

may itself be subject to disclosure under the Freedom of Information Act.

(f) *Notice of intent to disclose information.* The Board will consider carefully a business submitter's objections and specific grounds for claiming that the information should not be disclosed before determining whether to disclose confidential commercial information. Whenever the Board decides to disclose confidential commercial information over the objection of a business submitter, it will forward to the business submitter a written notice that includes:

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

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

(3) A specified disclosure date. The Board will forward the notice of intent to disclose the information a reasonable number of days, as circumstances permit, before the specified date upon which disclosure is expected. It will forward a copy of the disclosure notice to the requester at the same time.

(g) *Notice of Freedom of Information Act lawsuit.* Whenever a requester files a lawsuit seeking to compel disclosure of business information covered by paragraph (d) of this section, the Board will notify the business submitter promptly.

(h) *Exceptions to notice requirements.* The notice requirements of this section do not apply when:

(1) The Board determines that the information should not be disclosed;

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

(3) Disclosure of the information is required by law (other than 5 U.S.C. 552); or

(4) The disclosure is required by an agency rule that:

(i) Was adopted pursuant to notice and public comment;

(ii) Specifies narrow classes of records submitted to the agency that are to be released under the Freedom of Information Act; or

(iii) Provides in exceptional circumstances for notice when the submitter provides written justification,

at the time the information is submitted or a reasonable time thereafter, that disclosure of the information could reasonably be expected to cause substantial competitive harm.

(5) The information requested is not designated by the submitter as exempt from disclosure in accordance with agency regulations promulgated pursuant to this section, when the submitter has an opportunity to do so at the time of submission of the information or a reasonable time thereafter, unless the agency has substantial reason to believe that disclosure of the information would result in competitive harm; or

(6) The designation made by the submitter in accordance with Board regulations appears obviously frivolous; except that, in such case, the Board must provide the submitter with written notice of any final administrative disclosure determination within a reasonable period prior to the specified disclosure date.

Subpart C—Appeals

§ 1204.21 Submission.

A person may appeal a denial by the Clerk of the Board, or by any regional director, of access to agency records, waiver of fees, or reduction of fees. The appeal must be filed with the Chairman, Merit Systems Protection Board, 1120 Vermont Avenue NW., Washington, DC 20419. Any appeal must include a copy of the initial request, a copy of the letter denying the request, and a statement of the reasons why the appellant believes the denying official erred.

[55 FR 39911, Oct. 1, 1990, as amended at 59 FR 65243, Dec. 19, 1994]

§ 1204.22 Decisions on appeal.

Decisions on an appeal will be made within 20 workdays after the appeal is received. Each decision will be in writing and, if the denial of access to records is upheld, will contain the reasons for the decision, as well as information about the appellant's right to seek judicial review of the denial.