

#### §4.10

#### 16 CFR Ch. I (1–1–21 Edition)

premerger notification provisions of the Clayton Act, 15 U.S.C. 18a(b)(2);

(xii) Reports on appliance energy consumption or efficiency filed with the Commission pursuant to §305.8 of this chapter;

(xiii) Annual filings by professional boxing sanctioning organizations as required by the Muhammed Ali Boxing Reform Act, 15 U.S.C. 6301 note, 6307a–6307h;

(xiv) All transcripts or other materials that are distributed by staff at public workshops;

(xv) Other documents that the Commission has determined to place on the public record; and

(xvi) Every amendment, revision, substitute, or repeal of any of the foregoing items listed in paragraphs (b)(1) through (10) of this section.

(c) *Confidentiality and in camera material.* (1) Persons submitting material to the Commission described in this section may designate that material or portions of it confidential and request that it be withheld from the public record. All requests for confidential treatment shall be supported by a showing of justification in light of applicable statutes, rules, orders of the Commission or its administrative law judges, orders of the courts, or other relevant authority. The General Counsel or the General Counsel's designee will act upon such request with due regard for legal constraints and the public interest. No such material or portions of material (including documents generated by the Commission or its staff containing or reflecting such material or portions of material) will be placed on the public record until the General Counsel or the General Counsel's designee has ruled on the request for confidential treatment and provided any prior notice to the submitter required by law.

(2) Motions seeking *in camera* treatment of material submitted in connection with a proceeding under part 3 of these rules, except stay applications under §3.56, shall be filed with the Administrative Law Judge who is presiding over the proceeding. Requests for confidential treatment of material submitted in connection with a stay application shall be made in accordance with §4.9(c)(1).

(3) To the extent that any material or portions of material otherwise falling within paragraph (b) of this section contain information that is not required to be made public under §4.10 of this part, the General Counsel or the General Counsel's designee may determine, with due regard for legal constraints and the public interest, to withhold such materials from the public record.

[50 FR 50779, Dec. 12, 1985, as amended at 57 FR 10805, Mar. 31, 1992; 59 FR 34970, July 8, 1994; 60 FR 37749, July 21, 1995; 63 FR 18820, Apr. 16, 1998; 63 FR 32977, June 17, 1998; 63 FR 45647, Aug. 26, 1998; 64 FR 46269, Aug. 25, 1999; 66 FR 17633, Apr. 3, 2001; 66 FR 64144, Dec. 12, 2001; 77 FR 59311, Sept. 27, 2012; 78 FR 13474, Feb. 28, 2013; 80 FR 15162, Mar. 23, 2015; 80 FR 16961, Mar. 31, 2015; 81 FR 93805, Dec. 22, 2016]

EDITORIAL NOTE: At 80 FR 15162, Mar. 23, 2015, in §4.9, paragraph (a)(10)(viii) was revised, however no paragraph (a)(10)(viii) exists, so the amendment could not be incorporated.

#### §4.10 Nonpublic material.

(a) The following records and other material of the Commission are not required to be made public pursuant to 5 U.S.C. 552.

(1) Records, except to the extent required to be disclosed under other laws or regulations, related solely to the internal personnel rules and practices of the Commission. This exemption applies to internal rules or instructions to Commission personnel which must be kept confidential in order to assure effective performance of the functions and activities for which the Commission is responsible and which do not affect members of the public.

(2) Trade secrets and commercial or financial information obtained from a person and privileged or confidential. As provided in section 6(f) of the Federal Trade Commission Act, 15 U.S.C. 46(f), this exemption applies to competitively sensitive information, such as costs or various types of sales statistics and inventories. It includes trade secrets in the nature of formulas, patterns, devices, and processes of manufacture, as well as names of customers in which there is a proprietary or highly competitive interest.

(3) Interagency or intra-agency memoranda or letters that would not

## Federal Trade Commission

## § 4.10

routinely be available by law to a private party in litigation with the Commission, provided that the deliberative process privilege shall not apply to records created 25 years or more before the date on which the records are requested. This exemption preserves the existing freedom of Commission officials and employees to engage in full and frank communication with each other and with officials and employees of other governmental agencies. This exemption includes records of the deliberations of the Commission except for the record of the final votes of each member of the Commission in every agency proceeding. It includes intraagency and interagency reports, memorandums, letters, correspondence, work papers, and minutes of meetings, as well as staff papers prepared for use within the Commission or between the Commission and other governmental agencies. It also includes information scheduled for public release, but as to which premature release would be contrary to the public interest;

