§ 212.37 Procedures for agency consideration of appeals.

(a) Upon receipt of the appeal by the Appeals Officer, a maximum of twenty working days will normally be taken to decide the appeal. In unusual circumstances, as defined in §212.34, the twenty working days may be extended by ten working days or by the number of days not used in the original denial of the request.

(b) If the appeal is granted, the person making the appeal shall be immediately notified and copies of the releasable documents shall be made available promptly thereafter upon receipt of appropriate fees as set forth in §212.35. If the appeal is denied in whole or part, the person making the request shall be immediately notified of the decision and of the provisions for judicial review of the Agency’s denial of the request.

(c) In the event a determination is not issued within the applicable time limit and the person making the request therefore chooses to sue the Agency, the Agency-level determination process shall nonetheless continue.

(d) If an appeal not properly marked “FOIA Appeal” on the text of the appeal and/or envelope is thereby delayed in reaching the Appeals Officer, it will not be deemed received by the Appeals Officer until actually received by him/her. In such event, the person making the appeal will be furnished notice of the effective date of receipt.

§ 212.38 Predisclosure notification procedures for confidential commercial information.

(a) In general. Confidential commercial information provided to the Agency shall not be disclosed pursuant to a FOIA request except in accordance with this section. For purposes of this section, the following definitions apply:

(1) Confidential commercial information means records provided to the Agency by a submitter that arguably contain material exempt from release under Exemption 4 of FOIA, 5 U.S.C. 552(b)(4), because disclosure could reasonably be expected to cause substantial competitive harm.

(2) Submitter means any person or entity who provides confidential commercial information to the Agency. The term “submitter” includes, but is not limited to, corporations, state governments and foreign governments.

(b) Notice to submitters. Whenever the Agency receives a FOIA request for confidential commercial information and, pursuant to paragraph (c) of this section, the submitter of such information is entitled to receive notice of that request, then the Agency shall promptly notify the submitter that it has received the request, unless such a notice is not required pursuant to paragraph (g) of this section. The notice shall be in writing and shall either describe the exact nature of the confidential commercial information requested or provide a copy of the records or portion of the records containing the confidential commercial information. The notice shall be addressed to the submitter and mailed, postage prepaid, first class mail, to the submitter’s last known address. Where notice is required to be given to a voluminous number of submitters, in lieu of such a mailing the notice may be posted or