

Tribal government, a territory or possession of the United States, or a foreign government, the determination as to release will be made by DOT only after consultation with the interested government.

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

§ 7.17 Consultation with submitters of commercial and financial information.

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

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

prior to the specified date upon which disclosure is intended. At the same time the submitter is notified, the requestor will be notified of the decision to disclose information. The written notice will include:

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

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

(3) A specific disclosure date.

(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