

FEDERAL TRADE COMMISSION**16 CFR Part 4****Electronic Freedom of Information Act of 1996; Miscellaneous Rules**

AGENCY: Federal Trade Commission (FTC).

ACTION: Final rule.

SUMMARY: The Federal Trade Commission is implementing the requirements of the Electronic Freedom of Information Act Amendments of 1996 by revising its Rules of Practice governing access to agency records. The Commission is also making other "housekeeping" amendments to its Rules, including changes to reflect the Commission's establishment of a Consumer Response Center, which replaces the former Public Reference Branch, and the transfer of responsibility for initial Freedom of Information Act and Privacy Act requests to the Office of the General Counsel.

DATES: These amendments are effective August 26, 1998.

FOR FURTHER INFORMATION CONTACT: Alex Tang, Attorney, (202) 326-2447, Office of the General Counsel, FTC.

SUPPLEMENTARY INFORMATION: On October 2, 1996, the President signed the Electronic Freedom of Information Act Amendments of 1996 (E-FOIA), Pub. L. 104-231, 110 Stat. 3048, amending the Freedom of Information Act (FOIA), 5 U.S.C. 552. In a separate document published elsewhere in today's **Federal Register**, the Commission is seeking public comment on its proposal to amend its Rules of Practice to incorporate, among other things, procedures for expedited processing and aggregation of requests. This document contains implementing Rule amendments that do not require public comment. This document also includes Rule amendments reflecting recent organizational changes that affected the agency units responsible, respectively, for providing routine access to public records and for processing initial requests for non-public records under the FOIA and Privacy Act.

Making Certain Documents Previously Released Under the FOIA Available For Routine Public Inspection And Copying

Section (a)(2) of the FOIA, 5 U.S.C. 552(a)(2), which lists the agency records that must be made available for routine public inspection and copying, was amended by adding two new subsections, 5 U.S.C. 552(a)(2) (D) and (E). Previously, section (a)(2) applied

only to final opinions and orders in the adjudication of cases, agency policy statements and interpretations not published in the **Federal Register**, and administrative staff manuals and instructions affecting the public. See 5 U.S.C. 552(a)(2)(A), (B), (C). In practice, the Commission makes these and numerous other materials available for routine inspection and copying on its public record. See Commission Rule 4.9(b), 16 CFR 4.9(b).

The FOIA, as amended by the E-FOIA, now requires that the Commission also make routinely available "copies of all records, regardless of form or format, which have been released to any person under [the FOIA] and which, because of the nature of their subject matter, the agency determines have become or are likely to become the subject of subsequent requests for substantially the same records." 5 U.S.C. 552(a)(2)(D). An index of those records must also be made routinely available. 5 U.S.C. 552(a)(2)(E). Accordingly, the Commission is revising its list of public records in Rule 4.9(b) to include these items. The new provisions are being designated as Rules 4.9(b)(10) (ix) and (x), respectively, and certain existing paragraphs are being revised and redesignated.

These changes will likely reduce the number of requests made under the FOIA, although the Commission expects a corresponding increase in the number of requests received for public record materials. Because placing previously released documents on the public record and providing access through that process is generally less costly than providing access through the Commission's FOIA process, this proposed change to the Rules will probably decrease the overall costs to the Commission and should eliminate search and review fees that might otherwise be incurred by requesters with respect to such records.

The General Counsel (or designee) will determine, on a case-by-case basis, which documents may be appropriate to make routinely available on the public record under Rule 4.9(b)(10)(ix). The Commission, however, does not intend that documents placed on the public record under that Rule will include information that is legally exempt from public disclosure. One example is information about an individual that, even where it is not exempt from mandatory disclosure to that individual as a first-party requester, would still be withheld in response to subsequent requests from others if the materials are otherwise exempt under the FOIA. See, e.g., 5 U.S.C. 552(b)(6), (7)(C). Other

examples include information that is submitted to the Commission (either under compulsory process, or voluntarily in lieu thereof) in a Commission law enforcement investigation, or confidential business information. Again, that information may be released back to a first-party requester, but would be withheld from others under FOIA Exemption 3, by virtue of sections 6(f) and 21 (b) and (f) of the FTC Act, 15 U.S.C. 46(f) and 57b-2 (b) and (f), and FOIA Exemption 4.

