to approve changes that establish policy, delegate authority, or assign responsibility.

12.-19. **RESERVED.**

CHAPTER 2. RESPONSIBILITIES AND DELEGATIONS OF AUTHORITY

20. RESPONSIBILITIES.

a. The National Freedom of Information Act Staff (ARC-40) administers the FOIA program throughout the agency. The staff:

- (1) Develops national policies, guidance, and procedures to conduct the FAA FOIA program.
- (2) Provides training to FAA managers, coordinators, and program personnel who respond to FOIA requests.
- (3) Assigns and tracks FOIA requests received in Washington headquarters.
- (4) Identifies responsive organizations and, when appropriate, assigns a lead organization to coordinate the process when responding to a FOIA request that crosses organizational lines of business.
- (5) Monitors and reviews certain responses (i.e., those involving unique or complex issues) to FOIA requests received in the Washington headquarters.
- (6) Coordinates, monitors, and/or reviews certain responses to FOIA requests received at FAA organizations located outside the Washington headquarters.
- (7) Determines whether responses to a FOIA request received in headquarters will be consolidated or separate.
- (8) Documents and analyzes the operation of the FOIA program within the agency.
- (9) Reviews all partial no record and no record determinations made at the Washington headquarters.
- (10) Logs and tracks all appeals of initial determination.
- (11) Gathers all information necessary to process appeals of initial determinations.
- (12) Processes no records and fee issue appeals.
- (13) Remands to the service, office, region, or center certain appeals of determinations that are deemed to warrant review and reconsideration by those organizations.
- (14) Determines whether requests to expedite appeals should be granted.
- (15) Determines the fee category of a requester for requests received in headquarters when the category is not provided in the FOIA request and more than one program office has responsive records.

b. The Assistant Administrator for Region and Center Operations (ARC-1) has been delegated authority to make final agency determinations regarding FOIA appeals, unless ARC-1 made the initial determination, in which case the final agency determination shall be made by the Administrator or an official designated by the Administrator.

c. The General Law Branch in the Office of the Chief Counsel (AGC-110) provides legal advice and counsel on issues relating to the FOIA. AGC-110 provides legal review and concurrence for all partial denials, full denials, partial no records, and no records determinations for headquarters FOIA requests. It also provides legal review and concurrence for all appeal determinations.

d. The regional and center counsels provide legal assistance to division managers, reviewing officials, FOIA coordinators, and other employees and officers within their respective geographic or organizational jurisdictions. They also provide legal review and concurrence for all partial denials, full denials, partial no records, and no records determinations for region and center FOIA requests.

e. The heads of offices and services, regional administrators, and directors of centers are responsible for determining both the releasability of records under their purview and withholding records pursuant to properly applied exemptions or exclusions. In the case of the regions, the regional administrator's authority covers records for all organizations resident in the region including those not under his/her direct operational line of authority (straightline). Additionally, they are responsible for designating a FOIA coordinator who has technical or subject matter knowledge about the organization, and for notifying ARC-40 of that designation. These officials are accountable for ensuring that employees at all levels responsible for FOIA's, including the FOIA coordinator, receive appropriate FOIA training.

f. The responsibilities for the FOIA coordinators may include, but are not limited to:

(1) Acting as the focal point between their organization and ARC-40.

(2) Assigning and controlling FOIA requests with appropriate due dates to elements within their organization possessing records responsive to the requests. The FOIA coordinator shall include with each FOIA request a copy of FAA Form 1270-1, FOIA Checklist/Fee Worksheet, to be completed by the person preparing the FOIA response.

(3) Following up on the status of outstanding FOIA requests.

(4) Designating the lead organization or element for coordinating and processing FOIA requests when the requested records reside in more than one organizational element and consolidated approval is warranted.

(5) Advising program offices regarding the FOIA process; e.g., scoping the FOIA requests, establishing search parameters, addressing fees, and assisting in the decision process regarding the applicability of the FOIA to withholding and/or disclosing records.

(6) Reviewing for accuracy and completeness the FOIA response, checklist, and fee worksheet and coordinating on FOIA responses prior to signature. The FOIA coordinator shall ensure that there is adequate documentation both for materials released and withheld, and adequate search documentation for no records or partial no record responses.

(7) Providing ARC-40, upon notification of an appeal of a determination, with the withheld materials for denial/partial denial responses or search documentation for "no records" responses within 7 working days.

(8) Compiling and submitting to ARC-40, upon request, the FOIA Annual Report information affecting their organization in accordance with established instructions and deadlines.

(9) Providing copies of no records, denials, and partial denial determination letters to AGC-110 and ARC-40.

(10) Providing copies of news media FOIA requests to the appropriate public affairs office and ARC-40.

g. FOIA respondents are responsible for answering and processing FOIA requests under established FOIA policies, procedures, and timelines. When more than one program office has responsive records, responding organizations are encouraged to coordinate their efforts to ensure consistency in the agency response.

21. DELEGATIONS OF AUTHORITY.

a. **Release of FAA Records.** Authority to release FAA records requested under the FOIA is vested in the heads of offices and services, regional administrators, and directors of the Mike Monroney Aeronautical Center (AMC) and the William J. Hughes Technical Center (ACT). This authority may only be redelegated to heads of divisions.

b. **Denial Authority.** Authority to withhold FAA records or portions thereof and to make "no records" determinations is vested in the heads of offices and services, regional administrators, and directors of AMC and ACT. This signature authority may not be delegated.

22.-29. RESERVED.

CHAPTER 3. DISCLOSURE AND ACCESS TO FAA RECORDS

30. FOIA REQUEST REQUIREMENTS.

a. A request for agency records may be made by any person, which encompasses individuals (including foreign citizens), partnerships, corporations, associations, and foreign and domestic governments. "Person" does not, however, include Federal agencies.

b. A request for agency records shall meet the following provisions:

- (1) The request must be made in writing.
- (2) The request should indicate that it is being made under FOIA.
- (3) The envelope in which the request is mailed should be marked "FOIA."
- (4) The request should be addressed to the appropriate FOIA office. A current listing of FAA FOIA offices is available on the Internet on the FAA FOIA Home Page, accessible from the FAA Home Page.
- (5) The request should state the format (e.g., paper, microfiche, computer diskette, etc.) in which the information is sought, if the requester has a preference.
- (6) Each FOIA request shall specify the fee category of the requester (commercial, media, educational or noncommercial scientific institution, media, or other).
- (7) Each FOIA request shall state the maximum amount of fees that the requester is willing to pay.
- (8) Each FOIA request including a fee waiver shall address how the requester believes each of the criteria for fee waiver (see paragraph 46) is met.
- (9) Each request should describe the particular record to the fullest extent possible. 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 person or office that made it.

c. The time for responding to requests shall not begin to run until the FOIA request is perfected. A perfected request is a FOIA request for records which describes the records sought, which has been assigned to and received by the FOIA office of the agency or agency components in possession of the records. In addition, the time for responding to requests shall not begin to run:

- (1) If the requester has not sufficiently identified the fee category applicable to the request;
- (2) If a requester has not stated a willingness to pay fees as high as anticipated by the Department of Transportation (DOT); or

(3) If 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; or

(4) If a fee waiver request does not address fee waiver criteria.

d. A request provides a right of access only to records existing when the request is made. It does not allow access to records prospectively. A request may not require that new records be created in response to the request.

31. GUIDELINES FOR SCOPING THE REQUEST. A FOIA request should contain a sufficient description of the records being sought to enable an agency employee who is familiar with the subject area to locate the records with a reasonable amount of effort.

a. **Clarifying the Request.** If the request appears too broad or vague, the program office may contact the requester to clarify the description of the records being sought or to narrow the scope of the request.

b. **Identifying Responsive Records.** The agency is required to conduct a search reasonably calculated to locate all records responsive to a FOIA request.

c. **Coordinating with Other Offices with Responsive Records.** When other program offices are believed to have responsive records, the lead program office should contact them to confirm the existence of records, and then notify the appropriate FOIA coordinator. The coordinators may consolidate the responses.

32. TIME LIMITS. A determination is required within 20 working days after a FOIA request is received by the appropriate program office and determined to be a perfected FOIA request. The appropriate FOIA coordinator assigns to each FOIA request a due date that is within the regulatory time limit.

a. **Extensions.** The program office may extend the initial time limit for an additional 10 working days if there are unusual circumstances. The extension must be by written notice to the person making the request. "Unusual circumstances" means a need to:

(1) Search for and collect records from field facilities or other establishments that are separate from the office processing the request;

(2) Examine a voluminous amount of records required by the request; or

(3) Consult with another agency or DOT component having substantial subject matter interest in the records.

b. **Negotiations for Extension of Time.** When it appears that the response due date cannot be met, the program office should:

(1) Contact the requester by telephone, or if no telephone number is available, by letter;

(2) Explain the reasons for the unusual circumstance; and

(3) Provide the requester an opportunity to:

(a) modify the scope of the request so that it may be processed within the initial timeframe; or

(b) arrange a new due date for processing the request.

(4) Follow up with a letter confirming the conversation and provide a copy of the letter to the appropriate FOIA coordinator. If the requester refuses to reasonably modify the request or arrange a new due date, the due date for response may not be extended. However, the confirming letter should provide the estimated completion time for response.

c. Expedited Processing. Requests may be expedited at the time of the initial request or at a later time. Requests shall be given expedited treatment only upon a showing by the requester of a compelling need based on imminent threat to life or physical safety to an individual, or when a requester primarily engaged in disseminating information shows an urgency to inform the public of an actual or alleged FAA activity.

(1) A requester who is seeking expedited processing must submit a statement, certified to be true and correct to his or her knowledge and belief, explaining in detail the basis for requesting expedited processing.

(2) Media representatives must also establish a particular urgency to inform the public about the activity involved in the request--beyond the public's right generally to know about government activity.

(3) The program office must decide whether to grant an expedited processing request and notify the requester of that decision within 10 working days of receipt of a request to expedite. If the request to expedite is granted, the request will be processed as soon as practicable. In the event of a denial, the notification should include information indicating that the requester may appeal to the Assistant Administrator for Region and Center Operations within 5 working days of receipt of the letter.

