

TABLE OF CONTENTS

Section

.1	General
.1.1	Purpose and Scope
.1.2	Policy
.1.2.1	General
.1.2.2	Subject Matter
.1.2.3	Nonpublic Nature of Investigations
.1.2.4	Investigations Requiring Advance Commission Approval
.1.2.4.1	Large-Scale Investigations
.1.2.4.2	Investigations of Publishers and Broadcasters
.1.2.5	Liaison with Other Agencies
.1.2.6	Records Search
.1.2.7	Status Reports
.1.3	Planning of Investigations
.1.3.1	Investigational Procedures
.1.3.2	Support from the Bureau of Economics
.1.3.3	Support from the Information Systems Division
.1.3.4	Enforcement Mechanisms
.1.3.5	Policy Protocols
.1.3.6	Paperwork Reduction Act of 1980
.1.3.6.1	OMB's Authority to Review
.1.3.6.2	OMB Control Numbers and Required Notices
.1.3.6.3	OMB Clearance: Procedures and Forms
.1.3.6.4	Assessing Burden of Proposed Legislation
.1.3.7	Foreign Corporations, Foreign Nationals or Foreign Interests
.1.3.8	Agreement for Cooperation with Federal Republic of Germany for Exchange of Information Regarding Restrictive Trade Practices
.1.3.9	Investigations in Foreign Countries
.1.3.10	Consultants and Expert Witnesses
.1.3.11	Purchase of Exhibits
.1.3.12	Changes in Proposed Respondents or Other Entries on Initiating Form
.1.3.13	Advertising of Books
.1.3.14	Record of Outside Contacts

- .2 Investigational (Initial Phase)
 - .2.1 General
 - .2.2 Opening
 - .2.2.1 Clearance and Approval
 - .2.2.1.1 General
 - .2.2.1.2 Consumer Protection Matters
 - .2.2.1.3 Competition Matters
 - .2.2.2 Limitations on Contacting Proposed Respondents and Others
 - .2.3 Conduct
 - .2.3.1 Utilization of Existing Data
 - .2.3.2 Investigational Techniques
 - .2.3.3 Privacy Act and Freedom of Information Act
 - .2.4 Disposition
 - .2.4.1 Clearance and Approval
 - .2.4.1.1 Consumer Protection Matters
 - .2.4.1.2 Competition Matters
 - .2.4.2 Closing - No Further Action Recommended
 - .2.4.3 Closing - Referral Recommended
 - .2.4.3.1 To Another Unit of the Commission
 - .2.4.3.2 To Division of Compliance
 - .2.4.3.3 To Federal, State or Local Government Agencies
 - .2.4.4 Closing - Consolidation with Another Investigation
 - .2.4.5 Consent Settlements During the Initial Phase of Investigations
 - .2.4.6 Closing Letters in Investigations (Initial Phase)
 - .2.4.7 Responsibility for Files
- .3 Full Investigations (Beyond Initial Phase)
 - .3.1 Purpose and Scope
 - .3.2 Policy
 - .3.3 Status
 - .3.3.1 Nonpublic
 - .3.3.2 Public
 - .3.4 Purpose of Investigation
 - .3.4.1 Law Enforcement - Administrative
 - .3.4.2 Law Enforcement - Criminal
 - .3.4.3 Collection of Data or Trade Regulation Rule Support
 - .3.5 Authorization
 - .3.5.1 Clearance and Approval
 - .3.5.1.1 General
 - .3.5.1.2 Consumer Protection Matters
 - .3.5.1.3 Competition Matters
 - .3.5.1.4 Transmittal Memorandum
 - .3.6 Conduct
 - .3.6.1 Policy Re: Notifying Proposed Respondent of Investigation
 - .3.6.2 Policy Re: Expressing Opinions About Legality of Practices
 - .3.6.3 Policy Re: Dealing with Counsel When Parties Are Represented
 - .3.6.4 Policy Re: Return of Material Upon Termination of the Investigation
 - .3.6.5 Policy Re: Payment of Fees for Copying Records
 - .3.6.6 Noncompulsory Investigational Procedures
 - .3.6.6.1 Request for Access Letters