Likewise, the Commission does not intend for Rule 4.9(b)(10)(ix) to apply where the public interest in the documents is insufficient to conclude that the documents are likely to be requested by others. Further, documents placed on the public record under the Rule will be removed, consistent with the statutory language and purpose of the requirement, when it appears that they are no longer likely to be routinely requested.

Making Certain Records Available Electronically

Section (a)(2) of the FOIA, as amended, further provides that documents subject to routine public inspection and copying under that provision must also be made accessible to the public electronically (e.g., by "computer telecommunications," such as a direct computer dial-in system or through the Internet). This provision, which became effective on November 1, 1997, applies to all covered records created on or after November 1, 1996. Furthermore, beginning December 31, 1999, the agency must make the document index required under section (a)(2)(E) of the FOIA and new Rule 4.9(b)(10)(x), as discussed earlier, publicly accessible by computer telecommunications, whether or not the agency employs such a system for making other required documents electronically available. The Commission is using its Internet Web site (WWW.FTC.GOV) to meet the requirements of this provision. Accordingly, the Commission is amending Rule 4.9(a)(3), which identifies the locations from which public record materials may be obtained, to include the Commission's Web site address. This change is intended to promote electronic access to Commission information and documents.

Providing Records In the Format Requested

The FOIA, as amended, now requires that records released thereunder be made available in the form or format requested if the material is "readily

reproducible" in that form or format. See 5 U.S.C. 552(a)(3)(B). The Commission is amending Rule 4.11(a)(1)(iv)(C) to reflect this requirement.

In most instances, records are reproduced in their existing format (*e.g.*, paper) because no particular format has been requested. In other cases, no version of the requested records may exist in the particular format specified by the requester (*e.g.*, a request that paper-only records be made available in electronic form, or that records maintained in one electronic format be made available in a different electronic format). The Commission has determined that, in those cases, whether a record is "readily reproducible" in the requested format will depend on whether the record can be converted to that format with a reasonable amount of effort. The relevant time and cost to the requester, if any, will be determined in accordance with Commission Rule 4.8 before such records are converted and reproduced in the requested format. (The companion rulemaking document being published by the Commission in today's **Federal Register** proposes a new category of fees to be charged for conversions of paper records to electronic format.)

Searching For Electronic Records

New section (a)(3)(C) of the FOIA, 5 U.S.C. 552(a)(3)(C), requires that the Commission, in processing a FOIA request, make reasonable efforts to search for any responsive records that may exist in electronic form or format, except when such efforts would significantly interfere with the operation of the agency's automated information systems. In practice, the Commission already follows this procedure. Accordingly, the Commission is modifying Rules 4.8(a)(1) and 4.11(a)(1)(iv)(A) to conform its Rules with the statute and the Commission's current practice.

Amended Time Limit For Responding To Initial Requests

Section (a)(6) of the FOIA provides that the agency must determine whether requested records will be released or withheld, either in whole or in part, and respond to the request within specified periods of time. The E-FOIA increased the time available to the Commission to respond to an initial request from 10 working days to 20 working days. See 5 U.S.C. 552(a)(6)(A)(i), as amended. Rule 4.11(a)(1)(iii)(A) is amended to incorporate that change into the agency's Rules of Practice. (This particular amendment is also included in the Commission rulemaking

document being published elsewhere in today's **Federal Register**, which proposes other changes to Rule 4.11(a)(1)(iii)(A) requiring public comment.) The E-FOIA did not change the time available to respond to an administrative appeal of an initial denial of records, which remains 20 working days. Therefore, no change is being made to the corresponding portions of the Rules related to appeals.

