

SUPPLEMENTARY INFORMATION:**Order**

Adopted: June 20, 1996; Released: June 20, 1996.

1. On June 14, 1996, the American Public Communications Council ("APCC") filed a motion asking that we extend the deadline for filing comments in the above-captioned proceeding¹ from June 27, 1996, to July 1, 1996, a period of four days. APCC also requests a corresponding extension of the due date for reply comments from July 8, 1996, to July 12, 1996. In support of its motion, APCC states that virtually every issue in the proceeding vitally affects its members and that, as a result, additional days are required to effectively prepare comments.² Also on June 14, 1996, Southwestern Bell Telephone Company ("SWBT") filed a motion for an extension of the deadline for reply comments to July 12, 1996, although it does not request a change in the deadline for the initial comment cycle. SWBT argues that due to the forthcoming federal holiday, there will not be a sufficient number of business days for parties to respond adequately to the initial comments.

2. It is the policy of the Commission that extensions of time are not routinely granted.³ However, in light of the important issues presented in this proceeding and the relatively short period of time accorded to the parties to comment on those issues, we believe that the public interest would be served by granting all parties a brief extension of the deadlines for the comments and reply comments. While we take this action on our motion, we nevertheless believe that this Order will grant relief that is substantially similar to that requested by APCC and SWBT.

3. Accordingly, it is ordered, pursuant to Sections 4(i), 4(j), and 5(c) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), and 155(c), and the authority delegated thereunder pursuant to Sections 0.91 and 0.291 of the Commission's rules, 47 CFR §§ 0.91 and 0.291, that the deadline for filing comments in the above-captioned proceeding is extended to July 1, 1996, and the deadline for filing reply comments is extended to July 15, 1996. Because they concern issues that are now moot, the motions of APCC and

SWBT for an extension of time are dismissed.

Federal Communications Commission.

Robert W. Spangler

*Deputy Chief (Policy), Enforcement Division,
Common Carrier Bureau.*

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

[Docket No. OST-96-1430; Notice 96-17]

RIN 2105-AC58

Public Availability of Information

AGENCY: Office of the Secretary, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: Department of Transportation proposes to revise regulations implementing the Freedom of Information Act (FOIA), 5 U.S.C. 552. This revision updates organizational changes since the last revision and streamlines the regulations in order to make the regulations more useful.

DATES: Comments are due August 26, 1996.

ADDRESSES: Comments should be addressed to Documentary Services Division, Attention: Docket Section, Room PL401, Docket No. OST-96-1430, Department of Transportation, C-55, Washington, DC 20590. Any person wishing acknowledgment that his/her comments have been received should include a self-addressed stamped postcard. Comments received will be available for public inspection and copying in the Documentary Services Division, Room PL401, Department of Transportation Building, 400 Seventh Street, SW, Washington, DC, from 10:00 AM to 5:00 PM ET Monday through Friday except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Dorothy A. Chambers, Chief, FOIA Division, Office of the General Counsel, C-12, Department of Transportation, Washington, DC 20590, telephone (202) 366-4542, FAX (202) 366-7152.

SUPPLEMENTARY INFORMATION: The President instituted a Regulatory Review initiative, for the reinvention of regulations by eliminating duplicate, redundant, or unnecessary language and revising regulations to meet the needs of users. In response to this initiative, we have reviewed part 7 and are proposing to revise this section to update and streamline information on public availability of information. We propose

to reorganize this part by combining in subpart B sections that relate to information that is publicly available without a specific request. Similarly, we have combined sections in subpart C that address information that must be requested under FOIA. We have shortened the descriptions of FOIA exemptions and propose to delete the Appendices that set forth redundant information concerning document inspection facilities. We propose to replace these appendices with provisions in §§ 7.10 and 7.15, which set forth necessary information regarding public records available at Department Docket locations and FOIA contacts for records requested under the FOIA.

Analysis of Regulatory Impacts

This amendment is not a "significant regulatory action" within the meaning of Executive Order 12866. 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 Departmental policies. Because the economic impact should be minimal, further regulatory evaluation is not necessary. Moreover, I certify that this proposal will not have a significant economic impact on a substantial number of small entities.

This proposal 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 proposal 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 proposes to revise 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 the Department

7.3 Publication in the Federal Register.

7.4 Publication Required.

¹ Notice of Proposed Rulemaking, FCC 96-254 (rel. Jun. 6, 1996); 61 FR 31481, June 20, 1996.