(4) Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy except to the extent such files or materials must be disclosed under other laws or regulations. This exemption applies to personnel and medical records and similar records containing private or personal information concerning any individual which, if disclosed to any person other than the individual concerned or his designated legal representative without his permission in writing, would constitute a clearly unwarranted invasion of personal privacy. Examples of files exempt from disclosure include, but are not limited to:

(i) The personnel records of the Commission;

(ii) Files containing reports, records or other material pertaining to individual cases in which disciplinary or other administrative action has been or may be taken, including records of proceedings pertaining to the conduct or performance of duties by Commission personnel;

(5) Records or information compiled for law enforcement purposes, but only to the extent that production of such

law enforcement records or information:

(i) Could reasonably be expected to interfere with enforcement proceedings;

(ii) Would deprive a person of a right to a fair trial or an impartial adjudication;

(iii) Could reasonably be expected to constitute an unwarranted invasion of personal privacy;

(iv) Could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution that furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source;

(v) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or

(vi) Could reasonably be expected to endanger the life or physical safety of any individual.

(6) Information contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions;

(7) Geological and geophysical information and data, including maps, concerning wells; and

(8) Material, as that term is defined in section 21(a) of the Federal Trade Commission Act, which is received by the Commission:

(i) In an investigation, a purpose of which is to determine whether any person may have violated any provision of the laws administered by the Commission; and

(ii) Which is provided pursuant to any compulsory process under the Federal Trade Commission Act, 15 U.S.C. 41, *et seq.*, or which is provided voluntarily in place of compulsory process in

#### §4.10

#### 16 CFR Ch. I (1-1-21 Edition)

such an investigation. See section 21(f) of the Federal Trade Commission Act.

(9) Material, as that term is defined in section 21(a) of the Federal Trade Commission Act, which is received by the Commission pursuant to compulsory process in an investigation, a purpose of which is to determine whether any person may have violated any provision of the laws administered by the Commission. See section 21(b)(3)(C) of the Federal Trade Commission Act.

(10) Such other material of the Commission as may from time to time be designated by the Commission as confidential pursuant to statute or Executive Order. This exempts from disclosure any information that has been designated nonpublic pursuant to criteria and procedures prescribed by Executive Order and that has not been subsequently declassified in accordance with applicable procedures. The exemption also preserves the full force and effect of statutes that restrict public access to specific government records or material.

(11) Material in an investigation or proceeding that involves a possible violation of criminal law, when there is reason to believe that the subject of the investigation or proceeding is not aware of its pendency, and disclosure of the existence of the investigation could reasonably be expected to interfere with enforcement proceedings. When a request is made for records under §4.11(a), the Commission may treat the records as not subject to the requirements of the Freedom of Information Act.

(b) With respect to information contained in transcripts of Commission meetings, the exemptions contained in paragraph (a) of this section, except for paragraphs (a)(3) and (a)(7) of this section, shall apply; in addition, such information will not be made available if it is likely to have any of the effects described in 5 U.S.C. 552b (c)(5), (c)(9), or (c)(10).

(c) Under section 10 of the Federal Trade Commission Act, any officer or employee of the Commission who shall make public any information obtained by the Commission, without its authority, unless directed by a court, shall be deemed guilty of a misdemeanor, and upon conviction thereof, may be pun-

ished by a fine not exceeding five thousand dollars (\$5,000), or by imprisonment not exceeding 1 year, or by fine and imprisonment, in the discretion of the court.

(d) Except as provided in paragraphs (f) or (g) of this section or in §4.11(b), (c), (d), (i), or (j), no material that is marked or otherwise identified as confidential and that is within the scope of §4.10(a)(8), and no material within the scope of §4.10(a)(9) that is not otherwise public, will be made available without the consent of the person who produced the material, to any individual other than a duly authorized officer or employee of the Commission or a consultant or contractor retained by the Commission who has agreed in writing not to disclose the information. All other Commission records may be made available to a requester under the procedures set forth in §4.11 or may be disclosed by the Commission except where prohibited by law.

(e) Except as provided in paragraphs (f) or (g) of this section or in §4.11(b), (c), (d), (i), or (j), material not within the scope of §4.10(a)(8) or §4.10(a)(9) that is received by the Commission and is marked or otherwise identified as confidential may be disclosed only if it is determined that the material is not within the scope of §4.10(a)(2), and the submitter is provided at least ten days notice of the intent to disclose the material.

(f) Nonpublic material obtained by the Commission may be disclosed to persons other than the submitter in connection with the taking of oral testimony without the consent of the submitter only if the material or transcript is not within the scope of §4.10(a)(2). If the material is marked confidential, the submitter will be provided 10 days' notice of the intended disclosure or will be afforded an opportunity to seek an appropriate protective order.