(4) The program office is responsible for making the decision to grant or deny an expedited processing request. For media requests, any decision about expediting a FOIA request should be coordinated with their Office of Public Affairs staff member.

d. Estimating Fees. Fees should be estimated *before* starting to process a request. Any fee issue should be resolved before any substantive work is done on the request. (For additional information, refer to Chapter 4, Fees and Fee Waivers.)

33. SEARCH. The agency has a duty to make a "good faith" effort to identify responsive records.

a. Reasonable Search. An adequate search is conducted in a manner reasonably calculated to locate responsive documents by agency personnel familiar with the subject matter and with the likely location of responsive documents. The agency has no obligation either to create records or go outside the agency to obtain them. When no responsive records can be located, the program office

should document the name of the person(s) who conducted the search, the files that were searched manually or electronically, the reason the files were searched, and the identity of any other offices that might have the requested records.

b. Official vs. Unofficial Records. The FOIA makes no distinction between “official” and “unofficial” records. The FOIA applies to “agency records,” which means records under the possession and control of the agency at the time of the FOIA request.

c. FOIA Transfers/Coordination with Other Offices. A program office responding to a FOIA request should consider whether other offices have documents responsive to the request and, if appropriate, consult with those offices. When requested records are located in another FAA program office or in another DOT modal administration, the program office should notify the FOIA coordinator to ensure all agency records are gathered from the appropriate program office or DOT modal administration with responsibility for the requested records. If a request, or portion thereof, is referred to another program office, the FOIA coordinator shall advise the requester in writing of the forwarding action, indicate a point of contact if possible, and provide ARC-40 an information/courtesy copy, when appropriate, of the forwarding correspondence.

d. Referrals.

(1) When the FAA has possession of responsive records that were created by another Federal agency, the FAA shall refer those records to the originating agency for a release determination. The referral package shall include a copy of the incoming request and the responsive records. The referral letter should request the originating agency to provide the FAA with a copy of its response to the requester. The program office will advise the requester in writing of the referral action, with a point of contact if possible, and provide ARC-40, when appropriate, an information/courtesy copy of the forwarding correspondence.

(2) A request for Federal records that the FAA does not maintain may still require a formal no records response. A respondent may contact the requester by telephone, to advise of the appropriate Federal source for the records, if known, and negotiate withdrawal of the request. If the requester still wants an FAA search for the records, then the respondent is obliged to search the files most likely to have the records and follow procedures for a standard no records response.

e. Consultation. If agency records contain information that may be of substantial concern to another Federal agency, State or local government, or a foreign government, the responding program office shall consult with that organization before any determination is made regarding release. The program office shall maintain documentation of the consultation.

f. Federal Records Center. If a FOIA request is received that involves FAA agency records stored at a Federal Records Center, the program office is obligated to retrieve the records from the Federal Records Center.

g. Archives. Agency records that have been released to the National Archives and Records Administration (NARA) are no longer FAA records.

34. FAA FOIA RELEASE POLICY AND DUTY TO SEGREGATE. Agency records possessed by the FAA are subject to the Act and must be made available to the public on request, unless specifically exempted or excluded by the FOIA. Reasonably segregable information will be provided from records which contain information that may be withheld. At the request of the FOIA requester and **after review by the program office**, releasable records may be made available for inspection and copying.

35. APPLICATION OF EXEMPTIONS.

a. There are nine exemptions under the FOIA which permit an agency to withhold records. The appropriate program office must review each requested record to determine if the records or any reasonably segregable portion of the records fall within one of the nine exemptions. (See 5 U.S.C. 552 for a complete description of the exemptions.)

(1) **Exemption 1: Classified Information.** Exemption 1 protects from disclosure national security information concerning the national defense or foreign policy, provided it has been properly classified in accordance with the substantive and procedural requirements of Executive Order 12958, Classified National Security Information.

(2) **Exemption 2: Internal Matters.** Exemption 2 protects from disclosure records which relate to internal personnel rules and practices of the agency. The Exemption protects internal documents, the disclosure of which would risk circumvention of a statute or agency regulation, or impede the effectiveness of an agency's activities.

(3) **Exemption 3: Information Protected by Other Statutes.** Exemption 3 incorporates the disclosure prohibitions that are contained in other statutes. A statute must require withholding without permitting any discretion, or establish particular criteria for withholding or refer to particular types of matter to be withheld. (Note: Neither the Privacy Act nor the Government in The Sunshine Act qualify as exemption 3 statutes.)

(4) **Exemption 4: Business or Trade Information.** This Exemption protects trade secrets and commercial or financial information obtained from a person that is privileged or confidential.

(a) A trade secret is a secret, commercially valuable plan, formula, process, or device that is used for making, preparing, compounding, or processing trade commodities and that can be said to be the end product of either innovation or substantial effort. A direct relationship between the trade secret and the productive process is required.

(b) Commercial or financial information obtained from a person that is privileged or confidential. Examples of items regarded as commercial or financial information include: business sales statistics; research data; technical designs; customer and supplier lists; profit and loss data; overhead and operating costs; and information on financial condition.

(c) **Submitter Notice: Executive Order 12600, Predisclosure Notification Procedures for Confidential Commercial Information,** directs agencies to establish procedures to notify in writing submitters of confidential commercial information whenever an agency "determines that it may be required to disclose" such information under the FOIA. Once submitters are notified in

writing, they must be given a reasonable period of time to object to disclosure of any of the requested information. At the same time, the requester is given notification that the submitter is being provided the opportunity to comment. Executive Order 12600 also requires that agencies give careful consideration to the submitters' objections and provide them with a written statement explaining why any such objections are not sustained.

(5) Exemption 5: Privileged Information. Exemption 5 protects inter-agency or intra-agency memoranda or letters which would not be available by law to a party in litigation with the agency. The three most frequently invoked privileges are the deliberative process, the attorney work-product and the attorney-client product.

(a) The purpose of the deliberative process privilege is to prevent injury to the quality of agency decisions. Records qualify for withholding if they meet the following criteria:

1 The records are intra-agency or inter-agency documents, meaning they were generated by the agency or, in limited case, pursuant to agency initiative and are directly tied to the agency's decisionmaking process.

2 The records are predecisional in nature, meaning they precede an identifiable agency decision. Final agency decision or documents implementing a final agency decision are not predecisional.

3 The records, or portions thereof, are deliberative in nature, meaning that they express an advisory opinion, recommendation, or advice on a legal matter, policy matter, or other significant matters under agency consideration. Strictly factual information normally does not qualify for protection because it is not deliberative.

(b) The attorney work-product privilege protects documents and other memoranda prepared by an attorney in contemplation of litigation.

(c) The attorney-client privilege protects confidential communications between an attorney and his/her client relating to a legal matter for which the client has sought professional advice.

(6) Exemption 6: Personal Privacy. Exemption 6 protects information in personnel, medical, or similar files, the disclosure of which would "constitute a clearly unwarranted invasion of privacy." The threshold requirement is "personnel file, medical file, or similar file," which includes any information that applies to a particular individual. This exemption cannot be invoked to withhold from a requester information pertaining only to the requester. To determine whether release of information constitutes a clearly unwarranted invasion of privacy, the individual privacy interest at stake must be balanced against the public interest in disclosure.

(a) The first step is to determine whether the subject of the information has a privacy interest in the information.

(b) If a privacy interest exists, then, determine whether there is a qualifying "public interest" in disclosure. "Public interest" requires that disclosure would inform the public about how the agency is performing its statutory duties, or "what the government is up to." Once both a privacy

interest and a public interest have been identified, the two competing interests must be weighed against one another. In balancing these interests, the “clearly unwarranted” language of Exemption 6 weighs the scale in favor of disclosure. If the public benefit is weaker than the threat to privacy or nonexistent, the information should be withheld.

(7) Exemption 7: Law Enforcement Records. Exemption 7 applies to criminal, civil, and regulatory law enforcement records. Exemption 7 protects records or information compiled for law enforcement purposes, but only to the extent that the release of such law enforcement records or information would cause one of the “harms” specified in Exemption 7’s six subparts.

(a) Exemption 7(A)—Authorizes the withholding of “records or information compiled for law enforcement purposes, but only to the extent that production of such law enforcement records or information . . . could reasonably be expected to interfere with enforcement proceedings.”

(b) Exemption 7(B)—Protects “records or information compiled for law enforcement purposes, the disclosure of which would deprive a person of a right to a fair trial or an impartial adjudication.”

(c) Exemption 7(C)—Provides protection for personal information in law enforcement records, the disclosure of which could reasonably be expected to constitute an unwarranted invasion of personal privacy.

(d) Exemption 7(D)—Provides protection for “records or information compiled for law enforcement purposes, which could reasonably be expected to disclose the identity of a confidential source, including a State, local, 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.”

(e) Exemption 7(E)—Affords protection to all law enforcement information which “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.”

(f) Exemption 7(F)—Permits the withholding of information necessary to protect the physical safety of any individual when disclosure of information about him/or her could reasonably be expected to endanger his/or her life or physical safety.

(8) Exemption 8: Bank Records. Exemption 8 protects information that is 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.

(9) Exemption 9: Well Information. Exemption 9 protects geological and geophysical information and data, including maps, concerning wells.

b. Amount of Information Deleted. The Electronic Freedom of Information Act Amendments of 1996 added a provision to the FOIA law which stipulates that the volume of denied records be addressed in the response letter. It states in part: "In denying a request for records, in whole or in part, an agency shall make a reasonable effort to estimate the volume of any requested matter the provision of which is denied, and shall provide any such estimate to the person making the request, unless providing such estimate would harm an interest protected by the exemption in subsection (b) pursuant to which the denial is made." 5 U.S.C. § 552(a)(6)(F).

(1) When respondents are denying whole records, they can indicate volume and type of record in the response letter in one of several ways, e.g., "5 draft reports and 1 memorandum under Exemption 5, a record of investigation under Exemption 6," or "223 pages under Exemption 5 and 8 pages under Exemption 6."

(2) When respondents are partially denying records, and redactions are made using multiple exemptions, then it needs to be clear to the requester which exemption goes with each redaction. This is best done by noting the exemption number, e.g., "Exemption 6," at the place where the redaction is made. Occasionally, the response letter can sufficiently indicate the nature of the redactions, e.g., "home addresses and telephone numbers at the top of each form were withheld under Exemption 6, and blocks 18-23 of each form were withheld under Exemption 5."