Extensions Of Time For Responding To FOIA Requests

The FOIA permits agencies to extend the time limit for responding to a FOIA request, including any appeal of a denied request, by up to 10 working days in "unusual" circumstances. 5 U.S.C. 552(a)(6)(B); see Commission Rule 4.11(a)(1)(iii)(B). While the criteria for such extensions were not amended, the FOIA now provides that when an agency determines, in "exceptional" circumstances, that it cannot meet the extended deadline, the requester will be so notified and given the opportunity to modify the request or agree to an alternative time-frame. 5 U.S.C. 552(a)(6)(B)(ii). The Commission's FOIA unit has employed a similar procedure for many years to satisfy the needs of requesters and to limit the Commission's costs in responding to requests. Rules 4.11(a)(1)(iii)(B) and (C) and 4.11(a)(2)(ii)(B) have been amended to incorporate this statutory change.

Estimating the Volume Of Withheld Materials

The amended statute now requires that, at both the initial and administrative appeal levels, the agency must reasonably estimate the volume of materials to which access is denied and to provide that estimate to the requester, unless providing such an estimate would harm an interest protected by an exemption in section (b) of the statute that was cited as a basis for withholding materials. See 5 U.S.C. 552(a)(6)(F).

The statute does not state how specific the estimate must be. The Commission has determined that a good-faith approximation of the number of pages (or boxes of documents) being withheld should be sufficient to comply with this provision, and has modified Rules 4.11(a)(1)(iv)(A) (related to initial determinations) and 4.11(a)(2)(iii)(A) (related to appeal determinations) to effect these statutory changes.

Guide To Requesting Information

The FOIA now requires that the agency prepare and make publicly available reference material or a guide for requesting records or information from the Commission, including an

index of all major information systems, a description of major information and record locator systems maintained, and a handbook for obtaining various types and categories of public information. See 5 U.S.C. 552(g). The Commission has developed a handbook containing all of the required guidance in one document, and is adding a new Rule 4.9(b)(8)(v) to include that document in the list of agency records that are routinely available to the public.

Organizational Changes

The Commission has established within its Bureau of Consumer Protection a new Consumer Response Center, which is responsible for providing access to public records previously provided by the Commission's former Public Reference unit. The Commission has also transferred agency staff responsible for processing initial requests for non-public records under the FOIA and the Privacy Act, 5 U.S.C. 552a, from the Office of Information and Technology Management to the Office of the General Counsel. Thus, the processing of initial requests under the FOIA and Privacy Act, and initial determinations on all requests for fee waivers, are now consolidated in the General Counsel's office, which also retains its authority over the processing of appeals in such matters. Initial request and appeal functions will remain separate, however, and different staff and officials will process and decide initial requests and appeals. Revisions are being made throughout Rules 4.8, 4.11 and 4.13 to reflect these organizational changes.

The Rules are also being amended to clarify the General Counsel's responsibility for appeals of initial FOIA and Privacy Act requests and related matters (*e.g.*, initial denials of fee waivers, expedited treatment, etc.), including the General Counsel's discretion to refer unusual or difficult appeals of such matters to the Commission. See, *e.g.*, 16 CFR 4.11(a)(2)(iii)(A), 4.13(i)(1). In that regard, various references to the "Commission" in Rules 4.8, 4.11 and 4.13 have been deleted as unnecessary, as it is implicit that the Commission may exercise any of the authority over appeals that it has otherwise delegated to the General Counsel in cases where the General Counsel has referred the appeal to the Commission.

Public Records Previously Omitted From Rule 4.9

In amending Rule 4.9 to include certain materials on the public record, as required by the E-FOIA, the Commission is also taking the

opportunity to update that rule to include three additional categories of records that the Commission is otherwise required by law, or has determined as a matter of policy, to make routinely available on its public record. These three categories are being added to Rule 4.9 as paragraphs (b)(10)(xi), (xii), and (xiii), respectively.

