

§ 1206.609

initial determination, an official authorized to make an initial determination or the designee may seek an extension of time from the requester. If such an extension of time can be agreed upon, that fact should be clearly documented and the initial determination made within the extended time period; if not, an initial determination that the record cannot be identified or located, or reviewed, within the 20-working-day time limit shall be made under § 1206.603. "Exceptional circumstances" do not include a delay that results from a predictable Agency workload of requests unless the Agency demonstrates reasonable progress in reducing its backlog of pending requests. Refusal by the requester to reasonably modify the scope of a request or arrange an alternative time frame for processing the request shall be considered as a factor in determining whether exceptional circumstances exist.

§ 1206.609 Litigation.

In any instance in which a requester brings suit concerning a request for an Agency record under this part, the matter shall promptly be referred to the General Counsel together with a report on the details and status of the request. In such a case, if a final determination with respect to the request has not been made, such a determination shall be made as soon as possible, under procedures prescribed by the General Counsel in each case.

§ 1206.610 Notice to submitters of commercial information.

(a) General policy. Upon receipt of a request for commercial information pursuant to the Freedom of Information Act, NASA shall provide the submitter with notice of the request in accordance with the requirements of this section.

(b) Notice to submitters. Except as provided in paragraph (g) or (h) of this section, the Agency shall make a good faith effort to provide a submitter with prompt notice of a request appearing to encompass its commercial information whenever required under paragraph (c) of this section. Such notice shall identify the commercial information requested and shall inform the submitter

14 CFR Ch. V (1-1-08 Edition)

of the opportunity to object to its disclosure in accordance with paragraph (d) of this section. If the submitter would not otherwise have access to the document that contains the information, upon the request of the submitter, the Agency shall provide access to, or copies of, the records or portions thereof containing the commercial information. This notice shall be provided in writing upon the request of the submitter. Whenever the Agency provides notice pursuant to this section, the Agency shall advise the requester that notice and opportunity to comment are being provided to the submitter.

(c) When notice is required. Notice shall be given to a submitter whenever the information has been designated by the submitter as information deemed protected from disclosure under Exemption 4 of the Act, or the Agency otherwise has reason to believe that the information may be protected from disclosure under Exemption 4.

(d) Opportunity to object to disclosure. Through the notice described in paragraph (b) of this section, the Agency shall afford a submitter a reasonable period within which to provide the Agency with a detailed statement of any objection to disclosure. This period shall not exceed 10 working days from the date after which the Agency can reasonably assume receipt of notice by the submitter, unless the submitter provides a reasonable explanation justifying additional time to respond. If the Agency does not receive a response from the submitter within this period, the Agency shall proceed with its review of the information and initial determination. The submitter's response shall include all bases, factual or legal, for withholding any of the information pursuant to Exemption 4. Information provided by a submitter pursuant to this paragraph may itself be subject to disclosure under the FOIA. Submitters will not be provided additional opportunities to object to disclosure, and, therefore, should provide a complete explanation of any and all bases for withholding any information from disclosure.

(e) Notice of intent to disclose. The Agency shall carefully consider any objections of the submitter in the course