(3) When redactions are made by computer or copier, wherever it is technically feasible, the amount of the information and the applicable exemption should be indicated at the place in the record where the deletion is made.

36. DISCRETIONARY DISCLOSURE. Agency components should consider voluntarily releasing records which otherwise qualify for exemption if disclosure would not cause the agency harm that the relevant FOIA exemption sought to avoid. Discretionary disclosures cannot be made for documents that qualify for withholding under Exemptions 1, 3, 4, and 6 or constitute Privacy Act records.

37. FOIA AND PRIVACY ACT INTERFACE.

a. The Privacy Act is a withholding statute. The Privacy Act applies to a collection of agency records about an individual that is maintained in a system of records and retrieved by the name of the individual or a personal identifier, such as a social security number.

b. The Privacy Act, 5 U.S.C. 552a (49 CFR part 10), with 12 narrow exceptions, generally prohibits an agency from disclosing any record contained in a system of records which is retrieved by an individual's name or other personal identifier without the written consent of that individual.

c. A third party request for information contained in a Privacy Act system of records should be processed under the FOIA procedures. If none of the FOIA exemptions are applicable, the requested information may be released.

d. When an individual submits a FOIA request for his/her own records that are contained solely in a Privacy Act system of records, it may be processed under the Privacy Act. When an individual requests his/her own records under both the FOIA and Privacy Act, the request should be processed under both Acts. The request is processed procedurally (i.e., timelines, fees, appeal

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1270.1

process, etc.) under the Act that applies. For the whole request or portion of the request that is processed under the Privacy Act, follow guidance provided in FAA Order 1280.1, Protecting Privacy of Information About Individuals.

38.-39. RESERVED.

CHAPTER 4. FEES AND FEE WAIVERS

40. GENERAL STATEMENT. Assessment of fees is prescribed by regulation and the agency does not have the authority to arbitrarily waive or reduce the fees for processing a FOIA request unless the *statutory* fee waiver requirements have been met (see 49 CFR § 7.44 (f)).

41. CATEGORY OF REQUESTER. Each FOIA request shall specify the fee category of the requester. There are four categories of requesters: commercial; educational or noncommercial scientific institutions; news media; and all other requesters. In assessing fees, the respondent must determine the category of the requester and the type of services that are rendered to the requester.

a. Commercial Requesters. These requesters seek information for a commercial, trade, or profit interest. Requesters that fall within this category have a use or purpose that furthers their commercial, trade, or profit interests or those of the person on whose behalf the request is being made. The requester shall be assessed all direct costs of searching for responsive records, reviewing for applicability of exemptions, and duplicating the records sought.

b. Educational or Noncommercial Scientific Institution Requesters.

(1) Educational requesters include various categories of schools, as well as institutions of higher learning and vocational education, which operate a program of scholarly research. The requester must show a use or purpose for scholarly research (i.e., schools, institutes of professional education). Students gathering data for research papers do not qualify as educational requesters.

(2) Noncommercial scientific requesters include any institution that is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry.

(3) Costs to these requesters shall be assessed for duplication only, excluding the first 100 pages of standard agency size (no larger than 8 1/2" x 14") paper copies.

c. Media Requesters. A representative of the news media is a 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. Media may include freelance journalists who can demonstrate a solid basis for expecting the information disclosed to be published by a news organization. Media requests may include information sought for enclosure in soft or hardback books or for distribution to electronic publishing services.

(1) Private libraries or private repositories of government records, or middlemen, such as information vendors or data brokers who request records for use by others, are excluded as media requesters.

(2) Costs shall be assessed for duplication only, excluding the first 100 pages of standard agency size (no larger than 8 1/2" x 14") paper copies.

d. Other Requesters. Requesters who do not fit into any of the categories in paragraph 41b. through 41d. shall be assessed costs for search and duplication, except the first 2 hours of search time and the first 100 pages of standard agency size (no larger than 8 1/2" x 14") paper copies.

42. SERVICES FOR WHICH FEES ARE CHARGED.

a. General. Processing fees are assessed for search, review, and duplication activities associated with a FOIA request. Fees are assessed differently depending on the category of the requester and the intended use of the information sought.

b. Search. Search fees are assessed only for the time it takes to locate responsive records and may be conducted manually or electronically, as the situation warrants. The agency can charge for search time even if it fails to locate any records responsive to the request or even if the records located are subsequently determined to be exempt from disclosure.

(1) Any time spent searching for responsive records that will be examined or inspected in the office by the requester shall be included in the fee charged to the extent allowed by the requester's fee category.

(2) When a search is conducted on a mainframe computer (e.g., automated flight service station (AFSS) or automated radar terminal system (ARTS II/III)), the fee charged to the requester shall combine the cost of operating the computer for the time directly attributable to searching for responsive records with the time expended by the operator/programmer according to their pay range (see paragraph 42d).

(3) The time spent by each individual involved with searching for responsive records shall be documented on the FOIA fee worksheet.

c. Review. Review fees are assessed for the time spent determining whether the requested records are exempt from mandatory disclosure.

(1) Responsive documents should be examined line by line to determine if any portion of any document is permitted to be withheld.

(2) Time spent resolving general legal or policy issues regarding the applicability of particular exemptions shall not be charged as review time to the requester, but may be added as an incremental cost. This time may be accounted for in the FOIA fee worksheet as an incremental cost not charged to the requester.

(3) The time spent by each individual involved with reviewing responsive records shall be documented on the FOIA fee worksheet.

d. Calculating Search Fees and Review Fees. The FAA's search fees and review fees are based on an hourly rate schedule established by DOT. The hourly rate schedule is updated annually. Hourly rates are grouped into three pay ranges, based on FAA FG Grades or Pay Bands, depending on the responding program office's pay compensation system.

EMPLOYEE PAY RANGES		
Pay Range 1: FG-1 thru FG-8, or Pay Bands A thru F	Pay Range 2: FG-9 thru FG-14, or Pay Bands G thru J	Pay Range 3: FG-15 and above, or Pay Bands K thru L

The following options are provided to calculate the search fees and review fees for employees conducting manual or computer searches and reviewing records.

(1) **The FOIA National Tracking System.** The National Tracking System automatically calculates search fees and review fees if you provide: (1) fee category of requester; (2) pay range of employee(s) doing search and review; and (3) number of hours of search time and review time for each employee. This is the preferred option.

(2) **Manual calculations.** Based on the appropriate employee pay range, use the actual dollar rate provided by DOT, which includes the 16-percent overhead charge. The actual dollar rates are updated annually based on the Washington-Baltimore Federal White-Collar Pay Schedule. The updated actual dollar rates are provided to all FOIA coordinators.

MANUAL CALCULATIONS ONLY	
Employee Pay Range	DOT Actual Dollar Rate Based on Washington-Baltimore Federal White-Collar Pay Schedule (includes 16-percent overhead)
Pay Range 1	Actual DOT Dollar Rate* (GS-5, step 7 plus 16 percent)
Pay Range 2	Actual DOT Dollar Rate* (GS-12, step 7 plus 16 percent)
Pay Range 3	Actual DOT Dollar Rate* (GS-15, step 7 plus 16 percent)

(*CALCULATION: (Actual Dollar Rate) X (no. of hrs. of search time or of review time) = cost of search time or review time.)

e. Duplication.

(1) **Photocopying.** The standard fee for photocopying is \$.10 per page for paper that is no more than 8 1/2" x 14."

(2) **Computer Tapes/Printouts.** The standard fee for computer tapes or printouts is the actual direct cost for duplication (e.g., the cost of the tape).

(3) **Other Methods.** The fee for other methods of duplication, e.g., videos, color copies, is the actual expense incurred.

(4) **Air Traffic Tapes.** The fee for air traffic control tapes (cassette tape format) is \$30 per hour or portion thereof (i.e., one tape with 2 hours of recording = \$60; one tape with 30 minutes of recording = \$30; two tapes with 2 1/2 hours of recording = \$90). The fee for digital audio tape (DAT) format is \$25. In addition, a flat fee of \$30 will be charged for each *different* block of time requested, limited to the daily 24 hour period recorded on the facility's master DAT. For example, although a request for one block of time (0900-0900) is a total of 24 hours, it is spread over a 2-day period.

Therefore, such a request would be considered as two separate blocks of time (\$60), plus the DAT format (\$25), for a total fee of \$85.

f. Special Services. The fee for other special services asked for by the requester, such as overnight mail, is the actual cost of the service. The fee for certified true copies is \$4 with a seal and \$2 without a seal.

g. Incremental Costs. Costs to the agency in processing a request that are not borne by the requester are considered incremental costs. These costs include all the search, review, and duplication costs not assessed to the requester. (Note: Section D of the FOIA fee worksheet is an optional block to address other incurred costs not charged to the requester, e.g., amount of time spent duplicating records, participating in meetings, or preparing correspondence.)

43. AGGREGATION.

a. Requests that are broken into a series of requests for the purpose of avoiding the assessment of fees, may be aggregated and treated as a single request. Fees may not be aggregated for multiple requests on unrelated subjects from one requester.

b. On rare occasions, a group of requesters may be acting in concert to avoid paying fees. Fees cannot be aggregated for such requests unless a concrete basis exists on which to conclude that the requesters are acting in concert and are acting specifically to avoid payment of fees.

44. DELINQUENT FEE PAYMENT. The agency is not obligated to fulfill additional requests for requesters who have failed to pay prior FOIA fees until the requester demonstrates that the fee has been paid or to pay the full amount owed. The requester will also be required to make an advance payment of the full amount of the estimated fee before processing of a new request or continuation of a pending request is begun.

45. FEE LEVELS/REQUESTER NOTIFICATION.

a. \$10 or less. Fees that are \$10 or less shall not be assessed. However, these fees shall be noted on the FOIA Checklist/Fee Worksheet and in the National Tracking System under incremental costs. The determination letter should include a statement that there is no charge for the request because the cost to process is under \$10.

b. Over \$10/Under \$25. No written willingness to pay is required in advance. The amount of fees owed will be indicated in the agency's response letter to the requester.

c. \$25 to \$250. The agency must notify the requester, preferably in writing, of estimated fees of \$25 to \$250 and seek assurance that the requester will pay costs. The requester must also be informed of who to contact to reformulate the request in an effort to reduce the cost. Work must proceed on the request concurrent with these actions.

