

Title 16—Commercial Practices
CHAPTER I—FEDERAL TRADE
COMMISSION

SUBCHAPTER A—ORGANIZATION, PROCE-
DURES AND RULES OF PRACTICE

PART 4—MISCELLANEOUS RULES

Requests for Disclosure of Records

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: This rule delegates to the Commission's General Counsel the final authority to decide Freedom of Information Act appeals. The General Counsel will also be empowered to authorize testimony or the production of records in response to a subpoena. This change is designed to speed up the processing of FOIA appeals and free the individual Commissioners from this task.

EFFECTIVE DATE: March 14, 1977.

**FOR FURTHER INFORMATION CON-
TACT:**

Barry R. Rubin, Office of the General Counsel, Federal Trade Commission, Washington, D.C. 20580, 202-523-3865

Accordingly, 16 CFR Part 4, is amended to read as follows:

§ 4.11 Requests for disclosure of records.

(a) (1) (i)

(E) The letter of request should indicate whether any waiver of fees is requested. The Secretary shall make a determination on any such request in accordance with § 4.8(c) and notify the requester accordingly. A denial may be appealed to the General Counsel. If a waiver is requested, and the requester has not provided the indication required by subsection (C) above, unless the Secretary determines that the estimated fees will not exceed \$25.00, the access request will be deemed not to have been received until the waiver is granted.

(D) If a request is not granted within the time limits set forth in subsections (A) and (B), the request shall be deemed to be denied and the requesting party may appeal such denial to the General Counsel in accordance with subsection (a) (2).

(iv) **Initial Determination.** (A) The Secretary shall grant access to requested records, or any portion thereof that must be made available under the Freedom of Information Act. He shall deny access to records that are exempt under the Freedom of Information Act (5 U.S.C. 552 (b)), unless he 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 shall set forth the reasons therefor and advise the requester that this determination can be appealed to the General Counsel either because the requester believes the records are not exempt, or because the requester believes the Gen-

eral Counsel should exercise his discretion to release such records notwithstanding their exempt status.

(2) **Appeals to the General Counsel from initial denials.** (i) **Form and contents; time of receipt.**—(A) If the Secretary denies an initial request for records in its entirety, the requester may, within 30 days of the date of the Secretary's determination, appeal such denial to the General Counsel. If the Secretary denies an initial request in part, the time for appeal shall not expire until 30 days after the date of the letter notifying the requester that all records to which access has been granted have been made available. The appeal shall be in writing and should include a copy of the initial request and a copy of the Secretary's response, if any. The appeal shall be addressed as follows:

Freedom of Information Act Appeal, Office of the General Counsel, Federal Trade Commission, 8th Street and Pennsylvania Avenue NW., Washington, D.C. 20580.

(C) Each appeal to the General Counsel which requests him to exercise his discretion to release exempt records shall set forth the interest of the requester in the subject matter and the purpose for which the records will be used if the request is granted.

(i) **Time limit for appeal.** (A) The General Counsel shall, within twenty (20) working days of the receipt of an appeal, either grant or deny the appeal, in whole or in part.

(iii) **Determination of appeal.** (A) The General Counsel shall have 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 he may, in his sole discretion, refer an appeal to the Commission for determination. A denial of an appeal in whole or in part shall set forth the basis for the denial, and shall advise the requester that judicial review of the decision is available either in the district in which the requester resides or has a principal place of business, in the district in which the agency records are situated, or in the District of Columbia.

(B) The General Counsel shall be deemed solely responsible for all denials of appeals, except where an appeal is denied by the Commission. In such instances, the Commission shall be deemed solely responsible for the denial.

(b) **Requests from government agencies and Congressional Committees.** (1) Requests from Congressional Committees and Subcommittees shall be referred to the General Counsel for presentation to the Commission, subject to the provisions in 5 U.S.C. § 552(e) that that section is not authority to withhold information from Congress.

(2) Requests from agencies of the Federal Government should be addressed to the liaison officer for the requesting agency, or if there is none, to the Gen-

eral Counsel for determination. Requests from nonfederal agencies should be addressed to the General Counsel. The appropriate liaison officer or the General Counsel may grant the request or refer it to the Commission for determination.

(c) **Information requested by subpoena.**—Any employee of the Commission who is served with a subpoena or other compulsory process, except a subpoena issued within the scope of § 3.36 of this chapter, requiring the production of any document or record or the disclosure of any information which under § 4.10 is exempt from availability for public inspection and copying, shall promptly advise the General Counsel of the service of such subpoena or other compulsory process, the nature of the documents or information sought, and all relevant facts and circumstances. If the employee so served has not received instructions from the General Counsel authorizing disclosure of the information prior to the return date of the subpoena or other compulsory process, he shall appear in response thereto and respectfully decline to produce the documents or records or to disclose the information called for, basing his refusal upon this paragraph. The General Counsel will consider and act upon compulsory process under this section with due regard for statutory restrictions, the Commission's rules and the public interest, and the established legal standards for determining whether justification exists for the disclosure of the confidential information and records. (5 U.S.C. 552; 15 U.S.C. 46(g).)

By direction of the Commission dated March 4, 1977.

JOHN F. DUGAN,
Acting Secretary.

[FR Doc. 77-7445 Filed 3-11-77; 8:45 am]

[Docket No. 2035-0]

PART 13—PROHIBITED TRADE
PRACTICES

Kraftco Corp., et al.

Correction

In FR Doc. 77-5762 appearing on page 10979 of the issue for Friday, February 25, 1977, the following corrections should be made:

1. Page 10979, center column, immediately following the paragraph "The order to cease and desist. . . is as follows:", the following should appear:

"FINAL ORDER

This matter having been heard by the Commission upon the appeal of respondent from the initial decision, and upon briefs and oral argument in support thereof and opposition thereto, and the Commission, for the reasons stated in the accompanying Opinion having determined to deny the appeal:

It is ordered, That the initial decision of the administrative law judge, pages 1-18, be adopted as the Findings of Fact and Conclusions of Law of the Commission.