The first category comprises grants of early termination of waiting periods by the Commission under the premerger review provisions of the Hart-Scott-Rodino amendments to the Clayton Act. That Act requires that such early terminations be published in the **Federal Register**. See 15 U.S.C. 18a(b)(2). Thus, the Commission recognizes that this information should be treated as part of its public record. The second category is reports on applicable energy consumption and efficiency submitted under the Commission's Appliance Labeling Rule, 16 CFR 305.8. The Commission has previously voted to make such reports routinely available to the public without a FOIA request. The third category is a "catch-all" provision for any other documents that the Commission determines to place on its public record as a matter of policy, where such records would otherwise be considered non-public under the Commission's Rules and, thus, subject to release only upon a written FOIA request. This category includes, for example, particular responses to inquiries from Congressional committees and subcommittees that the Commission determines are of sufficient public interest or importance to make available for routine public inspection and copying (after any portions exempt from mandatory disclosure under the FOIA have been redacted).

Method of Payment

Rule 4.8 (i) is also being amended to delete the option for payment of processing fees by credit card, which the Commission no longer accepts. The Commission has found that the small volume of such transactions did not justify their processing costs. Requesters continue to have the option of paying fees by check or money order.

The Commission certifies that the Rule amendments set forth in this notice do not require an initial or final regulatory analysis under the Regulatory Flexibility Act because the amendments will not have a significant economic impact on a substantial number of small entities. See 5 U.S.C. 605(b). Most requests for access to FTC records are filed by individuals, who are not "small entities" within the meaning of that Act. 5 U.S.C. 601(6). In any event, the

economic impact of the rule changes on all requestors is expected to be minimal, if any. The Rule amendments also do not contain information collection requirements within the meaning of the Paperwork Reduction Act, 44 U.S.C. 3501–3520. The Commission has also determined, in consultation with the Office of Management and Budget, that none of the amendments constitutes a major rule within the meaning of the Small Business Regulatory Enforcement Fairness Act, 5 U.S.C. 801–808.

Furthermore, the notice-and-comment requirements of the Administrative Procedure Act (APA), 5 U.S.C. 553, do not apply to these Rule amendments. The Commission has determined that it is unnecessary to obtain public comment on the amendments to implement the E-FOIA, to the extent those amendments are required by statute and do not involve an exercise of agency discretion. See 5 U.S.C. 553(B). The Rule amendments that reflect organizational changes within the Commission are matters relating to agency management or personnel that are expressly exempt from the APA's requirements. See 5 U.S.C. 553(a)(2). Finally, the addition of certain categories of public records to the Commission's rules are merely technical amendments to rules of procedure that do not require public comment. See 5 U.S.C. 553(A).

List of Subjects in 16 CFR Part 4

Administrative practice and procedure, Freedom of Information Act.

For the reasons set forth in the preamble, the Federal Trade Commission amends Title 16, Chapter I, Subchapter A of the Code of Federal Regulations as follows:

PART 4—MISCELLANEOUS RULES

1. The authority citation for part 4 continues to read as follows:

Authority: Sec. 6, 38 Stat. 721; 15 U.S.C. 46.

2. Section 4.8 is amended by revising paragraphs (a)(1), (c), (e)(1), (g), (h) and (i) to read as follows:

§ 4.8 Costs for obtaining Commission records.

(a) * * *

(1) The term *search* includes all time spent looking, manually or by automated means, for material that is responsive to a request, including page-by-page or line-by-line identification of material within documents.

(c) *Information to determine fees.* Each request for records shall set forth whether the request is made for other

than commercial purposes and whether the requester is an educational institution, a noncommercial scientific institution, or a representative of the news media. The Assistant General Counsel for Legal Counsel (Management & Access) or his or her designee initially, or the General Counsel on appeal, will use this information, any additional information provided by the requester, and any other relevant information to determine the appropriate fee category in which to place the requester.