46. FEE WAIVER/FEE REDUCTION. Fees may be waived or reduced if a determination is made that the release of information will benefit the public interest because it is likely to contribute significantly to the public's understanding of the agency's operations or activities and is not primarily in the commercial interest of the requester. The program office will make fee waiver or fee reduction determinations on a case-by-case basis after consideration of all six factors described below.

a. Whether the subject matter of the requested records concerns the operations of the Federal Government.

b. Whether the disclosure is likely to contribute to an understanding of the Federal Government operations or activities.

c. Whether disclosure of the requested information will contribute to the understanding of the public at large, as opposed to the individual understanding of the requester or a narrow segment of interested persons.

d. Whether the contribution to the public understanding of Federal Government operations or activities will be significant.

e. Whether the requester has a commercial interest that would be furthered by the requested disclosure.

f. Whether the magnitude of any identified commercial interest to the requester is sufficiently large in comparison with the public interest in disclosure that disclosure is primarily in the commercial interest of the requester.

47. FEE PAYMENT. Requesters may pay by check, draft, or money order, payable to the DOT/FAA for deposit to the General Fund of the Treasury of the United States. The number assigned to identify the FOIA request should be annotated on the check, draft, or money order.

48.-49. RESERVED.

CHAPTER 5. DECISION LETTERS

50. FULL DISCLOSURE LETTER. A full disclosure letter is issued when no part of a requested record is withheld. Fees assessed in processing the request should be included. When fees are \$10 or less, indicate that there is no charge for the request because the cost to process was under \$10. This letter may be signed by the heads of offices and services, regional administrators, and directors of the AMC or ACT or, if redelegated (as authorized by paragraph 21a), it may be signed by heads of divisions. No legal review is necessary.

51. DENIAL/PARTIAL DENIAL LETTER. A denial or partial denial letter is issued when some or all of a requested record is exempt from disclosure. This letter must state the exemption being invoked, a brief statement explaining the exemption and the reason for its applicability to the specific records being withheld, and a description of the records withheld. The letter must advise requesters of their administrative appeal rights and the name(s) and title(s) of the personnel responsible for making the determination. Also, the letter should include assessment of fees. A denial/partial denial letter must be coordinated, as appropriate, and legal concurrence in the application of exemptions must be obtained. Only the head of the office, service, region, or center has signature authority. In the case of the regions, the regional administrator's signature authority covers all organizations resident in the region including those not under his/her direct operational line of authority (straightline).

52. NO RECORDS DETERMINATION LETTER.

a. A no records determination letter is issued after the agency conducts a reasonable search for responsive records and locates none. The letter must include a brief statement indicating that records could not be located along with an explanation, if appropriate. Also, the letter must advise requesters of their administrative appeal rights and the name(s) and title(s) of the personnel responsible for making the determination. Fees for processing the request should be included in the letter.

b. A no records determination should be coordinated with all offices that have conducted a search for records and determined that none exist. In headquarters, the response letter also must be coordinated with ARC-40 before the package is coordinated with the General Law Branch in the Office of the Chief Counsel. In regions and centers, the letter must be coordinated with the regional or center counsel, as appropriate. Only the head of the office, service, region, or center has signature authority. In the case of the regions, the regional administrator's signature authority covers all organizations resident in the region including those not under his/her direct operational line of authority (straightline).

53. DOCUMENTATION.

a. **General.** A FOIA file consists of the request letter, interim correspondence, the agency response letter, copies of all records released or an exact listing of the documents (accounting for all pages), copies of any records partially or completely withheld from disclosure (with redactions and/or withheld pages noted with exemption), a memorandum or note in the Remarks section of the FOIA checklist documenting the agency search for "no records" responses, and the completed and signed FOIA checklist and fee worksheet. In the case of exemption 4, include a copy of the submitter

notice, any objections received, the agency assessment of the objections, and any correspondence back to the submitter overruling the objections.

b. FOIA Checklist/Fee Worksheet. FAA Form 1270-1, Freedom of Information Act Checklist/Fee Worksheet, must be completed for each FOIA request made to the agency and maintained with the official file (see appendix 2). FAA Form 1270-1 is not stocked. Contact ARC-40 or your FOIA coordinator for copies.

c. Retention of FOIA Documentation.

(1) **Full disclosure.** Copies of the initial request, response letter(s), and released records are to be maintained in the FOIA file for 2 years from the date of release.

(2) **Denial/partial denials or "no records" determinations.** Copies of the request, response letter(s), pertinent correspondence, and withheld records are to be maintained for 6 years, unless appealed. If appealed, they are to be maintained for 6 years after the appeal determination, or 3 years after final adjudication by courts, whichever is later.

d. National Tracking System (NTS). The National Tracking System is a centralized data base wherein FOIA requests will be entered and tracked by headquarters, regional, and center FOIA coordinators. The NTS records shall be retained for 6 years after the date of last entry.

54. APPEALS. The Assistant Administrator for Region and Center Operations is the decision-maker for all administrative appeals. Upon receipt of an appeal, ARC-40 will request copies of the initial FOIA file from the appropriate program office. Determinations of administrative appeals are required to be made within 20 working days.

a. Upholding or Reversing Decision by Disclosure Authority. The Assistant Administrator for Region and Center Operations shall review the initial decision de novo and administratively affirm, reverse, or remand the initial determination in whole or in part, as appropriate. Any denial decision at the appeal level must obtain the concurrence of the General Counsel.

b. Remands for Reconsideration. An appeal request, particularly a no records appeal, is remanded for reconsideration when either the requester provides additional information clarifying the request (i.e., suggesting other search parameters), or provides additional explanation that can readily be provided by the program office and/or that may have been overlooked in the first response. In other cases, when the initial determination is reversed and significant review needs to be conducted of the records, the FOIA package will be remanded for reconsideration consistent with the appeal decision. The action office should reconsider the request as if it were a new request, responding directly to the requester. Remanded request responses are subject to appeal, therefore, an appeal paragraph should be provided if the response is a denial, partial denial, or no records determination.

c. **Fee waiver determination or fee assessment.** The Assistant Administrator for Region and Center Operations shall review and, if appropriate, adjust the determination or assessment. The transmittal letter will reflect the rationale for any adjustment. Copies of the transmittal letter will be sent to the disclosure authority responsible for the original decision, the Office of the Chief Counsel, and the Office of the General Counsel, Office of the Secretary of Transportation, when that office is involved in the review.

55.-59. RESERVED.

CHAPTER 6. REPORTS

60. FOIA ANNUAL REPORT.

a. The FOIA Annual Report is prepared by the Office of Assistant Administrator for Region and Center Operations and submitted to Congress through the Office of the Secretary of Transportation. Under the Electronic FOIA Amendments, effective October 1, 1997, the submission requirement of the report changed from calendar year to fiscal year. Under the amendments, agencies are given 4 months to prepare their annual reports after the conclusion of each fiscal year. Beginning February 1, 1999, each agency will be required to provide its annual report in an electronic format on the Internet and notify the Department of Justice of its website. The National Tracking System is the source for most of the data for the Annual Report. FOIA coordinators will be asked to provide certain supplementary information.

b. The following elements are required to be in the report:

- (1) The number of requests for records pending before the agency as of the end of the fiscal year.
- (2) The median number of days that such requests had been pending before the agency as of that date. (The median is the middle, not average number. For example, of 3, 5, 7, 9, and 14, the median number is 7).
- (3) The number of requests for records received by the agency.
- (4) The number of requests that the agency processed.
- (5) The median number of days taken by the agency to process different types of requests.
- (6) The number of determinations made by the agency not to comply with requests for records made to the agency.
- (7) The reasons for each such determination.
- (8) A complete list of all statutes that the agency relies upon to authorize the agency to withhold information under Exemption 3.
- (9) A description of whether a court has upheld the decision of the agency to withhold information under each such statute.
- (10) A concise description of the scope of any information withheld under each such statute.
- (11) The number of appeals made by persons under Exemption 6.
- (12) The results of such appeals.

(13) The reason for the action upon each appeal that results in a denial of information.

(14) The total amount of fees collected by the agency for processing requests.

(15) The number of FAA full-time staff devoted to processing requests for records under the Act.

(16) The total amount expended by the FAA to process such requests.

61. OVERDUE REPORT. ARC-40 shall provide a weekly report on overdue FOIA responses to the heads of offices and services.

62. STATUS REPORT. Upon request, ARC-40 and the region or center FOIA coordinators shall provide a status report to agency senior officials on the FOIA requests received within their purview.

63.-69. RESERVED.

CHAPTER 7. DOCUMENT INSPECTION FACILITIES

70. DOCUMENT INSPECTION FACILITIES. Inspection facilities for publicly available records are operated in accordance with 49 CFR 7.10.

71. TYPES OF DOCUMENTS AVAILABLE. The types of records and materials available at document inspection facilities are identified in 49 CFR 7.5.

72. FOIA READING ROOM. The FAA FOIA Reading Room is located in the Washington headquarters. Requesters may view records by appointment with the National Freedom of Information Act Staff. Records available in the reading room, including an index of the records, are found on the Internet on the FAA FOIA Home Page, which is accessible from the FAA Home Page at <http://www.faa.gov>.

73.-79. RESERVED.

**APPENDIX 1--DOT FINAL RULE, 49 CFR PART 7,
PUBLIC AVAILABILITY OF INFORMATION;
ELECTRONIC FOIA AMENDMENT**

Federal Register/Vol. 63, No. 136/Thursday, July 16, 1998/Rules and Regulations

38331

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 7

[Docket No. OST-96-1430; Amdt. 1]

RIN 2105-AC69

Public Availability of Information;
Electronic FOIA Amendment

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: The Department of Transportation revises its regulations implementing the Freedom of Information Act (FOIA), 5 U.S.C. 552. This amendment provides changes to conform to the requirements of the Electronic Freedom of Information Act Amendments of 1996 (EFOIA), Public Law 104-231, provides changes to DOT's fee schedule, and reflects certain organizational changes.

