

## § 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]

## 16 CFR Ch. II (1-1-04 Edition)

### § 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

(5) State whether the submitter is authorized to make claims of confidentiality on behalf of the person or organization concerned.

(d) Material received with a request that it be considered exempt shall not be maintained in a public file. If, in complying with a request for the disclosure of records, it is determined that some or all of the material relative to the request has been claimed to be exempt from disclosure, the requester will be supplied with a list of this material and informed that those portions found not to be exempt will be made available as soon as possible.

(e) No request for exemption from disclosure under 5 U.S.C. 552(b)(4) should be made by any person who does not intend in good faith to assist the Commission in the defense of any judicial proceeding that might thereafter be brought to compel the disclosure of information which the Commission has determined to be a trade secret or privileged or confidential commercial or financial information.

**§ 1015.19 Decisions on requests for exemption from disclosure under 5 U.S.C. 552(b)(4).**

(a) The Commission generally will not decide whether material received with a request for exemption from disclosure under 5 U.S.C. 552(b)(4) is entitled to be withheld until a request for production or disclosure is made for that information. The determination will be based on the most authoritative judicial interpretations available at the time a request for disclosure or production is considered. Any reasonably segregable portion of a record will be disclosed to any person requesting such record after deletion of any portions determined to be exempt under 5 U.S.C. 552(b)(4). The requester will be given a brief description of any information found to be exempt.

(b) If material received with a request for exemption from disclosure under 5 U.S.C. 552(b)(4) is found to be disclosable, in whole or in part, the person submitting the material will be notified in writing and given 10 calendar days from the receipt of the letter to seek judicial relief. In no event, however, will the material be returned to the person submitting it.

**Subpart C—Disclosure of Commission Accident or Investigation Reports Under 15 U.S.C. 2074(c)**

**§ 1015.20 Public availability of accident or investigation reports.**

(a) Accident or investigation reports made by an officer, employee, or agent of the Commission are available to the public under the procedures set forth in subpart A of this part 1015. No portion of such report are subject to the investigatory file exemption contained in the Freedom of Information Act (as restated in § 1015.16) except that portions identifying any injured person or any person treating such injured person will be deleted in accordance with section 25(c)(1) of the CPSA. Where disclosure of an accident or investigation report is requested by supplying the name of the person injured or other details of a specific accident (other than cases where the report is requested by the injured person or the injured person's legal representative), the Commission will offer to obtain the written consent of the injured party or the injured party's representative to the disclosure of the report without deleting the party's identity. No deletion of identifying portions of such reports or refusal to disclose without the Commission having first obtained written consent shall be considered as a denial by the Commission of disclosure of Commission records.

(b) Research reports, demonstration reports, and reports of other related activities of the Commission are available to the public under the procedures set forth in subpart A of this part 1015.

**PART 1016—POLICIES AND PROCEDURES FOR INFORMATION DISCLOSURE AND COMMISSION EMPLOYEE TESTIMONY IN PRIVATE LITIGATION**

Sec.

1016.1 Purpose and policy.

1016.2 Definition.

1016.3 Disclosure and certification of information and records.

1016.4 Testimony of Commission employees in private litigation.