

which the component estimates processing of the request will be completed. Where the extension exceeds 10 working days, the component must, as described by the FOIA, provide the requester with an opportunity to modify the request or arrange an alternative time period for processing the original or modified request. The component must make available its designated FOIA contact or its FOIA Public Liaison for this purpose. The component also must alert requesters to the availability of the OGIS to provide dispute resolution services.

(e) *Procedures for requesting expedited processing.* A requester who seeks expedited processing must submit a statement, certified to be true and correct to the best of that person's knowledge and belief, explaining in detail the basis for requesting expedited processing.

(1) Requests and appeals will be processed on an expedited basis whenever it is determined by the component that they involve:

(i) Circumstances in which the lack of expedited processing could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or

(ii) An urgency to inform the public about an actual or alleged federal government activity, if made by a person who is primarily engaged in disseminating information.

(2) Requests for expedited processing may be made at any time. Requests based on paragraphs (e)(1)(i) or (ii) of this section must be submitted to the component that maintains the records requested. Components receiving requests for expedited processing will decide whether to grant them within 10 calendar days of their receipt of these requests and will notify the requesters accordingly. If a request for expedited treatment is granted, the request or appeal will be given priority, placed in the processing track for expedited requests or appeals, and will be processed as soon as practicable. If a request for expedited processing is denied, any appeal of that decision will be acted on expeditiously.

§ 1.7 Records responsive to records requests.

(a) In determining which records are responsive to a request, a component ordinarily will include only records in its possession as of the date that the component begins its search.

(b) A component is not required to create a new record in order to fulfill a request for records. The FOIA does not require agencies to do research, to analyze data, or to answer written questions in response to a request.

(c) Creation of records may be undertaken voluntarily.

(d) A component will provide a record in the format specified by a requester, if the record is readily reproducible by the component in the format requested.

§ 1.8 Requirements for processing records requests seeking business information.

(a) *In general.* Each component is responsible for making the final determination with regard to the disclosure or nondisclosure of business information in records submitted by an outside entity.

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

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

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

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

§ 1.8

7 CFR Subtitle A (1-1-24 Edition)

(d) *When notice to the submitter is required.* (1) The component must promptly provide written notice to the submitter of confidential commercial information whenever records containing such information are requested under the FOIA if 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.

(2) The notice must 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, the component may post or publish a notice in a place or manner reasonably likely to inform the submitters of the proposed disclosure, instead of sending individual notifications.

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

(1) The component determines that the information is exempt under the FOIA and therefore will not be disclosed;

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

(3) Disclosure of the information is required by statute (other than the FOIA) or by a regulation issued in accordance with the requirements of Executive Order 12,600.

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

(f) *Submitter's opportunity to object to disclosure.* (1) The component must specify a reasonable time period within

which the submitter must respond to the notice referenced in paragraph (d) of this section.

(2) If a submitter objects to disclosure of any portion of the records, the submitter must provide the component with a detailed written statement that specifies all grounds for withholding the particular information. The submitter must show why the information is a trade secret or commercial or financial information that is privileged or confidential.

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

(g) *Notice of intent to disclose over submitter's objection.* If a component decides to disclose confidential commercial information over the objection of a submitter, the component will give the submitter written notice, which will include:

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

(2) A description of the information to be disclosed or copies of the records as the component intends to release them; and

(3) A disclosure date subsequent to the notice.

(h) *Notice of FOIA lawsuit.* Whenever a requester files a lawsuit seeking to compel the disclosure of confidential commercial information, the component will promptly notify the submitter.

(i) *Corresponding notice to requester.* The component must notify the requester whenever it provides the submitter with notice and an opportunity to object to disclosure; whenever it notifies the submitter of its intent to disclose the requested information; and whenever a submitter files a lawsuit to prevent the disclosure of the information.