DATES: This rule takes effect on August 17, 1998.

FOR FURTHER INFORMATION CONTACT: Robert I. Ross, Office of the General Counsel, C-10, Department of Transportation, Washington, DC 20590, telephone (202) 366-9156, FAX (202) 366-9170; electronic mail bob.ross@ost.dot.gov.

SUPPLEMENTARY INFORMATION: These revisions reflect changes required by the Electronic Freedom of Information Act Amendments of 1996 (Public Law 104-231). New provisions implementing the amendments are found at §§ 7.5 (frequently requested documents), 7.8 (electronic reading room requirements), 7.21 (deletion markings and volume estimation), 7.31 (timing of responses, multi-track and expedited processing), and 7.33 (unusual circumstances). Revisions to DOT's fee schedule can be found at § 7.43. DOT will be charging fees at rates based on an average of hourly rates for three pay scale levels. Finally, references to DOT's Urban Mass Transportation Administration (UMTA) are changed to the Federal Transit Administration (FTA) to reflect a statutory revision to the name of the agency. This amendment was published for public comment (63 FR 18855; April 16, 1998), but none was received. We are therefore issuing this amendment as proposed.

Regulatory Notices and Analysis

This amendment is not a "significant regulatory action" within the meaning of Executive Order 12866 or the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531 *et seq.*). It is also not significant within the definition in

DOT's Regulatory Policies and Procedures, 49 FR 11034 (1979), in part because it does not involve any change in important DOT policies. Because the economic impact should be minimal, further regulatory evaluation is not necessary. Under the Regulatory Flexibility Act, the group of persons who will be directly affected by this amendment are the public, who will find it easier to obtain information from the DOT under FOIA. Individual members of the public do not qualify as small entities, but small organizations, businesses, etc., do and all will have burdens lessened by this amendment, as its effect will be to make records available through electronic media and to streamline FOIA processing activities; however, it is not likely that any such burden reduction will be large nor that it will be convertible into economic equivalents. Hence, I certify that this amendment will not have a significant economic impact on a substantial number of small entities.

This amendment does not significantly affect the environment, and therefore an environmental impact statement is not required under the National Environmental Policy Act of 1969. It has also been reviewed under Executive Order 12612, Federalism, and it has been determined that it does not have sufficient implications for federalism to warrant preparation of a Federalism Assessment.

Finally, the amendment does not contain any collection of information requirements, requiring review under the Paperwork Reduction Act, as amended.

List of Subjects in 49 CFR Part 7:

Freedom of information.

In accordance with the above, DOT revises 49 CFR Part 7 to read as follows:

PART 7—PUBLIC AVAILABILITY OF INFORMATION

Subpart A—General Provisions

Sec.

7.1 General.

7.2 Definitions.

Subpart B—Information Required to be Made Public by DOT

7.3 Publication in the Federal Register.

7.4 Publication required.

7.5 Availability of opinions, orders, staff manuals, statements of policy, and interpretations and indices.

7.6 Deletion of identifying detail.

7.7 Access to materials and indices.

7.8 Copies.

7.9 Protection of records.

7.10 Public records.

APPENDIX 1—DOT FINAL RULE, 49 CFR PART 7,
PUBLIC AVAILABILITY OF INFORMATION;
ELECTRONIC FOIA AMENDMENT (Continued)

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

- 7.11 Applicability.
- 7.12 Administration of subpart.
- 7.13 Records available.
- 7.14 Requests for records.
- 7.15 Contacts for records requested under the FOIA.
- 7.16 Requests for records of concern to more than one government organization.
- 7.17 Consultation with submitters of commercial and financial information.

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

- 7.21 General.

Subpart E—Time Limits

- 7.31 Initial determinations.
- 7.32 Final determinations.
- 7.33 Extension.

Subpart F—Fees

- 7.41 General.
- 7.42 Payment of fees.
- 7.43 Fee schedule.
- 7.44 Services performed without charge or at a reduced charge.
- 7.45 Transcripts.
- 7.46 Alternative sources of information.

Authority: 5 U.S.C. 552; 31 U.S.C. 9701; 49 U.S.C. 322; E.O. 12600, 3 CFR, 1987 Comp., p. 235.

Subpart A—General Provisions

§ 7.1 General.

(a) This part implements 5 U.S.C. 552, and prescribes rules governing the availability to the public of DOT records. Many documents are made available to the public for inspection and copying through DOT's Primary Electronic Access Facility and public record unit locations that are discussed in subpart B of this part, which contains the DOT regulations concerning the availability to the public of opinions issued in the adjudication of cases, policy issuances, administrative manuals, and other information made available to the public, without need for a specific request.

(b) Subpart C of this part describes the records that are not required to be disclosed on DOT's own action under this part, but that may be available upon request under FOIA.

(c) Indices are maintained to reflect all records subject to subpart B of this part, and are available for public inspection and copying as provided in subpart B.

§ 7.2 Definitions.

As used 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 DOT component of DOT and includes

the Commandant of the Coast Guard, the Inspector General, and the Director of the Bureau of Transportation Statistics.

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

Consultation means that the approval of the person 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 of Transportation, the Office of the Inspector General, and the following DOT components, all of which may be referred to as DOT components. Means of contacting each of these DOT components appear in § 7.15. This definition specially excludes the Surface Transportation Board, which has its own FOIA regulations (49 CFR Part 1001):

- (1) United States Coast Guard,
- (2) Federal Aviation Administration,
- (3) Federal Highway Administration,
- (4) Federal Railroad Administration,
- (5) National Highway Traffic Safety Administration,
- (6) Federal Transit Administration,
- (7) Saint Lawrence Seaway Development Corporation,
- (8) Maritime Administration,
- (9) Research and Special Programs Administration, and
- (10) Bureau of Transportation Statistics.

Primary Electronic Access Facility means the electronic docket facility in the DOT Headquarters Building, 400 7th Street, S.W., Washington, D.C. 20590.

Reading room records are those records required to be made available to the public under 5 U.S.C. 552(a)(2) as described in § 7.5 of Subpart B of this part. These records are made available through DOT's Primary Electronic Access Facility. Other records may also be made available at DOT's discretion at DOT inspection facilities, including DOT's Primary Electronic Access Facility.

Record includes any writing, drawing, map, recording, tape, film, photograph, or other documentary material by which information is preserved. The term also includes any such documentary material stored by computer.

Responsible DOT official means the head of the DOT component 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 person to whom the Secretary has delegated authority in the matter concerned.

Subpart B—Information Required To Be Made Public by DOT

§ 7.3 Publication in the Federal Register.

This section implements 5 U.S.C. 552(a)(1), and prescribes rules governing publication in the Federal Register of the following:

(a) Descriptions of DOT's organization, including its DOT components 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:

(b) 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;

(c) 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;

(d) 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

(e) Each amendment, revision, or repeal of any material listed in paragraphs (a) through (d) of this section.

§ 7.4 Publication required.

(a) **General.** The material described in § 7.3 will be published in the Federal Register. For the purposes of this paragraph, material that will reasonably be available to the class of persons affected by it will be considered to be published in the Federal Register if it has been incorporated by reference with the approval of the Director of the Federal Register.

(b) **Effect of nonpublication.** Except to the extent that he/she has actual and timely notice of the terms thereof, a person may not in any manner be required to resort to, or be adversely affected by, any procedure or matter required to be published in the Federal Register, but not so published.

§ 7.5 Availability of opinions, orders, staff manuals, statements of policy, and interpretations and indices.

(a) This section implements 5 U.S.C. 552(a)(2). It prescribes the rules governing the availability for public inspection and copying of the following reading room materials:

(1) Any final opinion (including a concurring or dissenting opinion) or order made in the adjudication of a case.

(2) Any policy or interpretation that has been adopted under DOT authority.

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Including any policy or interpretation concerning a particular factual situation, if that policy or interpretation can reasonably be expected to have precedential value in any case involving a member of the public in a similar situation.

(3) Any administrative staff manual or instruction to staff that affects any member of the public, including the prescribing of any standard, procedure, or policy that, when implemented, requires or limits any action of any member of the public or prescribes the manner of performance of any activity by any member of the public. However, this does not include staff manuals or instructions to staff concerning internal operating rules, practices, guidelines, and procedures for DOT inspectors, investigators, law enforcement officers, examiners, auditors, and negotiators and other information developed predominantly for internal use, the release of which could significantly risk circumvention of agency regulations or statutes.

(4) Copies of all records, regardless of form or format, that have been released to any person under subpart C of this part and which, because of the nature of their subject matter, a DOT component 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 this paragraph.

(b) Any material listed in paragraph (a) of this section that is not made available for public inspection and copying, or that is not indexed as required by § 7.7, may not be cited, relied on, or used as precedent by DOT to affect any member of the public adversely unless the person to whose detriment it is relied on, used, or cited has had actual timely notice of the material.

(c) This section does not apply to material that is published in the Federal Register or covered by subpart C of this part.

§ 7.6 Deletion of identifying detail

Whenever it is determined to be necessary to prevent a clearly unwarranted invasion of personal privacy, identifying details will be deleted from any record covered by this subpart that is published or made available for inspection. Whenever it is determined to be necessary to prevent the disclosure of information required or authorized to be withheld by another Federal statute, such information shall be deleted from any record covered by this subpart that is published or made available for inspection. A full

explanation of the justification for the deletion will accompany the record published or made available for inspection.

§ 7.7 Access to materials and indices.

(a) Except as provided in paragraph (b) of this section, material listed in § 7.5 will be made available for inspection and copying to any member of the public at DOT document inspection facilities. It has been determined that it is unnecessary and impracticable to publish the index of materials in the Federal Register. Information as to the kinds of materials available at each facility may be obtained from the facility or the headquarters of the DOT component of which it is a part.

(b) The material listed in § 7.5 that is published and offered for sale will be indexed, but is not required to be kept available for public inspection. Whenever practicable, however, it will be made available for public inspection at the appropriate DOT reading room.

(c) Each DOT component will also make the reading room records identified in section 7.5(a) that are created by DOT on or after November 1, 1996, available electronically. This includes indices of its reading room records as required by law after December 1, 1999.