* * * * *

(e) *Public interest fee waivers.*—(1) *Procedures.* A requester may apply for a waiver of fees. The requester shall explain why a waiver is appropriate under the standards set forth in this paragraph. The application shall also include a statement, as provided by paragraph (d) of this section, of whether the requester agrees to pay costs if the waiver is denied. The Assistant General Counsel for Legal Counsel (Management & Access) or his or her designee initially, or the General Counsel on appeal, will rule on applications for fee waivers.

* * * * *

(g) *Aggregating requests.* If the Assistant General Counsel for Legal Counsel (Management & Access) or his or her designee initially, or the General Counsel on appeal, reasonably believes that a requester, or a group of requesters acting in concert, is attempting to evade an assessment of fees by dividing a single request into a series of smaller requests, the requests may be aggregated and fees charged accordingly.

(h) *Advance payment.* If the Assistant General Counsel for Legal Counsel (Management & Access) or his or her designee initially, or the General Counsel on appeal, estimates or determines that allowable charges that a requester may be required to pay are likely to exceed \$250.00, or if the requester has previously failed to pay a fee within 30 days of the date of billing, the requester may be required to pay some or all of the total estimated charge in advance. Further, the requester may be required to pay all unpaid bills, including accrued interest, prior to processing the request.

(i) *Means of payment.* Payment shall be made by check or money order payable to the Treasury of the United States.

* * * * *

3. Section 4.9 is amended by: redesignating paragraph (b)(10)(ix) as (b)(10)(xiv); adding new paragraphs (b)(8)(v) and (b)(10)(ix), (x), (xi), (xii) and (xiii); and revising paragraphs

(a)(3), (a)(4)(i), (b)(8)(iii) and (iv), and (b)(10)(viii) to read as follows:

§ 4.9 The public record.

(a) * * *

(3) *Location.* All of the public records of the Commission are available for inspection at the principal office of the Commission on each business day from 9 a.m. to 5 p.m., and copies of some of those records are available at the regional offices on each business day from 8:30 a.m. to 5 p.m. Copies of records that the Commission is required to make available to the public electronically, pursuant to 5 U.S.C. 552(a)(2), may be obtained in that format from the Commission's Web site on the Internet, WWW.FTC.GOV.

(4) *Copying of public records—(i) Procedures.* Reasonable facilities for copying public records are provided at each office of the Commission. Subject to appropriate limitations and the availability of facilities, any person may copy public records available for inspection at each of those offices. Further, the agency will provide copies to any person upon request. Written requests for copies of public records shall be addressed to the Supervisor, Consumer Response Center, and shall specify as clearly and accurately as reasonably possible the records desired. For records that cannot be specified with complete clarity and particularity, requesters shall provide descriptions sufficient to enable qualified Commission personnel to locate the records sought. In any instance, the Commission, the Supervisor of the Consumer Response Center, the General Counsel, the Assistant General Counsel for Legal Counsel (Management & Access), or the official in charge of each office may prohibit the use of Commission facilities to produce more than one copy of any public record, and may refuse to permit the use of such facilities for copying records that have been published or are publicly available at places other than the offices of the Commission.

* * * * *

(b) * * *

(8) * * *

(iii) Summaries or other explanatory materials relating to matters to be considered at open meetings made available pursuant to § 4.15(b)(3)

(iv) Commission minutes of open meetings, and, to the extent they are not exempt from mandatory public disclosure under the Sunshine Act or the Freedom of Information Act, portions of minutes or transcripts of closed meetings; and

(v) A guide for requesting records or information from the Commission,

including an index of all major information systems, a description of major information and record locator systems maintained by the Commission, and a handbook for obtaining various types and categories of public information.

