

proceeding outside the scope of § 3.2, including a matter in state or federal court or before another governmental agency; * * *

14. In § 4.9, the heading and paragraphs (a)(1) through (a)(3) are revised to read as follows:

§ 4.9 The public record.

(a) General. (1) Materials on the public record of the Commission are available for public inspection and copying either routinely or upon request.

(2) Materials that are exempt from mandatory public disclosure, or are otherwise not available from the Commission's public record, may be made available for inspection and copying only upon request under the procedures set forth in § 4.11 of this part, or as provided in §§ 4.10 (d) through (g), 4.13, and 4.15(b)(3) of this part, or by the Commission.

(3) Location. Materials on the public record are available for inspection at the principal office of the Commission, and copies of some of those records are available at the regional offices, on each business day from 9 a.m. to 5 p.m.

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§ 4.9 [Amended]

15. Section 4.9(b) is amended by revising the heading and introductory text, the heading of paragraph (b)(3), the heading and text of paragraphs (b)(5) and (b)(6), and the heading of paragraph (b)(8) to read as follows:

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(b) *Categories*. Except to the extent material is confidential, as provided in paragraph (c) of this section, the public record of the Commission includes, but is not necessarily limited to:

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(3) *Rulemaking* (16 CFR 1.7 through 1.26). * * *

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(5) *Adjudicative proceedings, stay applications, requests to reopen, and litigated orders*. (16 CFR 2.51, 3.1 through 3.24, 3.31 through 3.56, 3.71 through 3.72, 4.7)—Except for transcripts of matters heard in camera pursuant to § 3.45 and material filed in camera pursuant to §§ 3.22, 3.24, 3.45, 3.46, 3.51 and 3.52,

(i) The versions of pleadings and transcripts of prehearing conferences to the extent made available under § 3.21(e), motions, certifications, orders, and the transcripts of hearings (including public conferences), testimony, oral arguments, and other material made a part thereof, and exhibits and material received in evidence or made a part of the public record in adjudicative proceedings;

(ii) Initial decisions of administrative law judges;

(iii) Orders and opinions in interlocutory matters;

(iv) Final orders and opinions in adjudications, and rulings on stay applications, including separate statements of Commissioners;

(v) Petitions for reconsideration, and answers thereto, filed pursuant to § 3.55;

(vi) Applications for stay, answers thereto, and replies, filed pursuant to § 3.56;

(vii) Petitions, applications, pleadings, briefs, and other records filed by the Commission with the courts in connection with adjudicative, injunctive, enforcement, compliance, and condemnation proceedings, and in connection with judicial review of Commission actions, and opinions and orders of the courts in disposition thereof;

(viii) Records of ex parte communications in adjudicative proceedings and stay applications;

(ix) Petitions to reopen proceedings and orders to determine whether orders should be altered, modified, or set aside in accordance with § 2.51; and

(x) Decisions reopening proceedings, and orders to show cause under § 3.72.

(6) *Consent Agreements* (16 CFR 2.31 through 2.34, 3.25). (i) Agreements containing orders, after acceptance by the Commission pursuant to §§ 2.34 and 3.25(f) of this chapter;

(ii) Comments filed under §§ 2.34 and 3.25(f) of this chapter concerning proposed consent agreements; and

(iii) Final decisions and orders issued after the comment period prescribed in §§ 2.34 and 3.25(f), including separate statements of Commissioners.

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(8) *Access to Documents and Meetings* (16 CFR 4.8, 4.11, 4.13, 4.15). * * *

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§ 4.9 [Amended]

16. Section 4.9(c) is amended by revising the heading, the first sentence of paragraph (c)(1), and paragraphs (c)(2) and (c)(3) to read as follows:

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(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. * * *

(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 § 4.9(b) contain information that is not required to be made public under § 4.10 of this part, the General Counsel may determine to withhold such materials from the public record.

17. Section 4.10 is amended by revising the heading, paragraph (a) introductory text, paragraphs (a)(8) through (a)(11), and paragraphs (d), (e), (f), and (g), introductory text and concluding text, to read as follows:

§ 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.

* * * * *

(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 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