² As a national trade association of independent pay telephone companies, APCC claims that the comment process will require coordination with member companies and allied state associations. APCC claims that this process cannot be completed effectively in the time allotted.

³ See 47 CFR § 1.46(a).

- 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 Available at Department Docket Locations.

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

- 7.11 Applicability.
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- 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

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 records of the Department of Transportation. Many documents are made available to the public for inspection and copying through the Department Docket locations that are listed in subpart B, which contains the regulations of the Department of Transportation 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.

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

(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.

Administrator means the head of each operating element of the Department and includes the Commandant of the Coast Guard and the Director of the Bureau of Transportation Statistics.

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 operating elements:

- (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.
- (10) Bureau of Transportation Statistics.

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.

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 the Department

§ 7.3 Publication in the Federal Register.

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

(a) Descriptions of the organization of the Department, including its operating elements 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 the Department'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 the Department; 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 shall 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 therein with the approval of the Director of the Federal Register.

(b) *Effect of nonpublication.* Except to the extent that a person 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:

(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 the authority of the Department, 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 Departmental 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.

(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 the Department 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. 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 document inspection facilities of the Department. 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 operating element 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 any document inspection facility maintained by the Office of the Secretary or an operating element, as appropriate.

§ 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.

§ 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, in pertinent part, for criminal penalties for embezzlement or theft of government records.

(c) 18 U.S.C. 2071 provides, in pertinent part, 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 Available at Department Docket Locations.

Publicly available records are located in DOT Docket Units as follows (all times are eastern time zone, and are Monday—Friday except Federal holidays):

(a) Docket Units located at 400 7th Street, S.W., Washington, D.C. 20590 include:

(1) Office of the Secretary and former Civil Aeronautics Board material, Plaza 401, Hours 10:00–5:00.

(2) Federal Highway Administration, Room 4232, Hours 8:30–5:00.

(3) Federal Railroad Administration, Room 8209, Hours 9:30–4:00

(4) National Highway Traffic Safety Administration, Room 5111, Hours 9:30–4:00.

(5) Federal Transit Administration, Room 9316A, Hours 8:30–5:00.

(6) Maritime Administration, Room 7210, Hours 8:30–5:00.

(7) Research and Special Programs Administration, Room 8421, Hours 8:30–5:00.

(b) Federal Aviation Administration, 800 Independence Avenue, S.W., Washington, D. C. 20591:

(1) Rules Dockets Room 915–G, Hours 8:30–5:00.

(2) Enforcement Dockets, Room 924–C, Hours 8:30–5:00.

(c) United States Coast Guard, Room 3406, Hours 8:30–5:00, 2100 2nd Street, S.W., Washington, D. C. 20593–0001.

(d) Operating elements 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.

(e) Additional information on the location and hours of operations for Department Docket Offices can be obtained through the Office of the Secretary Docket Unit, mentioned above, 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 the Freedom of Information Act.

(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 the Department 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 Part.

Authority to administer this part and to issue determinations with respect 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 the Inspector General.

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

(c) to the Administrator of each operating element, who may redelegate to officers of that element 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 operating element.

§ 7.13 Records Available.

(a) *Policy.* It is the policy of the Department of Transportation to make

the records of the Department available to the public to the greatest extent possible, in keeping with the spirit of the Freedom of Information Act. This includes providing reasonably segregable information from documents that contain information that may be withheld.

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

(c) *Statutory exemptions.* Exempted from the Act'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), 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,

(vi) 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 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.

§ 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 the Freedom of Information Act.

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

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

(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 ten-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 the Department as a request pursuant to the Freedom of Information Act 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 person making the request 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 requester claims the request to fall and the basis of this claim (see subpart F for fees and fee waiver requirements), and

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

(iii) Requesters are advised that the time for responding to requests set forth in subpart E may be delayed—

(A) If a requester has not sufficiently identified the fee category applicable to the request,

(B) If a requester has not stated a willingness to pay fees as high as anticipated by the Department, or

(C) 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 the Department.

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

(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 the Department determines that creating a new record will be less burdensome than disclosing large volumes of unassembled material, the Department may, in its discretion, agree to creation of a new record as an alternative to disclosing existing records.