* * * * *

(10) * * *

(viii) The Commission's annual report submitted after the end of each fiscal year, summarizing its work during the year (available for inspection at each of the offices of the Commission with copies obtainable from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402) and any other annual reports made to Congress on activities of the Commission as required by law;

(ix) Records, as determined by the General Counsel or his or her designee, that have been released in response to a request made under the Freedom of Information Act, 5 U.S.C. 552, and which, because of the nature of the subject matter, have become or are likely to become the subject of subsequent requests for substantially the same records, except where some or all of those records would be exempt from disclosure under 5 U.S.C. 552 if requested by another party;

(x) A general index of the records referred to under paragraph (b)(10)(ix) of this section;

(xi) Grants of early termination of waiting periods published in accordance with the Hart-Scott-Rodino 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) Other documents that the Commission has determined to place on the public record; and

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4. Section 4.11 is amended by revising paragraphs (a)(1)(i)(A); (a)(1)(iii)(A), (B), introductory text, and (C); (a)(1)(iv)(A), (B), and (C); (a)(2)(ii)(B); and (a)(2)(iii)(A) to read as follows:

§ 4.11 Disclosure requests.

(a) * * *

(1) * * *

(i) * * *

(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 addressed as follows:

Freedom of Information Act Request,
Assistant General Counsel for Legal Counsel,
(Management & Access), Office of the General

Counsel, Federal Trade Commission, 6th Street and Pennsylvania Avenue, NW., Washington, DC 20580.

* * * * *

(iii) *Time limit for initial determination.* (A) The Assistant General Counsel for Legal Counsel (Management & Access) or his or her designee will, within 20 working days of the receipt of a request, either grant or deny, in whole or in part, such request.

(B) Except in exceptional circumstances as provided in paragraph (a)(1)(iii)(C) of this section, the Assistant General Counsel for Legal Counsel (Management & Access) or his or her designee may extend the time limit by not more than 10 working days if such extension is: * * *

(C) If the Assistant General Counsel for Legal Counsel (Management & Access) or his or her designee extends the time limit for initial determination pursuant to paragraph (a)(1)(iii)(B) of this section, the requester will be notified in accordance with 5 U.S.C. 552(a)(6)(B). In exceptional circumstances, when the request cannot be processed within the extended time limit, the requester will be so notified and provided an opportunity to limit the scope of the request so that it may be processed within such time limit, or to arrange an alternative time frame for processing the request or a modified request. "Exceptional" circumstances will not include delays resulting from a predictable workload of requests under this section. Unwillingness to make reasonable modifications in the scope of the request or to agree to an alternative time frame may be considered as factors in determining whether exceptional circumstances exist and whether the agency has exercised due diligence in responding to the request.

* * * * *

(iv) *Initial determination.* (A) The Assistant General Counsel for Legal Counsel (Management & Access) or his or her designee will make reasonable efforts to search, using either manual or electronic means, for the requested records in electronic form or format, except when such efforts would significantly interfere with the operation of the Commission's automated information systems. Access will be granted to requested records, or any portions thereof, that must be made available under the Freedom of Information Act. Access will be denied to records that are exempt under the Freedom of Information Act, 5 U.S.C. 552(b), unless the Assistant General Counsel for Legal Counsel (Management & Access) or his or her designee determines that such records fall within

a category the Commission or the General Counsel has previously authorized to be made available to the public as a matter of policy. Denials will set forth the reasons therefor and advise the requester that this determination may be appealed to the General Counsel if the requester believes either that the records are not exempt, or that the General Counsel should exercise discretion to release such records notwithstanding their exempt status. The Assistant General Counsel for Legal Counsel (Management & Access) or his or her designee will also provide a reasonable, good-faith estimate of the volume of any materials to which access is denied, unless providing such an estimate would harm an interest protected by an exemption in 5 U.S.C. 552(b) that was cited as a basis for withholding materials.

(B) The Assistant General Counsel for Legal Counsel (Management & Access) or his or her designee is deemed to be the sole official responsible for all denials of initial requests, except denials of access to materials contained in active investigatory files, in which case the Director or Deputy Director of the Bureau or the Director of the Regional Office responsible for the investigation will be the responsible official.

