

§ 1015.17

§ 1015.17 Internal Commission procedure for withholding exempt records.

Paragraphs (a) and (b) of this section describe the internal Commission procedure to be followed for requesting that a record exempt from disclosure under the inter- intra-agency memorandum exemption, 5 U.S.C. 552(b)(5), or the investigatory file exemption, 5 U.S.C. 552(b)(7), not be disclosed.

(a) If a bureau or office director believes that it is against the public interest to disclose a Commission record prepared by his/her bureau or office, he/she may request in writing that the Secretary withhold the document. The request must specify why the release would be against the public interest.

(1) If the Secretary agrees to withhold the document, the requester shall be notified in writing of the denial and of his/her right to appeal in accordance with § 1015.6(b).

(2) If the Secretary decides to release the document, the bureau or office director shall be notified and given two working days within which to appeal to the Commissioners. An appeal by a bureau or office director shall be in writing addressed to the Chairman. If an appeal is taken by a bureau or office director, the Secretary will not disclose the document. The Commissioner's action on appeal shall be in accordance with § 1015.7(d).

(b) If a Commissioner believes that it is not in the public interest to disclose a Commission record prepared by himself/herself or by his/her office personnel, the Commissioner shall so inform the Secretary and shall specify in writing why the release would be against the public interest. The Secretary shall notify the requester in writing of the denial in accordance with § 1015.6(b). Any appeal by a requester shall be in accordance with § 1015.7 except the provisions for reconsideration by the Secretary is not applicable. On appeal, the Commissioner who withheld the document shall not participate in the decision.

[42 FR 10490, Feb. 22, 1977, as amended at 45 FR 22023, Apr. 3, 1980]

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§ 1015.18 Information submitted to the Commission; request for treatment as exempt material.

(a) A person who is submitting information to the Commission, after being notified by the Commission of his/her opportunity to request confidential treatment for information, must accompany the submission with a request that the information be considered exempt from disclosure or indicate that a request will be submitted within 10 working days of the submission. The failure to make a request within the prescribed time limit will be considered an acknowledgment that the submitter does not wish to claim exempt status.

(b) A person who has previously submitted information to the Commission, that is now the subject of a Freedom of Information request, after being notified by the Commission of his/her opportunity to request confidential treatment for the information, must submit a request that the information be considered exempt from disclosure within 5 working days from receipt of notification. The failure to make a request within the prescribed time limit will be considered an acknowledgment that the submitter does not wish to claim exempt status.

(c) Each request for exemption from disclosure under 5 U.S.C. 552(b)(4) as a trade secret or privileged or confidential commercial or financial information must:

(1) Specifically identify the exact portion(s) of the document claimed to be confidential;

(2) State whether the information claimed to be confidential has ever been released in any manner to a person who was not an employee or in a confidential relationship with the company;

(3) State whether the information so specified is commonly known within the industry or is readily ascertainable by outside persons with a minimum of time and effort;

(4) State how release of the information so specified would be likely to cause substantial harm to the company's competitive position; and