(e) 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 requester upon payment of the appropriate fee. Original records ordinarily will be copied except in those instances where, in the Department'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 Department custody.

(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 requester 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 not be charged for individual copies of that material so long as the material is in supply. In addition the Department 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 to the Departmental element where the records are located:

(a) FOIA Offices at 400 7th Street, S.W., Washington, D.C. 20590:

- (1) Office of the Secretary of Transportation, Room 5432
- (2) Federal Highway Administration, Room 4428
- (3) Federal Railroad Administration, Room 8201
- (4) National Highway Traffic Safety Administration, Room 5219
- (5) Federal Transit Administration, Room 9400
- (6) Maritime Administration, Room 7221
- (7) Research and Special Programs Administration, Room 8419
- (8) St. Lawrence Seaway Development Corporation, Room 5424
- (9) Bureau of Transportation Statistics, Room 2104
- (10) Office of the Inspector General, Room 9210

(b) Federal Aviation Administration, 800 Independence Avenue, S.W., Room 906A, Washington, D. C. 20591.

(c) United States Coast Guard, 2100 2nd Street, S.W., Room 6418, Washington, D. C. 20593-0001.

(d) Operating elements 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 above.

(e) If the person making the request does not know where in the Department

the record is located, he or she may make inquiry to the Chief, FOIA Division, Office of the General Counsel.

§ 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 this Department and another Federal agency, the determination as to release will be made 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 this Department and a State or local government, a territory or possession of the United States, or a foreign government, the determination as to release will be made by the Department only after consultation with the other interested State or local government or foreign government.

(c) As an alternative to consultation, the Department may refer the request (or relevant portion thereof) to a Federal agency that originated or is substantially concerned with the records. Such referrals shall be made expeditiously and the requester shall be 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 the Department has some other reason to believe may contain trade secrets or other commercial or financial 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 requester 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 Office of the Secretary or the responsible operating element, as appropriate, 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 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 that 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. Such notice of intent to disclose 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 requester will be notified of the decision to disclose information.

(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 shall 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 (14 CFR 302.39) in Aviation Economic Proceedings.

(e) Whenever a requester brings suit seeking to compel disclosure of confidential commercial information, the Office of the Secretary or the responsible operating element, whichever the case may be, 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 the Department 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 the Department'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 the Department.

(b) When a request for a waiver of fees, pursuant to § 7.44, has been denied in whole or in part, the requester 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 head of the operating element concerned or, in the case of the Office of the Secretary, to the General Counsel of the Department, and in the case of the Office of Inspector General, to the Inspector General. 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 requester 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 head of the operating element concerned (or his or her designee), or the General Counsel or the Inspector General, as the case may be; 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 all information and arguments relied upon by the person making the request. Such letter should indicate that it is an appeal from a denial of a request made under the Freedom of Information Act. The envelope in which the 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 an employee of the Department as an appeal under the Freedom of Information Act, and has been received by the appropriate office.

(e) Whenever the head of the operating element concerned, or the General Counsel or the Inspector

General, as the case may be, determines it to be necessary, he/she may require the person making the request to furnish additional information, or proof of factual allegations, and may order other proceedings appropriate in the circumstances. The decision of the head of the operating element concerned, or the General Counsel or the Inspector General, as the case may be, 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 head of the operating element concerned, or the General Counsel or Inspector General, as the case may be, 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 operating element or his or her delegate, 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 the General Counsel or his/her designee.

(h) Upon a determination that an appeal will be denied, the requester 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 requester resides or has his or her principal place of business, the judicial district in which the requested records are located, or the District of Columbia.

Subpart E—Time Limits

§ 7.31 Initial Determinations.

An initial determination whether to release a record requested pursuant to subpart C will be made within ten 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 this 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 to appeal the determination, and the name and title of

each person responsible for the initial determination to deny the request.

§ 7.32 Final Determination.

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.

§ 7.33 Extension.

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 ten Federal working days. As used in this subparagraph, "unusual circumstances" means, but only to the extent reasonably necessary to the proper processing of the particular request:

(a) 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.

(b) 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

(c) The need for consultation, which will be conducted with all practicable speed, with any other agency or DOT element 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.

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 the Department.

