

**§ 1610.19 Predisclosure notification procedures for confidential commercial information.**

(a) *In general.* Commercial information provided to the Commission shall not be disclosed except in accordance with this section. For the purposes of this section, the following definitions apply:

(1) *Confidential commercial information* refers to records provided by a submitter containing information that is arguably exempt from disclosure under 5 U.S.C. 552(b)(4), because disclosure could reasonably be expected to cause substantial competitive harm.

(2) *Submitter* refers to any person or entity who provides confidential commercial information to the government. The term includes, but is not limited to, corporations, State governments, and foreign governments.

(b) *Notice to submitter.* Except as provided in paragraph (g) of this section, the Commission shall provide a submitter with explicit notice of a FOIA request for confidential commercial records whenever:

(1) The Commission reasonably believes that disclosure could cause substantial competitive harm to the submitter;

(2) The information was submitted prior to January 1, 1988, the records are less than 10 years old, and the submitter designated them as commercially sensitive; or

(3) The information was submitted after January 1, 1988, and the submitter previously, in good faith, designated the records as confidential commercial information. Such designations shall:

(i) Whenever possible, include a statement or certification from an officer or authorized representative of the company that the information is in fact confidential commercial information and has not been disclosed to the public; and

(ii) Expire ten years from the date of submission unless otherwise justified.

(c) *Notice to requester.* When notice is given to a submitter under this section, the requester shall be notified that notice and opportunity to comment are being provided to the submitter.

(d) *Opportunity of submitter to object.* When notification is made pursuant to

paragraph (b) of this section, the Commission shall afford the submitter a minimum of five working days to provide it with a detailed statement of objections to disclosure. Such statement shall provide precise identification of the exempted information, and the basis for claiming it as a trade secret or as confidential information pursuant to 5 U.S.C. 552(b)(4), the disclosure of which is likely to cause substantial harm to the submitter's competitive position.

(e) *Notice of intent to disclose.* (1) The Commission shall consider carefully the objections of a submitter provided pursuant to paragraph (d) of this section. When the Commission decides to disclose information despite such objections, it shall provide the submitter with a written statement briefly explaining why the objections were not sustained. Such statement shall be provided a minimum of three working days prior to the specified disclosure date, in order that the submitter may seek a court injunction to prevent release of the records if it so chooses.

(2) When a submitter is notified pursuant to paragraph (e)(1) of this section, notice of the Commission's final disclosure determination and proposed release date shall also be provided to the requester.

(f) *Notice of lawsuit.* Whenever a requester brings suit seeking to compel disclosure of confidential commercial information, the Commission shall promptly notify the submitter of the legal action.

(g) *Exceptions to the notice requirement.* The notice requirements of this section shall not apply if:

(1) The Commission determines that the information shall not be disclosed;

(2) The information is published or otherwise officially available to the public;

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

[56 FR 29579, June 28, 1991]

**§ 1610.20 Deletion of exempted matters.**

Where requested records contain matters which are exempted under 5 U.S.C. 552(b) but which matters are

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reasonably segregable from the remainder of the records, they shall be disclosed by the Commission with deletions. To each such record the Commission shall attach a written justification for making deletions. A single such justification shall suffice for deletions made in a group of similar or related records.

[40 FR 8171, Feb. 26, 1975. Redesignated at 56 FR 29579, June 28, 1991]

### § 1610.21 Annual report.

The Legal Counsel shall, on or before February 1, 1998, and annually thereafter, submit a Freedom of Information Act report covering the preceding fiscal year to the Attorney General of the United States. The report shall include those matters required by 5 U.S.C. 552(e), and shall be made available electronically.

[63 FR 1342, Jan. 9, 1998]

## Subpart B—Production in Response to Subpenas or Demands of Courts or Other Authorities

### § 1610.30 Purpose and scope.

This subpart contains the regulations of the Commission concerning procedures to be followed when a subpoena, order, or other demand (hereinafter in this subpart referred to as a “demand”) of a court or other authority is issued for the production or disclosure of (a) any material contained in the files of the Commission; (b) any information relating to material contained in the files of the Commission; or (c) any information or material acquired by any person while such person was an employee of the Commission as a part of the performance of his official duties or because of his official status.

[32 FR 16261, Nov. 29, 1967]

### § 1610.32 Production prohibited unless approved by the Legal Counsel.

No employee or former employee of the Commission shall, in response to a demand of a court or other authority, produce any material contained in the files of the Commission or disclose any information or produce any material acquired as part of the performance of

his official duties or because of his official status without the prior approval of the Legal Counsel.

[32 FR 16261, Nov. 29, 1967, as amended at 47 FR 46275, Oct. 18, 1982]

### § 1610.34 Procedure in the event of a demand for production or disclosure.

(a) Whenever a demand is made upon an employee or former employee of the Commission for the production of material or the disclosure of information described in §1610.30, he shall immediately notify the Legal Counsel. If possible, the Legal Counsel shall be notified before the employee or former employee concerned replies to or appears before the court or other authority.

(b) If response to the demand is required before instructions from the Legal Counsel are received, an attorney designated for that purpose by the Commission shall appear with the employee or former employee upon whom the demand has been made, and shall furnish the court or other authority with a copy of the regulations contained in this part and inform the court or other authority that the demand has been or is being, as the case may be, referred for prompt consideration by the Legal Counsel. The court or other authority shall be requested respectfully to stay the demand pending receipt of the requested instructions from the Legal Counsel.

[32 FR 16261, Nov. 29, 1967, as amended at 47 FR 46275, Oct. 18, 1982; 63 FR 1342, Jan. 9, 1998]

### § 1610.36 Procedure in the event of an adverse ruling.

If the court or other authority declines to stay the effect of the demand in response to a request made in accordance with §1610.34(b) pending receipt of instructions from the Legal Counsel, or if the court or other authority rules that the demand must be complied with irrespective of the instructions from the Legal Counsel not to produce the material or disclose the information sought, the employee or former employee upon whom the demand has been made shall respectfully decline to comply with the demand