or authorized representative of the submitter that the information is, in fact, confidential or proprietary and has not been disclosed to the public. All information considered confidential or proprietary by a submitter should be clearly designated with a prominent stamp, typed legend, or other suitable form of notice, stating "Confidential Treatment Requested by [insert name of submitter]", which should appear on each page or segregable portion of the page. If such marking is impractical, a cover sheet prominently marked "Confidential Treatment Requested by [insert name of submitter]" should be securely attached to the information for which confidential treatment is requested. These designations shall be deemed to have expired 10 years after the date of the submission, unless the submitter requests, and provides reasonable justification for, a longer period of designation.

(d) Notice to submitter. To the extent permitted by law, the Department shall provide a submitter with prompt written notice of a FOIA request or administrative appeal encompassing its business information, unless notice is excused under paragraph (h) of this section. Such notice shall afford the submitter an opportunity to object to disclosure pursuant to paragraph (f) of this section. The notice shall either describe the exact nature of the business information requested or provide copies of the records or portions thereof containing the business information. The Department will provide this notice

(1) The information has been designated in good faith by the submitter as information deemed protected under Exemption 4; or

(2) The Department has reason to believe that the information may be protected from disclosure under

Exemption 4.

- (e) Notice to requester. At the same time the Department notifies the submitter, the Department shall also notify the requester that the request is subject to the provisions of this section and that the submitter is being afforded an opportunity to object to disclosure of the information.
- (f) Opportunity to object to disclosure. Through the notice described in paragraph (d) of this section, the Department shall afford a submitter or its designee 10 Federal working days to provide the Department a detailed written statement of the submitter's objection to disclosure of any portion of the information it submitted to the Department. Such statement shall specify all grounds for withholding any of the information and shall

demonstrate why the information is a trade secret or commercial or financial information that is privileged or confidential. Conclusory statements that particular information would be useful to competitors or would impair sales, or similar statements, generally will not be considered sufficient to justify confidential treatment. Information provided by a submitter or its designee pursuant to this paragraph may itself be subject to disclosure under the FOIA.

(g) Notice of intent to disclose. The Department shall consider carefully a submitter's objections and specific grounds for nondisclosure, before determining whether to disclose business information. If the Department decides to disclose business information over the objection of a submitter, the Department shall forward to both the submitter and the requester a written notice of intent to disclose. The written notice shall be forwarded 10 Federal working days before the specified disclosure date and shall include:

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

- (2) A description of the business information to be disclosed; and
- (3) A specified disclosure date. (h) Exceptions to the notice requirement. The notice requirements of paragraphs (d) and (g) of this section shall not apply if:
- (1) The Department determines that the information should not be disclosed;
- (2) The information has been published lawfully or has been made available officially to the public;
- (3) Disclosure of the information is required by law (other than the Act);
- (4) Disclosure of the information is required by a departmental regulation that:
- (i) Was adopted pursuant to notice and public comment;
- (ii) Specifies narrow classes of records submitted to the Department that are to be released under the FOIA; and
- (iii) Provides for notice in exceptional circumstances when the submitter provides, at the time the information is submitted or a reasonable time thereafter, written justification that disclosure of the information could reasonably be expected to cause substantial competitive harm:
- (5) The information requested was not designated by the submitter as exempt from disclosure in accordance with paragraph (c) of this section at the time of the submission of the information or a reasonable time thereafter, unless the Department has substantial reason to believe that the disclosure of the information would cause competitive harm; or

- (6) The designation made by the submitter in accordance with paragraph (c) of this section appears obviously frivolous. In such circumstances, the Department shall forward to the submitter, 10 Federal working days before a specified disclosure date, written notice of any final administrative decision to disclose business information.
- (i) *Notice of FOIA lawsuit.* Whenever a requester brings suit seeking to compel disclosure of business information, the Department shall promptly notify the submitter.
- (j) Determination of confidentiality. HUD will make no determination as to the validity of any request for confidentiality until a request for disclosure of the information is received.
- (k) Current mailing address for the submitter. Each submitter shall provide to the Department:
- (1) A mailing address for receipt of any notices under this section; and (2) Notice of any change of address.
- (I) Treatment of confidential information by HUD employees. (1) HUD officers and employees shall not, directly or indirectly, use or allow the use of business information obtained through or in connection with Government employment that has not been made available to the general public.
- (2) Except as otherwise provided in this section, HUD officers and employees may not disclose business information, except to other HUD officers or employees who are properly entitled to such information for the performance of their official duties.
- 14. Section 15.61 is revised to read as

§ 15.61 Administrative appeal.

(a) Appeal shall be available only from a written denial of a request issued under § 15.52, and only when the appeal is filed within 30 days of issuance of the denial. An appeal from a denial issued by the Office of Executive Secretariat or by offices in which there is a Field Assistant General Counsel must be mailed to the Assistant General Counsel for Training and Administrative Law, Room 10246, 451 Seventh Street, SW, Washington, DC, 20410. An appeal from a denial issued by a Field Office must be mailed to the appropriate Field Assistant General Counsel. An appeal must include a copy of the original request for records; a copy of the written denial of access to those records, and a statement of the reasons, circumstances, or arguments advanced in support of, or in opposition to, disclosure of the records. The