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SOURCE: Amdt. 1, 63 FR 38331, July 16, 1998, unless otherwise noted.

### 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.

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

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

*Administrator* means the head of each component of DOT and includes the Under Secretary for Security, 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* means the Department of Transportation, including the Office of the Secretary, the Office of Inspector General, and the following DOT Operating Administrations, all of which may be referred to as DOT components. Means of contacting each of these DOT components appear in § 7.15. This definition specifically excludes the Surface Transportation Board, which has its own FOIA regulations (49 CFR Part 1001):

- (1) Federal Aviation Administration,
- (2) Federal Highway Administration,
- (3) Federal Motor Carrier Safety 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) Pipeline and Hazardous Materials Safety Administration, and
- (10) Research and Innovative Technology Administration.

*Primary Electronic Access Facility* means the electronic docket facility in the DOT Headquarters Building, 1200 New Jersey Avenue, SE., Washington, DC 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

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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.

[Amdt. 1, 63 FR 38331, July 16, 1998, as amended at 67 FR 54746, Aug. 26, 2002; 73 FR 33328, June 12, 2008; 75 FR 5244, Feb. 2, 2010]

## **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

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(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, 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