.3.6.6.2	Questionnaires
.3.6.6.3	Formal Surveys
.3.6.6.4	Interviews
.3.6.6.4.1	Purpose
.3.6.6.4.2	Interview Reports
.3.6.6.4.3	Treatment of Information Obtained in the Course of Investigating
.3.6.6.4.4	Offers of Unauthorized Documents
.3.6.7	Use of Compulsory Procedures
.3.6.7.1	Purpose and Scope
.3.6.7.2	Justification
.3.6.7.3	Clearance and Approval
.3.6.7.4	Resolutions
.3.6.7.4.1	General
.3.6.7.4.2	Omnibus Resolutions
.3.6.7.4.3	Blanket Resolutions
.3.6.7.4.4	Special Resolutions
.3.6.7.5	Investigational Subpoenas and Civil Investigative Demands
.3.6.7.5.1	General
.3.6.7.5.2	Criteria for Subpoenas
.3.6.7.5.3	Criteria for CIDs
.3.6.7.5.4	Forms and Procedures for Subpoenas and CIDs
.3.6.7.5.5	Material Withheld Based on Privilege
.3.6.7.5.6	Extensions of Time
.3.6.7.5.7	Petitions to Quash or Limit
.3.6.7.5.8	Enforcement of Compulsory Subpoenas
.3.6.7.6	Investigational Hearings
.3.6.7.6.1	Purpose and Scope
.3.6.7.6.2	Conduct of Hearings
.3.6.7.6.3	Participation in Hearings
.3.6.7.6.3.1	Hearings in General
.3.6.7.6.3.2	Hearings Conducted Pursuant to a CID
.3.6.7.6.4	Presiding Officer's Responsibilities
.3.6.7.6.5	Managing Submitted Documents
.3.6.7.6.6	Marking and Identifying Exhibits
.3.6.7.6.7	Rights of Witnesses and Counsel
.3.6.7.6.8	Transcripts
.3.6.7.6.9	Grants of Immunity
.3.6.7.7	Access Orders
.3.6.7.8	Orders to File Special, Section 6(b) FTCA, Reports
.3.6.7.8.1	Purpose and Scope
.3.6.7.8.2	Clearance and Approval
.3.6.7.8.3	Forms and Procedures
.3.6.7.8.4	Service of Special Reports Order
.3.6.7.8.5	Extensions of Time to File Special Reports
.3.6.7.8.6	Petitions to Quash or Limit
.3.6.7.8.7	Notice of Default
.3.6.8	Investigative Liaison with the U.S. Postal Service
.3.6.8.1	General

- .3.6.8.2 Clearance
- .3.6.8.3 Mail Covers
- .3.6.8.4 Bulk-Rate Mail Volume Readings
- .3.6.8.5 Box Holder Information
- .3.6.8.6 Monitoring of Metered Mail
- .3.6.9 Investigative Liaison with the Department of Justice Re: Criminal Violations of the Sherman Act
- .3.6.10 Investigative Liaison with State or Local Agencies
- .3.7 Disposition of Full Investigations
- .3.7.1 By Investigational Consent Agreement
- .3.7.2 By Recommendation for Complaint
- .3.7.3 By Recommendation for Enforcement or Corrective Action Other than Acceptance of Investigational Consent Agreement or Issuance of Complaint
- .3.7.4 Closing -- No Further Action
 - .3.7.4.1 General
 - .3.7.4.2 Clearance and Approval
 - .3.7.4.3 Reasons for Closing
 - .3.7.4.4 Closing Memorandum
 - .3.7.4.5 Closing Letters
 - .3.7.4.5.1 Policy
 - .3.7.4.5.2 Format
 - .3.7.4.5.3 Closing Letters - Referral to Other Agencies
 - .3.7.4.6 News Releases
 - .3.7.4.7 Closing Forms