(C) Records to which access has been granted will be made available to the requester in any form or format specified by the requester, if the records are readily reproducible in that form or format, or can be converted to that form or format with a reasonable amount of effort, and they will remain available for inspection and copying for a period not to exceed 30 days from date of notification to the requester unless the requester asks for and receives the consent of the Assistant General Counsel for Legal Counsel (Management & Access) or his or her designee to a longer period. Records assembled pursuant to a request will remain available only during this period and thereafter will be refiled. Appropriate fees may be imposed for any new or renewed request for the same records.

* * * * *

(2) * * *

(ii) * * *

(B) The General Counsel may, by written notice to the requester in accordance with 5 U.S.C. 552(a)(6)(B), extend the time limit for deciding an appeal by not more than 10 working days pursuant to paragraph (a)(1)(iii)(B) of this section, provided that the amount of any extension utilized during the initial consideration of the request under that paragraph will be subtracted

from the amount of additional time otherwise available. Where exceptional circumstances do not permit the processing of the appeal within the extended time limit, the notice and procedures set forth in paragraph (a)(1)(iii)(C) of this section shall apply.

(iii) * * *

(A) The General Counsel has the authority to grant or deny all appeals and to release as an exercise of discretion records exempt from mandatory disclosure under 5 U.S.C. 552(b). In unusual or difficult cases, the General Counsel may, in his or her sole discretion, refer an appeal to the Commission for determination. A denial of an appeal in whole or in part will set forth the basis for the denial; will include a reasonable, good-faith estimate of the volume of any materials to which access is denied, unless providing such an estimate would harm an interest protected by an exemption in 5 U.S.C. 552(b) that was cited as a basis for withholding materials; and will advise the requester that judicial review of the decision is available by civil suit in the district in which the requester resides, or has his principal place of business, or in which the agency records are situated, or in the District of Columbia.

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5. Section 4.13 is amended by revising paragraphs (c), (d), (e), (f), (h), (i), (j), and (k) to read as follows:

§4.13 Privacy Act rules.

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(c) *Procedures for requests pertaining to individual records in a record system.* An individual may request access to his or her records or any information pertaining to that individual in a system of records, and notification of whether and to whom the Commission has disclosed a record for which an accounting of disclosures is required to be kept and made available to the individual, using the procedures of this section. Requests for the disclosure of records under this section or to determine whether a system of records contains records pertaining to an individual or to obtain an accounting of disclosures, shall be in writing and if mailed, addressed as follows:

Privacy Act Request, Assistant General Counsel for Legal Counsel (Management & Access), Office of the General Counsel, Federal Trade Commission, 6th Street and Pennsylvania Avenue N.W., Washington, DC 20580.

If requests are presented in person at the Office of the General Counsel, the individual shall be required to execute a written request. All requests shall

name the system of records that is the subject of the request, and shall include any additional information specified in the pertinent system notice as necessary to locate the records requested. If the requester wants another person to accompany him or her to review the records, the request shall so state. Nothing in this section will allow an individual access to any information compiled in reasonable anticipation of a civil action or proceeding.

(d) *Times, places, and requirements for identification of individuals making requests.* Verification of identity of persons making written requests to the Assistant General Counsel for Legal Counsel (Management & Access) ordinarily will not be required. The signature on such requests will be deemed a certification by the signatory that he or she is the individual to whom the record pertains or is the parent or guardian of a minor or the legal guardian of the individual to whom the record pertains. The Assistant General Counsel for Legal Counsel (Management & Access) or his or her designee may require additional verification of a requester's identity when such information is reasonably necessary to assure that records are not improperly disclosed; provided, however, that no verification of identity will be required if the records sought are publicly available under the Freedom of Information Act.

