

## Laws and Regs SBA Form 3513

Sec. 7(a) and (b) of the Small Business Act, 15 U.S.C. § 631 et seq.

Title V of the Small Business Investment Act of 1958, 15 U.S.C. § 695, et seq.

Coronavirus Preparedness and Response Supplemental Appropriations Act, 2020

Coronavirus Aid, Relief, and Economic Security Act (CARES Act)

Paycheck Protection Program and Health Care Enhancement Act

Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act

### **13 §102.7 Confidential commercial information.**

(a) *Definitions.* For purposes of this section:

*Confidential commercial information* means commercial or financial information obtained by the SBA from a submitter that may be protected from disclosure under Exemption 4 of the FOIA, 5 U.S.C. 552(b)(4).

*Submitter* means any person or entity, including a corporation, State, or foreign government, but not including another Federal Government entity, that provides information, either directly or indirectly to the Federal Government.

(b) *Designation of confidential commercial information.* A submitter of confidential commercial information must use good faith efforts to designate by appropriate markings, either at the time of submission or within a reasonable time thereafter, any portion of its submission that it considers to be protected from disclosure under Exemption 4. These designations shall expire 10 years after the date of the submission unless the submitter requests and provides justification for a longer designation period.

(c) *When notice to submitters is required.* (1) A component shall promptly provide written notice to a submitter of confidential commercial information whenever records containing such information are requested under the FOIA if, after reviewing the request, the responsive records, and any appeal by the requester, the component determines that it may be required to disclose the records, provided:

(i) The requested information has been designated in good faith by the submitter as information considered protected from disclosure under Exemption 4; or

(ii) The component has a reason to believe that the requested information may be protected from disclosure under Exemption 4, but has not yet determined whether the information is protected from disclosure under that exemption or any other applicable exemption.

(2) The notice shall either describe the commercial information requested or include a copy of the requested records or portions of records containing the information. In cases involving a voluminous number of submitters, notice may be made by posting or publishing the notice in a place or manner reasonably likely to accomplish it.

(d) *Exceptions to submitter notice requirements.* The notice requirements of this section shall not apply if:

(1) The component determines that the information is exempt under the FOIA;

(2) The information has been lawfully published or has been officially made available to the public;

(3) Disclosure of the information is required by a statute other than the FOIA or by a regulation issued in accordance with the requirements of Executive Order 12600 of June 23, 1987; or

(4) The designation made by the submitter under paragraph (b) of this section appears obviously frivolous, except that, in such a case, the component shall give the submitter written notice of any final decision to disclose the information and must provide that notice within a reasonable number of days prior to a specified disclosure date.

(e) *Opportunity to object to disclosure.* (1) A component shall specify a reasonable time period within which the submitter must respond to the notice referenced above. If the submitter has any objections to disclosure, it should provide the component a detailed written statement that specifies all grounds for withholding the particular information under any exemption of the FOIA. In order to rely on Exemption 4 as the basis for nondisclosure, the submitter must explain why the information constitutes a trade secret or commercial or financial information that is privileged or confidential.

(2) A submitter who fails to respond within the time period specified in the notice shall be considered to have no objection to disclosure of the information. Information received by the component after the date of any disclosure decision shall not be considered by the component. Any information provided by a submitter under this subpart may itself be subject to disclosure under the FOIA.

(f) *Analysis of objections.* A component shall consider a submitter's objections and specific grounds for nondisclosure in deciding whether to disclose the requested information.

(g) *Notice of intent to disclose.* Whenever a component decides to disclose information over the objection of a submitter, the component shall provide the submitter written notice, which shall include:

(1) A statement of the reasons why each of the submitter's disclosure objections was not sustained;

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

(3) A specified disclosure date, which shall be a reasonable time subsequent to the notice.