(g) Material obtained by the Commission:

(1) Through compulsory process and protected by section 21(b) of the Federal Trade Commission Act, 15 U.S.C. 57b-2(b) or voluntarily in lieu thereof and designated by the submitter as confidential and protected by section 21(f) of the Federal Trade Commission

## Federal Trade Commission

## § 4.11

Act, 15 U.S.C. 57b-2(f), and § 4.10(d) of this part; or

(2) That is designated by the submitter as confidential, and protected by section 21(c) of the Federal Trade Commission Act, 15 U.S.C. 57b-2(c), and § 4.10(e) of this part; or

(3) That is confidential commercial or financial information protected by section 6(f) of the Federal Trade Commission Act, 15 U.S.C. 46(f), and § 4.10(a)(2) of this part, may be disclosed in Commission administrative or court proceedings subject to Commission or court protective or *in camera* orders as appropriate. See §§ 1.18(b) and 3.45.

Prior to disclosure of such material in a proceeding, the submitter will be afforded an opportunity to seek an appropriate protective or *in camera* order. All other material obtained by the Commission may be disclosed in Commission administrative or court proceedings at the discretion of the Commission except where prohibited by law.

(15 U.S.C. 41 *et seq.*)

[38 FR 1731, Jan. 18, 1973, as amended at 40 FR 7629, Feb. 21, 1975; 40 FR 23278, May 29, 1975; 42 FR 13540, Mar. 11, 1977; 46 FR 26291, May 12, 1981; 49 FR 30166, July 27, 1984; 54 FR 7399, Feb. 21, 1989; 57 FR 10807, Mar. 31, 1992; 60 FR 37749, July 21, 1995; 63 FR 38473, July 17, 1998; 65 FR 67259, Nov. 9, 2000; 66 FR 17633, Apr. 3, 2001; 72 FR 28853, May 23, 2007; 81 FR 93805, Dec. 22, 2016]

### § 4.11 Disclosure requests.

(a) *Freedom of Information Act*—(1) *Initial requests*—(i) *Form and contents; time of receipt.* (A) A request under the provisions of the Freedom of Information Act, 5 U.S.C. 552, as amended, for access to Commission records shall be in writing and transmitted by one of the following means: by the form located on the FTC's FOIA Web site, found at [www.ftc.gov](http://www.ftc.gov); by email message to the FOIA email account at [foia@ftc.gov](mailto:foia@ftc.gov); by facsimile transmission to (202) 326-2477; or by mail to the following address: Freedom of Information Act Request, Office of the General Counsel, Federal Trade Commission, 600 Pennsylvania Avenue NW., Washington, DC 20580.

(B) Failure to mark the envelope and the request in accordance with paragraph (a)(1)(i)(A) of this section, or the filing of a request for expedited treat-

ment under paragraph (a)(1)(i)(G) of this section, will result in the request (or requests, if expedited treatment has been requested) as received on the date that the processing unit in the Office of General Counsel actually receives the request(s).

(C) *Acknowledgment of requests.* Once a FOIA request is properly received by the processing unit in the Office of the General Counsel, a letter acknowledging the receipt of the request shall be mailed to the requester if processing the request will likely take more than 5 business days.

(D) *Identifiability.* (1) A properly filed FOIA request shall reasonably describe the records sought with enough detail to enable the Commission to locate them with a reasonable amount of effort. Whenever possible, the request should include specific information about each record sought such as date, title, name, author, recipient, subject matter of the record, provide information regarding fees pursuant to § 4.8(c), and provide sufficient contact information for a response to be sent. Although a mailing address is generally required, an email address can suffice in some instances. The FOIA Office will consider requests to send responses by email.

(2) A denial of a request may state that the description required by paragraph (a)(2)(ii)(A) of this section is insufficient to allow identification and location of the records.

(E) *Costs; agreement to pay costs.* Requesters will be charged search, review, duplication and other chargeable direct costs as prescribed by § 4.8 for requests under this section. All requests shall include a statement of the information needed to determine fees, as provided by § 4.8(c), and an agreement to pay fees (or a statement that the requester will not pay fees if a fee waiver is denied), as provided by § 4.8(d). Requests may also include an application for a fee waiver, as provided by § 4.8(e). An advance payment may be required in appropriate cases as provided by § 4.8(h).

(F) *Failure to agree to pay fees.* If a request does not include an agreement to pay fees, and if the requester is notified of the estimated costs pursuant to § 4.8(d)(3), the request will be deemed