

§ 1015.20

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

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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.

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SOURCE: 53 FR 6594, Mar. 2, 1988, unless otherwise noted.

§ 1016.1 Purpose and policy.

(a) The Commission's policy is to make official records available to private litigants, to the fullest extent possible.

(b) The Commission's policy and responsibility is to conserve the time of its employees for work on Commission projects and activities. Participation of Commission employees in private litigation, in their official capacities, is generally contrary to this policy and responsibility. In addition, such participation could impair the effectiveness of Commission employees as witnesses in litigation in which the Commission is directly involved.

§ 1016.2 Definition.

Private litigation refers to any legal proceeding which does not involve the United States government, or any department or agency of the U.S. government, as a party.

§ 1016.3 Disclosure and certification of information and records.

(a) Identifiable information and records in the Commission's possession will be made available to private litigants in accordance with the Commission's Procedures for Disclosure or Production of Information under the Freedom of Information Act (16 CFR part 1015), the Freedom of Information Act (5 U.S.C. 552), sections 6 and 25(c) of the Consumer Product Safety Act (15 U.S.C. 2055 and 2074(c)), and any other applicable statutes or regulations.

(b) The Secretary of the Commission shall certify the authenticity of copies of Commission records. Requests must be in writing and must include the records to be certified. Requests should be sent to: Secretary, Consumer Product Safety Commission, Washington, DC 20207.

(c) Any subpoena duces tecum served on a Commission employee will be handled by the Office of the Secretary in conjunction with the Office of the General Counsel. Whenever necessary to prevent the improper disclosure of documents, the General Counsel will take steps, in conjunction with the Department of Justice, to quash such subpoenas or seek protective orders.

§ 1016.4 Testimony of Commission employees in private litigation.

(a) No Commission employee shall testify in his or her official capacity in any private litigation, without express authorization from the Commission's General Counsel. The Commission may, in its discretion, review a decision by the General Counsel to authorize such employee testimony. The General Counsel shall in such instances, where time permits, advise the Commission, on a no objection basis, of the authorization of such employee testimony.

(b) If any Commission employee is served with a subpoena seeking testimony in private litigation, he or she must immediately notify the Office of the General Counsel. The Office of the General Counsel, in conjunction with the Department of Justice, will (1) take steps to quash the subpoena or (2) direct the employee to appear in response to the subpoena but refuse to testify on the ground that it is prohibited by this section.

(c) If the General Counsel becomes aware of private litigation in which testimony by a Commission employee would be in the interests of the Commission, he or she may authorize such testimony, notwithstanding paragraph (b) of this section. The Commission may, in its discretion, review a decision by the General Counsel to authorize such employee testimony. The General Counsel shall in such instances, where time permits, advise the Commission, on a no objection basis, of the authorization of such employee testimony. Any such testimony must be provided in a way that minimizes the use of Commission resources as much as possible.

PART 1017 [RESERVED]**PART 1018—ADVISORY COMMITTEE MANAGEMENT****Subpart A—General Provisions**

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