Illustrations

- 1 Request for OMB Review
- 2 Instructions for Requesting OMB Approval Under the Paperwork Reduction Act of 1980
- 3 Supporting Statement
- 4 Request for Department of Justice Clearance
- 5 Access Letter -- Competition
- 6 Access Letter -- Consumer Protection
- 7 Language for Civil Investigative Demand
- 8 Questionnaire
- 9 Consumer Redress Language in Resolution
- 10 Omnibus Resolution
- 11 Blanket Resolution
- 12 Special Resolution
- 13 Opening Statement by Presiding Officer
- 14 Immunity Request
- 15 Transmittal Memorandum for Immunity Request
- 16 Order Requiring Access
- 17 Order Requiring Filing of Special Report
- 18 Transmittal Letter for Special Report Order
- 19 Notice of Default
- 20 Inquiry as to Postal Investigation
- 21 Closing Letter to Applicant (Commission Level)

- 22 Closing Letter to Proposed Respondent (Commission Level)
- 23 Closing Letter to Applicant (Bureau Level)
- 24 Closing Letter to Proposed Respondent (Bureau Level)

Appendix

- A Information to be Submitted to the Department of Justice in Requesting Permission to Immunize Witnesses
- B Information for the Department of Justice After Witness
Has Invoked Privilege Against Testifying

.1 GENERAL

.1.1 PURPOSE AND SCOPE

The purpose of this chapter is to provide guidance for the initiation, conduct, and disposition of investigations. It will discuss general policies for recommending investigations, describe the investigational procedures that may be followed and consider the enforcement and correction alternatives that are available.

.1.2 POLICY

.1.2.1 General

Investigations may be authorized to inquire into: (1) any acts, practices, conduct, or circumstances which the Commission has been authorized by law to investigate; (2) suspected violations of the laws and regulations enforced by the Commission; (3) industry practices to determine whether a trade regulation rule, legislation, or other means of corrective action would be appropriate; or (4) possible violations of a Commission order to cease and desist. (See OM Ch. 12 for special procedures applicable to compliance investigations.)

The investigational powers of the Commission are derived from Sections 6, 9, 10 and 20 of the FTC Act and are exercised in accordance with the procedures set out in Part 2A of the Commission's Rules.

.1.2.2 Subject Matter

The Commission possesses broad jurisdiction to deal with unfair or deceptive acts and practices and unfair methods of competition under the FTCA and the various special statutes enforced by the Commission and to deal with various anticompetitive acts and practices under the Clayton Act. However, because the resources of the Commission are limited and must be carefully managed to produce optimum results, a programmatic budget has been established which includes various approved enforcement programs with specific objectives.

Every investigation can be placed within the ambit of an approved program, and all memoranda and other internal communications should identify the applicable program code. (For detailed information concerning programs, see OM Ch. 2.)

.1.2.3 Nonpublic Nature of Investigations

Unless otherwise directed by the Commission, all investigations are nonpublic. Accordingly, the existence of the investigation, the identity of the parties or practices under investigation, the facts developed in the investigation, and any other nonpublic information in the files can be disclosed only in accordance with the Commission's directives and procedures for the disclosure of information (see .3.3.1 below). See OM Ch. 15 for further guidance regarding confidentiality and disclosure.

.1.2.4 Investigations Requiring Advance Commission Approval

.1.2.4.1 Large-Scale Investigations

No large-scale or industry-wide investigation or study is to be undertaken, if numerous proposed respondents or substantial expenditure of Commission resources are involved, or if a significant change in the overall resource levels (work-years or dollars) of a Commission-approved program will result unless prior approval has been granted by the Commission. The proposal for such an investigation should be discussed with the appropriate program advisor in BCP or the Associate Director for Evaluation, BC, if a competition matter. Regional office staff should consult the Assistant Director for Regional Operations, BC, for competition matters. If it is agreed that Commission approval is required, the proposal for the investigation should be submitted to the Commission by explanatory memorandum routed through the appropriate review and evaluation procedure.

.1.2.4.2 Investigations of Publishers and Broadcasters

See amended by [clicking here](#).