(b) All terms defined by the Freedom of Information Act 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 the Department, 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 the Department 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 Departmental systems of records. Fees for such requests are to be determined in accordance with the Privacy Act of 1974, as implemented by Department of Transportation 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 Treasury of the United States; except that, in the case of the Saint Lawrence Seaway Development Corporation, all fees resulting from a request to that operating element shall be made payable to the Saint Lawrence Seaway Development Corporation.

(b) Charges may be assessed by the Department 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, the Department 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 requester will likely exceed \$25, the requester will be notified of the estimated amount of the fees, unless the requester has indicated in advance his or her willingness to pay fees as high as those anticipated. The notice will also inform the requester how to consult with the appropriate Departmental 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 by the Department prior to actual duplication or delivery of any releasable records to a requester. However, advance payment of fees, i.e., payment before work is commenced or continued

on a request, may not be required unless:

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

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

(e) When paragraph (d)(1) of this section applies, the requester 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 requester 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 below. 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.

(g) The Department 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 requester. 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 the Department 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 requester, an administrative charge will be assessed by the Department 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 the Department to encourage payment of amounts overdue.

(i) In any instance where the Department reasonably believes that a requester or a group of requesters acting in concert is attempting to break down a single FOIA request into a series of requests for the sole purpose of evading

the payment of otherwise applicable fees, the Department will aggregate the requests and determine the applicable fees on the basis of the aggregation.

(j) 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, after taking into account all services that must be provided free of, or at a reduced, charge, is less than \$10.00 the Department will not make any charge for fees.

§ 7.43 Fee Schedule.

(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 each searcher's hourly rate plus 16 percent by 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 salary (hourly plus 16 percent) costs apportionable to the search.

(c) The standard fee for review of records requested under subpart C of this part is the reviewer's hourly rate plus 16 percent multiplied by the time he or 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 1/2 x 14 inches) reproduced by photocopy or similar methods (includes costs of personnel and equipment)—\$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 requester, and the use for which the records are requested, in some cases the fees computed in accordance with the above standard fee schedule will either be reduced or not charged, as prescribed by other provisions of this subpart.

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

§ 7.44 Services Performed Without Charge or at a Reduced Charge.

(a) A fee is not to be charged to any requester making a request under subpart C 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 requester 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 requester 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 requester 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 requester.

(f) Factors to be considered by officials of the Department 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 requester 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 requester has a commercial interest that would be furthered by the requested disclosure; and

(6) 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.

§ 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 the Department 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 shall 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.

Issued in Washington, DC, on May 31, 1996.

Federico Peña,
Secretary of Transportation.

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DEPARTMENT OF THE INTERIOR**50 CFR Part 17****Endangered and Threatened Wildlife and Plants; Notice of Public Hearing and Reopening of Comment Period on Proposed Threatened and Endangered Status for Five Plants and a Lizard From Monterey County, California**

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed Rule; notice of public hearing and reopening of comment period.

SUMMARY: The Fish and Wildlife Service (Service), pursuant to the Endangered Species Act of 1973, as amended (Act), provides notice of a public hearing on the proposed endangered status for coastal dunes milkvetch (*Astragalus tener* var. *titi*), Yadon's piperia (*Piperia yadonii*), Hickman's potentilla (*Potentilla hickmanii*), Monterey clover (*Trifolium trichocalyx*) and the black legless lizard (*Anniella pulchra nigra*); and threatened status for Gowen cypress (*Cupressus goveniana* ssp. *goveniana*). In addition, the Service has reopened the comment period. All parties are invited to submit comments on this proposal.

DATES: The public hearing will be held from 6 p.m. to 8 p.m. on Wednesday, July 17, 1996, in Monterey, California. The public comment period now closes August 30, 1996. Any comments received by the closing date will be considered in the final decision on this proposal.

ADDRESSES: The public hearing will be held at the Hyatt Regency Hotel, One Golf Course Road, Monterey, California. Written comments and materials concerning this proposal may be submitted at the hearing or sent directly to the Field Supervisor, Ventura Field Office, 2493 Portola Road, Suite B, Ventura, California 93003. Comments and materials will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Connie Rutherford (see **ADDRESSES** section) or at 805/644-1766.

SUPPLEMENTARY INFORMATION:**Background**

Most of the habitat for the plants and lizard is found in coastal habitats in northern Monterey County. Coastal dunes milk-vetch and Monterey clover are restricted to private lands on the Monterey Peninsula. Hickman's potentilla is restricted to two populations: one on the Monterey