(e) *Disclosure of requested information to individuals.* Within 10 working days of receipt of a request under § 4.13(c), the Assistant General Counsel for Legal Counsel (Management & Access) or his or her designee will acknowledge receipt of the request. Within 30 working days of the receipt of a request under § 4.13(c), the Assistant General Counsel for Legal Counsel (Management & Access) or his or her designee will inform the requester whether a system of records containing retrievable information pertaining to the requester exists, and if so, either that the request has been granted or that the requested records or information is exempt from disclosure pursuant to § 4.13(m). When, for good cause shown, the Assistant General Counsel for Legal Counsel (Management & Access) or his or her designee is unable to respond within 30 working days of the receipt of the request, that official will notify the requester and inform him or her approximately when a response will be made.

(f) *Special procedures: Medical records.* When the Assistant General Counsel for Legal Counsel (Management & Access) or his or her designee determines that disclosure of a medical

or psychological record directly to a requesting individual could have an adverse effect on the individual, he or she will require the individual to designate a medical doctor to whom the record will be transmitted.

* * * * *

(h) *Agency review of request for correction or amendment of record.*

Whether presented in person or by mail, requests under § 4.13(g) will be acknowledged by the Assistant General Counsel for Legal Counsel (Management & Access) or his or her designee within 10 working days of the receipt of the request if action on the request cannot be completed and the individual notified of the results within that time. Thereafter, the Assistant General Counsel for Legal Counsel (Management & Access) or his or her designee will promptly either make the requested amendment or correction or inform the requester of his refusal to make the amendment or correction, the reasons for the refusal, and the requester's right to appeal that refusal in accordance with § 4.13(i).

(i) *Appeal of initial adverse agency determination.* (1) If an initial request filed under § 4.13(c) or § 4.13(g) is denied, the requester may appeal that denial to the General Counsel. The appeal shall be in writing and addressed as follows:

Privacy Act Appeal, Office of the General Counsel, Federal Trade Commission, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

Within 30 working days of the receipt of the appeal, the General Counsel will

notify the requester of the disposition of that appeal, except that the General Counsel may extend the 30-day period for good cause, in which case, the General Counsel will advise the requester of the approximate date on which review will be completed. In unusual or difficult cases, the General Counsel may, in his or her sole discretion, refer an appeal to the Commission for determination.

(2)(i) If the General Counsel refuses to amend or correct the record in accordance with a request under § 4.13(g), the General Counsel will notify the requester of that decision and inform the requester of the right to file with the Assistant General Counsel for Legal Counsel (Management & Access) a concise statement setting forth the reasons for the requester's disagreement with the General Counsel's determination and the fact that the requester's statement will be treated as set forth in paragraph (i)(2)(ii) of this section. The General Counsel will also inform the requester that judicial review of the decision is available by a civil suit in the district in which the requester resides, or has his principal place of business, or in which the agency records are situated, or in the District of Columbia.

(ii) If the individual files a statement disagreeing with the General Counsel's determination not to amend or correct a record, such disagreement will be clearly noted in the record involved and the individual's statement will be made available to anyone to whom the record has been disclosed after September 27, 1975, or is subsequently disclosed

together with, if the General Counsel deems it appropriate, a brief statement of his or her reasons for declining to amend the record.

(j) *Disclosure of record to person other than the individual to whom it pertains.* Except as provided by 5 U.S.C. 552a(b), the written request or prior written consent of the individual to whom a record pertains, or of his parent if a minor, or legal guardian if incompetent, shall be required before such record is disclosed. If the individual elects to inspect a record in person and desires to be accompanied by another person, the Assistant General Counsel for Legal Counsel (Management & Access) or his or her designee may require the individual to furnish a signed statement authorizing disclosure of his or her record in the presence of the accompanying named person.

(k) *Fees.* No fees will be charged for searching for a record, reviewing it, or for copies of records made by the Commission for its own purposes incident to granting access to a requester. Copies of records to which access has been granted under this section may be obtained by the requester from the Assistant General Counsel for Legal Counsel (Management & Access) or his or her designee on payment of the reproduction fees provided in § 4.8(b)(6).

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By direction of the Commission.

Donald S. Clark,
Secretary.

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