



**DEPARTMENT OF TRANSPORTATION**

**4910-9X**

**Office of the Secretary**

**49 CFR Part 7**

**RIN 2105-AE62**

**Updates to Comply with the FOIA Improvement Act of 2016 and other Technical Amendments; Final Rule; Correction**

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

**ACTION:** Final Rule; correction.

**SUMMARY:** The Department of Transportation is correcting a final rule that appeared in the Federal Register on May 5, 2017. The document issued a final rule that made technical changes to the Department of Transportation's regulations prescribing procedures for the public availability of information.

**DATES:** This final rule is effective June 5, 2017.

**FOR FURTHER INFORMATION CONTACT:** Claire McKenna, Senior Attorney, Office of the General Counsel, U.S. Department of Transportation, Washington, DC, at [claire.mckenna@dot.gov](mailto:claire.mckenna@dot.gov) or (202) 366-0365.

**SUPPLEMENTARY INFORMATION:**

In FR Doc. 2017-08925 appearing on page 21136 in the Federal Register on May 5, 2017, the following corrections are made:

**I. Purpose of the Regulatory Action [Corrected]**

1. On page 21136, the last sentence of the third column stating, "In section 7.23, the rule amends subparagraph (c)(5) to state that Exemption 5's deliberative process privilege only applies to records created 25 years or more before the date on which the records are

requested, and the rule adds a new paragraph (d) to prohibit DOT from withholding information under this section unless DOT reasonably foresees that disclosure will harm an interest protected by a FOIA exemption, or the disclosure is prohibited by law” is corrected to read, “In section 7.23, the rule amends paragraph (c)(5) to state that Exemption 5’s deliberative process privilege does not apply to records created 25 years or more before the date on which the records are requested, and the rule adds a new paragraph (d) to prohibit DOT from withholding information under this section unless DOT reasonably foresees that disclosure will harm an interest protected by a FOIA exemption, or the disclosure is prohibited by law.”

**§ 7.23 [Corrected]**

2. On page 21139, in the first and second columns, amendatory instruction 4 and the amended text of § 7.23 are corrected to read as follows:

4. Amend § 7.23 as follows:

- a. Revise paragraph (c)(5);
- b. Redesignate paragraphs (d) and (e) as paragraphs (e) and (f) respectively; and
- c. Add new paragraph (d).

The revision and addition read as follows:

**§7.23 What limitations apply to disclosure?**

\* \* \* \* \*

(c) \* \* \*

(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, provided that the deliberative process privilege shall not apply to records created 25 years or more before the date on which the records were requested;

\* \* \* \* \*

(d) *Application of exemptions.* DOT shall withhold information pursuant to a statutory exemption only if:

(1) DOT reasonably foresees that disclosure would harm an interest protected by an exemption under paragraph (c) of this section; or

(2) Disclosure is prohibited by law or otherwise exempted from disclosure under paragraph (c)(3) of this section.

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