§ 7.8 Copies

Copies of any material covered by this subpart that is not published and offered for sale may be ordered, upon payment of the appropriate fee, from the Docket Offices listed in § 7.10. Copies will be certified upon request and payment of the fee prescribed in § 7.43(f).

§ 7.9 Protection of records.

(a) Records made available for inspection and copying may not be removed, altered, destroyed, or mutilated.

(b) 18 U.S.C. 641 provides for criminal penalties for embezzlement or theft of government records.

(c) 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.

§ 7.10 Public Records.

Publicly available records are located in DOT's Primary Electronic Access Facility at 400 7th Street, S.W., Washington, D.C. 20590.

(a) The Primary Electronic Access Facility maintains materials for the Office of the Secretary, including former

Civil Aeronautics Board material, and materials for the DOT components. This facility is located at Plaza Level 401, and the hours of operation are 10:00–17:00.

(b) Certain DOT components also maintain public record units at regional offices and at the offices of the Commandant and District Commanders of the United States Coast Guard. These facilities are open to the public Monday through Friday except Federal holidays, during regular working hours. The Saint Lawrence Seaway Development Corporation has facilities at 180 Andrews Street, Massena, New York 13662-0520.

(c) Operating Administrations may have separate facilities for manual records. Additional information on the location and hours of operations for Docket Offices and inspection facilities can be obtained through DOT's Primary Electronic Access Facility, at (202) 366-9322.

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

§ 7.11 Applicability.

(a) This subpart implements 5 U.S.C. 552(a)(3), and prescribes the regulations governing public inspection and copying of reasonably described records under FOIA.

(b) This subpart does not apply to:

(1) Records published in the Federal Register, opinions in the adjudication of cases, statements of policy and interpretations, and administrative staff manuals that have been published or made available under subpart B of this part.

(2) Records or information compiled for law enforcement purposes and covered by the disclosure exemption described in § 7.13(c)(7) 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.

(3) Informant records maintained by a 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.

§ 7.12 Administration of subpart.

Authority to administer this subpart and to issue determinations with respect

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to initial requests is delegated as follows:

(a) To the General Counsel for the records of the Office of the Secretary other than the Office of Inspector General.

(b) To the Inspector General for records of the Office of Inspector General.

(c) To the Administrator of each DOT component, who may redelegate to officers of that administration the authority to administer this part in connection with defined groups of records. However, each Administrator may redelegate the duties under subpart D of this part to consider appeals of initial denials of requests for records only to his or her deputy or to not more than one other officer who reports directly to the Administrator and who is located at the headquarters of that DOT component.

§ 7.13 Records available.

(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 providing reasonably segregable information from documents that contain information that may be withheld.

(b) *Statutory disclosure requirement.* FOIA requires that DOT, on a request from a member of the public submitted in accordance with this subpart, make requested records available for inspection and copying.

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

(1)(i) Specifically authorized under criteria established by Executive Order to be kept secret in the interest of national defense or foreign policy, and

(ii) 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 mandatory disclosure by statute (other than the Privacy Act or the Government in the Sunshine Act), provided that such statute—

(i) Requires that the matters be withheld from the public in such a manner as to leave not any discretion on the issue, or

(ii) Establishes particular criteria for withholding or refers to particular criteria for withholding or refers to particular types of matters to be withheld;

(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 that 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 that 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) *Deleted information.* The amount of information deleted from frequently-requested electronic records that are available in a public reading room will be indicated on the released portion of the record, unless doing so would harm an interest protected by the exemption concerned. If technically feasible, the amount of information deleted will be indicated at the place in the record where the deletion is made.

§ 7.14 Requests for records.

(a) Each person desiring access to or a copy of a record covered by this subpart shall comply with the following provisions:

(1) A written request must be made for the record.

(2) Such request should indicate that it is being made under FOIA.

(3) The envelope in which a mailed request is sent should be prominently marked: "FOIA."

(4) The request should be addressed to the appropriate office as set forth in § 7.15.

(5) The request should state the format (e.g., paper, microfiche, computer diskette, etc.) in which the information is sought, if the requestor has a preference.

(b) If the requirements of paragraph (a) of this section are not met, treatment of the request will be at the discretion of the agency. The twenty-day limit for responding to requests, described in § 7.31, will not start to run until the request has been identified, or would have been identified with the exercise of due diligence, by an employee of DOT as a request pursuant to FOIA and has been received by the office to which it should have been originally sent.

(c) *Form of requests.* (1) Each request should describe the particular record to the fullest extent possible. 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 person 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 notify the requestor and, to the extent possible, indicate the additional data required.

(2) Each request shall—

(i) Specify the fee category (commercial use, news media, educational institution, noncommercial scientific institution, or other) in which the requestor claims the request to fall and the basis of this claim (see subpart F of this part for fees and fee waiver requirements).

(ii) State the maximum amount of fees that the requestor is willing to pay or include a request for a fee waiver, and

(iii) A request seeking a fee waiver shall, to the extent possible, address why the requestor believes that the criteria for fee waivers set out in § 7.44(f) are met.

(3) Requesters are advised that the time for responding to requests set forth in subpart E will not begin to run—

(i) If a requestor has not sufficiently identified the fee category applicable to the request,

(ii) If a requestor has not stated a willingness to pay fees as high as anticipated by DOT.

(iii) If a fee waiver request is denied and the requestor has not included an alternative statement of willingness to pay fees as high as anticipated by DOT, or

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(iv) If a fee waiver request does not address fee waiver criteria.

(d) *Creation of records.* A request may seek only records that are in existence at the time the request is received. A request may not seek records that come into existence after the date on which it is received and 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. In those instances where DOT determines that creating a new record will be less burdensome than disclosing large volumes of unassembled material, DOT may, in its discretion, agree to creation of a new record as an alternative to disclosing existing records. Records will be provided in the form or format sought by the requestor if the record is readily reproducible in the requested format.

(e) *Search for records.* (1) Each record made available under this subpart will be made available for inspection and copying during regular business hours at the place where it is located, or photocopying may be arranged with the copied materials being mailed to the requestor upon payment of the appropriate fee. Original records ordinarily will be copied except in this instance where, in DOT's judgment, copying would endanger the quality of the original or raise the reasonable possibility of irreparable harm to the record. In these instances, copying of the original would not be in the public interest. In any event, original records will not be released from DOT custody. Original records, regardless of format, may be returned to agency service upon provision of a copy of the record to the requestor, or, in the case of a denial, upon creation and retention of a copy of the original for purposes of FOIA processing.

(2) DOT will make a reasonable effort to search for requested records in electronic form or format, unless doing so would significantly interfere with operation of the affected automated information system.

(f) If a requested record is known not to exist in the files of the agency, or to have been destroyed or otherwise disposed of, the requestor will be so notified.

(g) Fees will be determined in accordance with subpart F of this part.

(h) Notwithstanding paragraphs (a) through (g) of this section, informational material, such as news releases, pamphlets, and other materials of that nature that are ordinarily made

available to the public as a part of any information program of the Government will be available upon oral or written request. A fee will be not be charged for individual copies of that material so long as the material is in supply. In addition DOT will continue to respond, without charge, to routine oral or written inquiries that do not involve the furnishing of records.

§7.15 Contacts for records requested under the FOIA.

Each person desiring a record under this subpart should submit a request in writing (via paper, facsimile, or electronic mail) to the DOT component where the records are located:

- (a) FOIA Offices at 400 7th Street, S.W., Washington, DC 20590:
 - (1) Office of the Secretary of Transportation, Room 5432.
 - (2) Federal Highway Administration, Room 4428.
 - (3) National Highway Traffic Safety Administration, Room 5221.
 - (4) Federal Transit Administration, Room 9400.
 - (5) Maritime Administration, Room 7221.
 - (6) Research and Special Programs Administration, Room 8419.
 - (7) Bureau of Transportation Statistics, Room 3430.
 - (8) Office of Inspector General, Room 9210.
- (b) Federal Aviation Administration, 800 Independence Avenue, S.W., Room 906A, Washington, DC 20591.
- (c) United States Coast Guard, 2100 2nd Street, S.W., Room 6106, Washington, DC 20593-0001.
- (d) Director, Office of Finance, Saint Lawrence Seaway Development Corporation, 180 Andrews Street, P.O. Box 520, Massena, New York 13662-0520.
- (e) Federal Railroad Administration, 1120 Vermont Avenue NW, 7th Floor, Washington, DC. (Mailing address: 400 Seventh St., SW, Washington, DC 20590.)

(f) 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.

(g) 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).

(h) 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).

§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 nondisclosure prior to determining whether to disclose business information. Whenever a decision is

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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.

(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 exemption. 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 identified, or would have been identified with the exercise of due diligence, by a DOT

employee as an appeal under FOIA, and has been received by the appropriate office.

(e) Whenever the responsible DOT official determines it necessary, he/she may require the requestor to furnish additional information, or proof of factual allegations, and may order other proceedings appropriate in the circumstances; in any case in which a request or order is made, DOT's time for responding ceases to count while the requestor responds to the request or order. The decision of the responsible DOT official as to the availability of the record or the appropriateness of a fee waiver or reduction constitutes final agency action for the purpose of judicial review.

(f) The decision of the responsible DOT official not to disclose a record under this part or not to grant a request for a fee waiver or reduction is considered to be a denial by the Secretary for the purpose of 5 U.S.C. 552(a)(4)(B).

(g) Any final determination by the head of an DOT component not to disclose a record under this part, or not to grant a request for a fee waiver or reduction, is subject to concurrence by a representative of the General Counsel.

(h) Upon a determination that an appeal will be denied, the requestor will be 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 requestor 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.

Subpart E—Time Limits

§ 7.31 Initial determinations.

An initial determination whether to release a record requested pursuant to subpart C of this part will be made within twenty Federal working days after the request is received by the appropriate office in accordance with § 7.14, except that this time limit may be extended by up to ten Federal working days in accordance with § 7.33. The person making the request will be notified immediately of such determination. If the determination is to grant the request, the desired record will be made available as promptly as possible. If the determination is to deny the request, the person making the request will be notified in writing, at the same time he or she is notified of such determination, of the reason for the determination, the right of such person

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to appeal the determination, and the name and title of each person responsible for the initial determination to deny the request.