.1.2.5 Liaison with Other Agencies

In considering the advisability of any investigation, staff should consider whether any other federal agency or any state or local agency has the jurisdiction and authority to take effective action to deal with the matter. See OM Ch. 14 for further guidance on liaison in general, including listing of designated Commission liaison officers for federal agencies. In determining whether an investigation should be initiated, the staff may be authorized by Assistant Bureau Directors and Regional Directors to exchange information with federal, state and local agencies to the extent necessary for an informed preliminary determination as to whether the matter might be best handled by the Commission or by another federal or state or local agency. Special considerations applicable to liaison in connection with investigations will be discussed in Parts .2 and .3 of this chapter.

.1.2.6 Records Search

Before recommending any investigation, it is the responsibility of the staff to have a records search made to determine whether there are any past or pending matters involving proposed respondent which may bear upon the proposed investigation. See OM Ch. 18 for guidance in obtaining a records search.

.1.2.7 Status Reports

Status reports may be required during the course of an investigation. See OM Ch. 18.10 for guidelines on the form and substance of these reports.

.1.3 PLANNING OF INVESTIGATIONS

.1.3.1 Investigational Procedures

Careful planning is a prerequisite to an orderly and expeditious investigation. At the outset of any investigation, staff should carefully consider which basic investigational technique (voluntary or compulsory, or a combination) may be most appropriate for accomplishing the purposes of the

investigation. Detailed discussions of the investigational techniques will follow in Parts .2 and .3 of this chapter. As an aid to investigational planning, the staff should review OM Ch. 4, Administrative Complaints, for elements of proof as to parties. It may be helpful also to review Commission complaints, decisions, and orders in similar cases which may be retrieved from LEXIS. See OM Chs. 4 and 5. Consult the appropriate program advisor in BCP for guidance as to the most current consumer protection matters. In competition matters, Regional Office staff may consult the Assistant Director for Regional Operations.

.1.3.2 Support from the Bureau of Economics

The extent of consumer injury caused by the practices to be investigated, the benefits to be achieved by Commission action and/or impact on the marketplace should be considered in any investigation which is likely to lead to a recommendation for complaint or a recommendation for initiation of a trade regulation rule, or to other enforcement or corrective action by the Commission. When appropriate and feasible, the analysis should consider the impact of proposed major initiatives on cities or other types of communities, with respect to factors such as employment, especially minority employment; population size and composition, including the degree of racial concentration or deconcentration; and income, especially that of low-income households. Assistance and guidance may be available from the Bureau of Economics in planning and evaluating that aspect of the investigation. See OM Ch. 18 for further information regarding support services.

.1.3.3 Support from the Information Systems Division

When an investigation may involve the review and analysis of substantial amounts of data, the Information Systems Division should be consulted to determine if the Commission's computerized data processing facilities can be used to organize and analyze data. If this capability can be utilized, the Bureau administrative officer should be contacted to then verify that sufficient funds are available; for regional office BC matters, Assistant Director for Regional Operations should first be consulted. See OM Ch. 18 for further information regarding support services.

Consideration must also be given to the use of legal support systems to index the large volume of documents anticipated in many proceedings. This must be done in advance of complaint or rulemaking recommendations, and should be reflected in any cost estimates for the matter. Staff should consult with Information Systems Division personnel concerning this capability. See OM Ch. 18 for further information.

.1.3.4 Enforcement Mechanisms

In planning any investigation, it is essential that the staff consider at the outset the various enforcement mechanisms that are available. Investigational strategy will be affected by the statutory prerequisites and procedures of the enforcement alternatives. Enforcement mechanisms and other corrective measures which the Commission is empowered to use are described in the Operating Manual as follows:

- (1) Injunction under FTCA § 13 - OM Chs. 11 and 13
- (2) Investigational consent agreement - OM Ch. 6
- (3) Recommendation for complaint under Part 3 - OM Ch. 4

- (4) Civil penalties under FTCA Section 5(m)(1) - OM Chs. 11 and 12
- (5) Consumer redress under FTCA Section 19 FTCA - OM Ch. 11
- (6) Recommendation for trade regulation rule - OM Ch. 7
- (7) Recommendation for industry guides - OM Ch. 8
- (8) Issuance of staff report - OM Ch. 8
- (9) Issuance of policy statement - OM Ch. 8

.1.3.5 Policy Protocols

Policy protocols are useful as an investigational tool. By describing major issues and questions relevant to specific types of cases, the protocols offer assistance to staff in selecting cases for investigation and evaluating the public interest. See OM Ch. 2 for further information regarding approved protocols and their use.

