

§ 503.11

notice shall specify a date that would result in an extension for more than ten working days. As used in this paragraph, “unusual circumstances” means, but only to the extent reasonably necessary to the proper processing of the particular request—

(1) The need to search for and collect the requested records from other establishments that are separate from the office processing the request;

(2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(3) The need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the agency having substantial subject-matter interest therein.

(d) With respect to determinations on appeals, such determinations shall be made within twenty days (excepting Saturdays, Sundays, and legal holidays) after the receipt of such appeal. If, on appeal, the denial of the request for records is in whole or in part upheld, the person making such request shall be notified of the provisions for judicial review of that determination under section 552(a)(4) of title 5, United States Code.

§ 503.11 Appeals.

(a) Any person to whom a record has not been made available within the time limits established by paragraph (d) of § 503.10, and any person who has been given an adverse determination pursuant to paragraph (b) of § 503.10, that a requested record will not be disclosed, may apply to the Chairman of the Commission, or in the Chairman's absence an officer or employee designated by the Chairman, for reconsideration of the request. A determination that a record will not be disclosed is not administratively final for the purpose of judicial review unless it was made by the Chairman or Chairman's designee, unless the applicable time limit has passed without a determination of the appeal having been made.

(b) Each application for reconsideration must be made in writing within

45 CFR Ch. V (10–1–00 Edition)

thirty days from the date of receipt of the original denial and must include all information and arguments relied upon by the person making the request. Such application must indicate that it is an appeal from a denial of a request made under the Freedom of Information Act. The envelope in which the application is sent must be prominently marked with the letters “FOIA”. If these requirements are not met, the twenty day limit described in § 503.10 will not begin to run until the application has been identified as an application under the Freedom of Information Act and has been received by the appropriate office.

(c) Whenever it is to be determined necessary, the person making the request may be required to furnish additional information, or proof of factual allegations and other proceedings appropriate in the circumstances may be ordered. The decision of the Chairman or Chairman's designee as to the availability of the record is administratively final.

(d) The decision not to disclose a record under this part is considered to be a withholding for the purposes of section 552(a)(3) of title 5, United States Code.

§ 503.12 Exemptions.

In the event any document or record requested hereunder shall contain material which is exempt from disclosure under this section, any reasonably segregable portion of such record shall, notwithstanding such fact, and to the extent feasible, be provided to any person requesting same, after deletion of the portions which are exempt under this section. Documents or records determined to be exempt from disclosure hereunder may nonetheless be provided upon request in the event it is determined that the provision of such document would not violate the public interest or the right of any person to whom such information may pertain, and the disclosure is not prohibited by law or Executive Order. The following categories of records are exempt from disclosure under the provisions of 5 U.S.C. 552(b):

(a) Records which are specifically required by Executive Order to be kept