(a) *In general.* Components ordinarily will respond to requests according to their order of receipt.

(b) *Multitrack processing.* (1) A 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 on the number of pages involved.

(2) A component using multitrack 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). A component doing so will contact the requestor either by telephone, letter, facsimile, or electronic mail, whichever is most efficient in each case.

(c) *Expedited processing.* (1) Requests and appeals will be taken out of order and given expedited treatment whenever a compelling need is demonstrated and it is determined 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;

(ii) Requests made by a person primarily engaged in disseminating information, with an 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, a request for expedited processing must be received by the proper component. Requests must be submitted to the component that maintains the records requested.

(3) A requestor who seeks expedited processing must submit a statement, certified to be true and correct to the best of that person's knowledge and belief, explaining in detail the basis for requesting expedited processing. For example, a requestor within the category in paragraph (c)(1)(ii) of this section, if not a full-time member of the news media, must establish that he or she is a person whose main professional activity or occupation is information dissemination, though it need not be his or her sole occupation. A requestor within the category in paragraph (c)(1)(ii) of this section also 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. The formality of certification may be waived as a matter of discretion.

(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 requestor of the decision. If a request for expedited treatment is granted, the request will be given priority and will be processed as soon as practicable. If a request for expedited processing is denied, any appeal of that decision will be acted on expeditiously.

§ 7.32 Final determinations.

(a) A determination with respect to any appeal made pursuant to § 7.21 will be made within twenty Federal working days after receipt of such appeal except that this time limit may be extended by up to ten Federal working days in accordance with § 7.33. The person making the request will be notified immediately of such determination pursuant to § 7.21.

(b) *In general.* Components ordinarily will respond to appeals according to their order of receipt.

(c) *Multitrack processing.* (1) A 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 on the number of pages involved.

(2) A component using multitrack 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.

(d) *Expedited processing.* (1) An appeal will be taken out of order and given expedited treatment whenever a compelling need is demonstrated and it is determined 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;

(ii) A request made by a person primarily engaged in disseminating information, with an 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 any later time. For a prompt determination, a request for expedited processing must be received by the proper component, which is the component that is processing the appeal for the records requested.

(3) A requestor who seeks expedited processing must submit a statement, certified to be true and correct to the best of that person's knowledge and belief, explaining in detail the basis for requesting expedited processing. For example, a requestor within the category in § 7.31(c)(1)(ii), if not a full-time member of the news media, must establish that he or she is a person whose main professional activity or occupation is information dissemination, though it need not be his or her sole occupation. A requestor within the category in § 7.31(c)(1)(ii) also 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. The formality of certification may be waived as a matter of discretion. A person who was granted expedited processing under § 7.31 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 requestor 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.

§ 7.33 Extension.

(a) In unusual circumstances as specified in this section, the time limits prescribed in § 7.31 and § 7.32 may be extended by written notice to the person making the request setting forth the reasons for such extension and the date on which a determination is expected to be dispatched. Such notice may not specify a date that would result in a cumulative extension of more than 10 Federal working days without providing the requestor 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.

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(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; or

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

(b) Where the extension is for more than 10 working days, the DOT component will provide the requestor with an opportunity either to modify the request so that it may be processed within the time limits or to arrange an alternative time period with the component for processing the request or a modified request.

(c) Where a component reasonably believes that multiple requests submitted by a requestor, 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, they may be aggregated for the purposes of fees and processing activities. Multiple requests involving unrelated matters will not be aggregated.

Subpart F—Fees

§7.41 General.

(a) This subpart prescribes fees for services performed for the public under subparts B and C of this part by DOT.

(b) All terms defined by FOIA apply to this subpart, and the term "hourly rate" means the actual hourly base pay for a civilian employee or, for members of the Coast Guard, the equivalent hourly pay rate computed using a 40-hour week and the member's normal basic pay and allowances.

(c) This subpart applies to all employees of DOT, including those of non-appropriated fund activities of the Coast Guard and the Maritime Administration.

(d) This subpart does 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.

(e) This subpart does not apply to requests from record subjects for records

about themselves in DOT systems of records, which are determined in accordance with the Privacy Act, as implemented by DOT regulations (49 CFR part 10).

§7.42 Payment of fees.

(a) The fees prescribed in this subpart may be paid by check, draft, or money order, payable to the DOT component where fees were incurred, for deposit in the General Fund of the Treasury of the United States, e.g. DOT/FAA.

(b) Charges may be assessed by DOT for time spent searching for requested records 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 it is estimated that the search charges, review charges, duplication fees, or any combination of fees that could be charged to the requestor will likely exceed US \$25, the requestor will be notified of the estimated amount of the fees, unless the requestor has indicated in advance his or her willingness to pay fees as high as those anticipated. In cases where a requestor has been notified that actual or estimated fees may amount to more than US \$25, the request will be deemed not to have been received until the requestor has agreed to pay the anticipated total fee. The notice will also inform the requestor 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.

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

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

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

(e) When paragraph (d)(1) of this section applies, the requestor will be notified of the likely cost and, where he/she has a history of prompt payment of FOIA fees, requested to furnish satisfactory assurance of full payment of FOIA fees. Where the requestor does not have any history of payment, he or she may be required to make advance payment of any amount up to the full estimated charges.

(f) When paragraph (d)(2) of this section applies, the requestor will be required to demonstrate that the fee has, in fact, been paid or to pay the full amount owed, including any applicable interest, late handling charges, and penalty charges as discussed in paragraphs (g) and (h) of this section. The requestor will also be required to make an advance payment of the full amount of the estimated fee before processing of a new request or continuation of a pending request is begun.

(g) DOT will assess 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 requestor. Interest will accrue from the date of the notice of amount due and will be 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 will stay the accrual of interest, even if the payment has not been processed.

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

(i) Notwithstanding any other provision of this subpart, when the total amount of fees that could be charged for a particular request (or aggregation of requests) under subpart C of this part, after taking into account all services that must be provided free of, or at a reduced, charge, is less than US \$10.00 DOT will not make any charge for fees.

§7.43 Fee schedule.

The rates for manual searching, computer operator/programmer time and time spent reviewing records will be calculated based on the grades and rates established by the Washington-Baltimore Federal White-Collar Pay Schedule or equivalent grades, as follows:..

When performed by employees:
GS-1 through GS-8—Hourly rate of GS-5 step 7 plus 16%
GS-9 through GS-14—Hourly rate of GS-12 step 7 plus 16%

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GS-15 and above—Hourly rate of GS-15 step 7 plus 16%

(a) The standard fee for a manual search to locate a record requested under subpart C of this part, including making it available for inspection, will be determined by multiplying the searcher's rate as calculated from the chart in this section and the time spent conducting the search.

(b) The standard fee for a computer search for a record requested under subpart C of this part is the actual cost. This includes the cost of operating the central processing unit for the time directly attributable to searching for records responsive to a FOIA request and the operator/programmer's rate as calculated from the chart for costs apportionable to the search.

(c) The standard fee for review of records requested under subpart C of this part is the reviewer's rate as calculated from the chart multiplied by the time he/she spent determining whether the requested records are exempt from mandatory disclosure.

(d) The standard fee for duplication of a record requested under subpart C of this part is determined as follows:

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

(2) Per copy prepared by computer such as tapes or printout—actual costs, including operator time.

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

(e) Depending upon the category of requestor, and the use for which the records are requested, in some cases the fees computed in accordance with the standard fee schedule in paragraph (d) of this section will either be reduced or not charged, as prescribed by other provisions of this subpart.

(f) The following special services not required by FOIA may be made available upon request, at the stated fees: Certified copies of documents, with DOT or DOT component seal (where authorized)—US \$4.00; or true copy, without seal—US \$2.00.

§7.44 Services performed without charge or at a reduced charge.

(a) A fee is not to be charged to any requestor making a request under subpart C of this part for the first two hours of search time unless the records are requested for commercial use. For purposes of this subpart, when a computer search is required two hours of search time will be considered spent when the hourly costs of operating the central processing unit used to perform

the search added to the computer operator's salary cost (hourly rate plus 16 percent) equals two hours of the computer operator's salary costs (hourly rate plus 16 percent).

(b) A fee is not to be charged for any time spent searching for a record requested under subpart C if the records are not for commercial use and the requestor is a representative of the news media, an educational institution whose purpose is scholarly research, or a non-commercial scientific institution whose purpose is scientific research.

(c) A fee is not to be charged for duplication of the first 100 pages (standard paper, not larger than 8.5 x 14 inches) of records provided to any requestor in response to a request under Subpart C unless the records are requested for commercial use.

(d) A fee is not to be charged to any requestor under subpart C to determine whether a record is exempt from mandatory disclosure unless the record is requested for commercial use. A review charge may not be charged except with respect to an initial review to determine the applicability of a particular exemption to a particular record or portion of a record. A review charge may not be assessed for review at the administrative appeal level. When records or portions of records withheld in full 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.

(e) Documents will be furnished without charge or at a reduced charge if the official having initial denial authority determines that disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requestor.

(f) Factors to be considered by DOT officials authorized to determine whether a waiver or reduction of fees will be granted include:

(1) Whether the subject matter of the requested records concerns the operations or activities of the Federal government;

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

(3) Whether disclosure of the requested information will contribute to the understanding of the public at large, as opposed to the individual understanding of the requestor or a narrow segment of interested persons;

(4) Whether the contribution to public understanding of Federal government operations or activities will be significant;

(5) Whether the requestor has a commercial interest that would be furthered by the requested disclosure; and

(6) Whether the magnitude of any identified commercial interest to the requestor is sufficiently large in comparison with the public interest in disclosure that disclosure is primarily in the commercial interest of the requestor.

(g) Documents will be furnished without charge or at a reduced charge if 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 or a member of the Coast Guard.

(h) Documents will be furnished without charge or at a reduced charge if the official having initial denial authority determines that the request is by the victim of a crime who seeks the record of the trial or court-martial at which the requestor testified.

§7.45 Transcripts.

Transcripts of hearings or oral arguments are available for inspection. Where transcripts are prepared by a nongovernmental contractor, and the contract permits DOT to handle the reproduction of further copies, § 7.43 applies. Where the contract for transcription services reserves the sales privilege to the reporting service, any duplicate copies must be purchased directly from the reporting service.

§7.46 Alternative sources of information.

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

Rodney E. Slater,

Secretary of Transportation.

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BILLING CODE 4910-02-P

 U.S. Department of Transportation Federal Aviation Administration	FREEDOM OF INFORMATION ACT REQUEST CHECKLIST/FEE WORKSHEET	
FOIA Requester:	FOIA Response Due Date:	
FOIA Request Number:	Person Preparing Response:	Date:
Scoping the Request (Check all applicable items)		
<input type="checkbox"/> Identify responsive records.		
<input type="checkbox"/> Contact the requester by phone to negotiate/clarify the request.		Date:
<input type="checkbox"/> Contact any other offices, services, regions, etc., which are likely to have responsive records.		Date:
<input type="checkbox"/> Estimate fees		
<input type="checkbox"/> Fee waiver requested.* <input type="checkbox"/> Granted* <input type="checkbox"/> Denied*		
<input type="checkbox"/> Calculate estimated fees.*		
<input type="checkbox"/> Notify requester of fee estimate (if over \$25) and/or requirement to prepay fees (if estimate is over \$250 or previous payments not timely)*		Date:
<input type="checkbox"/> Send a follow-up letter or fax re: renegotiated or clarified request, extension and fee.*		
Basis for extension*		
<input type="checkbox"/> Volume <input type="checkbox"/> Consultation <input type="checkbox"/> Records located in field facilities/other establishments separate from office processing request		
Search and Review (Check all applicable items)		
<input type="checkbox"/> Search all sources likely to house responsive records.		
<input type="checkbox"/> Obtain records from and coordinate response with other offices, services, regions, etc.		
<input type="checkbox"/> If no records are located, document the search in the <i>remarks section (page 4)</i> stating the type of search (<i>manual, automated</i>), the files searched, and the name and title of the person who conducted the search.		
<input type="checkbox"/> Determine whether any exemptions apply.*		
<input type="checkbox"/> Exemption 1. Classified information		
<input type="checkbox"/> Exemption 2. Internal matters that would risk circumvention of statute or agency regulations		
<input type="checkbox"/> Exemption 3. Information specifically protected by other statutes; list statute _____		
<input type="checkbox"/> Exemption 4. Trade secrets or commercial or financial information that is privileged or confidential and submitted to the agency by any person		
<input type="checkbox"/> Exemption 5. Interagency and intra-agency memoranda or letters that would normally be privileged; i.e., predecisional and deliberative; attorney work product; attorney-client privilege		
<input type="checkbox"/> Exemption 6. Information about an individual the disclosure of which would constitute a clearly unwarranted invasion of personal privacy		
<input type="checkbox"/> Exemption 7. Information compiled for law enforcement purposes, if disclosure		
<input type="checkbox"/> (a) could reasonably be expected to interfere with enforcement proceedings		
<input type="checkbox"/> (b) could reasonably be expected to deprive a person of a right to a fair trial		
<input type="checkbox"/> (c) could reasonably be expected to constitute a clearly unwarranted invasion of personal privacy		
<input type="checkbox"/> (d) could reasonably be expected to disclose identity of a confidential source		
<input type="checkbox"/> (e) could disclose techniques and procedures for law enforcement investigations or prosecutions		
<input type="checkbox"/> (f) could reasonably be expected to endanger the life or physical safety of an individual		
<input type="checkbox"/> Exemption 8. Information submitted for regulation or supervision of financial institutions		
<input type="checkbox"/> Exemption 9. Geological and geophysical information concerning wells		
<input type="checkbox"/> Contact any other agency or private party about documents they submitted to FAA*		
<input type="checkbox"/> Calculate fees charged to requester and actual agency costs. (<i>Consult fee worksheet on page 3</i>)*		
* Apprise FOIA coordinator of action/status to be entered in the National Tracking System (NTS). NTS is an online tracking system that lists all FOIA requests and allows tracking from initial entry through final response (and appeal process, if applicable).		

FREEDOM OF INFORMATION ACT REQUEST CHECKLIST/FEE WORKSHEET (Continued)	
FOIA Requester:	FOIA Request Number:
Decision Letter — Full Disclosure* (Check if all of request is located and released)	
<input type="checkbox"/> Signed by program director or division manager, as appropriate* <input type="checkbox"/> Collect fees (payable to DOT/FAA)	
Decision Letter — Denial/Partial Denial* (Check if any material is denied)	
<input type="checkbox"/> Signed by the head of office, service, region, or center, as appropriate* <input type="checkbox"/> Name(s) & title(s) of person responsible for denial <input type="checkbox"/> Cite applicable exemption and include brief statement explaining the exemption <input type="checkbox"/> Specifically identify the information being withheld and the exemption that applies to that specific information <input type="checkbox"/> Include appeal rights paragraph <input type="checkbox"/> Coordinate with all offices having an interest in the document <input type="checkbox"/> Coordinate with FOIA legal staff* <input type="checkbox"/> Collect fees (payable to DOT/FAA)	
Decision Letter — "No Records" Determination* (Check if no records are located for all or part of request)	
<input type="checkbox"/> Signed by the head of office, service, region, or center, as appropriate* <input type="checkbox"/> Name(s) & title(s) of person responsible for determination <input type="checkbox"/> State type of search conducted and the location of files searched <input type="checkbox"/> Include appeal rights paragraph <input type="checkbox"/> Coordinate with all offices likely to have responsive documents <input type="checkbox"/> Coordinate with FOIA legal staff (and ARC-40, if headquarters)* <input type="checkbox"/> Collect fees for search, if appropriate (payable to DOT/FAA)	
Other Determination Not to Comply (Check applicable item)*	
<input type="checkbox"/> Referral to another DOT mode, or referral of records to another federal agency* <input type="checkbox"/> Failure to adequately identify records sought* <input type="checkbox"/> Request cancelled/withdrawn* <input type="checkbox"/> Refusal to pay reasonable fee*	
FOIA File Documentation (Check all applicable items)	
<input type="checkbox"/> Maintain a copy of, or create an index of documents released and withheld <input type="checkbox"/> Document search in remarks, if no records found* <input type="checkbox"/> Complete the checklist/fee worksheet and include it in the file* <input type="checkbox"/> Forward a copy of the signed decision letter (with FOIA no.) to HQ or regional FOIA coordinator and any other involved office(s) <input type="checkbox"/> REGION/CENTER: Forward a copy of signed denial/part denial or "no records" decision letter to AGC-110 and ARC-40. HQ: Forward a copy of signed denial/part denial or "no records" decision letter to AGC-110 and a copy of all signed decision letters with completed checklist/fee worksheet to ARC-40	
<small>* Apprise FOIA coordinator of action/status to be entered in the National Tracking System (NTS). NTS is an online tracking system that lists all FOIA requests and allows tracking from initial entry through final response (and appeal process, if applicable).</small>	

FREEDOM OF INFORMATION ACT CHECKLIST/FEE WORKSHEET						
FOIA Request Number:		<input type="checkbox"/> Fee Waiver Requested		<input type="checkbox"/> Fee Waiver Approved		
FEE CATEGORY OF REQUESTER		TYPE OF FEE				
		SEARCH	REVIEW	DUPLICATION		
<input type="checkbox"/> Commercial use		All	All	All		
<input type="checkbox"/> News media		None	None	All except first 100 pages		
<input type="checkbox"/> Educational and noncommercial scientific institutions		None	None	All except first 100 pages		
<input type="checkbox"/> All other		All except cost of first 2 hours	None	All except first 100 pages		
FEE COMPUTATION: CONTACT YOUR FOIA COORDINATOR TO AUTOMATICALLY CALCULATE FEES USING THE FOIA NATIONAL TRACKING SYSTEM (NTS) OR TO OBTAIN THE DOT ACTUAL DOLLAR RATE FOR MANUAL CALCULATIONS.						
EMPLOYEE PAY RANGES						
PAY RANGE 1: FG-1 thru FG-8 , or Pay Bands A thru F		PAY RANGE 2: FG-9 thru FG-14, or Pay Bands G thru J		PAY RANGE 3: FG-15 and above, or Pay Bands K thru L		
A Search Time (Applies to time spent searching for or locating responsive records)						
1. Manual	Searcher's Pay Range	Hours Searched	DOT Actual Dollar Rate	Total	Charged to Requester	Incremental Costs not charged to requester
2. Central Processing Unit	Actual CPU Time	Operator time (rate X hours searched)	DOT Actual Dollar Rate	Total	Charged to Requester	Incremental Costs not charged to requester
B Review Time (Applies to time spent reviewing any responsive records to determine whether they are exempt from disclosure)						
	Reviewer's Pay Range	Hours Reviewed	DOT Actual Dollar Rate	Total	Charged to Requester	Incremental Costs not charged to requester

FREEDOM OF INFORMATION ACT REQUEST CHECKLIST/FEE WORKSHEET (Continued)				
C Duplication Costs (Applies to duplicating responsive records)				
Type of Duplication	Quantity and Rate	Total	Charged to Requester	Incremental Costs not Charged to Requester
1. Photocopies	_____ pages x 0.10 per page			
2. Certified Copies	_____ packages <u>with seal</u> x \$4.00			
	_____ packages <u>without seal</u> x \$2.00			
3. Computer Tapes & Printouts	Actual Cost			
4. Other Methods	Actual Cost			
5. Digital Audio Tapes (DAT)	\$25.00 per DAT + \$30.00 for each different block of time requested within a facility's 24-hour master DAT. (See latest version of FAA Order 7210.3, Facility Operation and Administration)			
6. ATC Tapes	_____ hours or portion thereof x \$30.00			
D Other Incurred Costs Not Charged to Requester (Specify)				
<i>Charged to Requester</i>			<i>Incremental Costs</i>	
TOTAL =			TOTAL =	
Remarks:				
FOIA Respondent Completion of FOIA Request, Checklist, & Fee Worksheet (Signature)			Date	
FOIA Coordinator Checklist, Fee Worksheet & Response Letter Review (Signature)			Date	