.1.3.6 Paperwork Reduction Act of 1980

.1.3.6.1 OMB's Authority to Review

The information set forth below is a general discussion of the requirements imposed by the Paperwork Reduction Act of 1980 with respect to Commission information collection requests and recordkeeping requirements. It is intended for general guidance and should not be regarded as a definitive statement for the purpose of determining whether it is necessary to seek Office of Management and Budget (OMB) clearance in a particular case. Whenever the staff plans to request information from or impose recordkeeping requirements on ten or more persons, they should consult with the FTC Clearance Officer or the Assistant General Counsel for Legal Counsel to determine whether OMB clearance is required. See OM Ch. 14 for Clearance Officer.

The Paperwork Reduction Act (Pub. L. 96-511) amended the Federal Reports Act, 44 U.S.C. §§ 35011 et seq., and, among other things, established requirements for clearance by OMB of "collections of information" as defined in the statute. Under the Act, the agency must seek OMB clearance for information collections such as surveys, questionnaires, reports, recordkeeping requirements and certain subpoenas. Letters of inquiry and subpoenas issued during the course of administrative investigations and proceedings against specific individuals or entities and all CIDs are exempt from the clearance requirements. 44 U.S.C. § 3518(c).

The term "collection of information" as defined in the statute includes obtaining or soliciting facts or opinions through the use of reporting or recordkeeping requirements, surveys, questionnaires, or other similar methods, including telephone surveys and personal interviews that call for either: (a) answers to identical questions posed to, or identical reporting or recordkeeping requirements imposed on, ten or more persons other than federal agencies; or (b) answers to questions posed to federal agencies to be used for general statistical purposes. 44 U.S.C. § 3502(4).

The term "person," as defined in the Act, means an individual, partnership, association, corporation, business trust, or legal representative, an organized group of individuals, a state or local government, including branches thereof, and political subdivisions. 44 U.S.C. § 3502(14).

The Director of OMB has sixty days within which to decide whether to approve a "collection of information" submitted for review. If the request cannot be reviewed within sixty days, the Director may, after notice to the agency involved, extend the review period for an additional thirty days. After ninety days, OMB must assign a control number, OMB's approval may be inferred and the agency may collect the information for one year. 44 U.S.C. § 3507(b). The statute includes a procedure for expedited review that can be invoked in certain emergency situations. 44 U.S.C. § 3507(g). The Commission, by majority vote of its members, can void any disapproval by OMB of an information collection request. 44 U.S.C. § 3507(c).

.1.3.6.2 OMB Control Numbers and Required Notices

An OMB control number should be displayed on every "information collection request" that is subject to OMB review. 44 U.S.C. § 3507(f). Without an OMB control number, such a request is unenforceable. 44 U.S.C. § 3512.

Whenever fewer than ten persons are contacted or when a request for information is otherwise exempt from OMB review, the request should state that it is not subject to the Paperwork Reduction Act of 1980. 44 U.S.C. § 3512. For example, subpoenas issued in an investigation of an individual company state: "This subpoena does not require approval of OMB under the Paperwork Reduction Act of 1980." See OM Ch. 18, Illustration 2.

The information collection request must also contain an approved form of notice about the estimated amount of time needed to complete each response and an invitation for anyone to submit comments to OMB and the FTC.

.1.3.6.3 OMB Clearance: Procedures and Forms

After a "collection of information" that is subject to the OMB clearance requirements has been approved internally, the staff should prepare a Request for OMB Review in close consultation with the Clearance Officer. Illustration 1 is a copy of the Request for OMB Review (Form SF-83) currently required by OMB. Staff should prepare a supporting statement according to applicable OMB instructions (SF-83A) justifying why approval should be granted on the basis of the Act's criteria. See Illustration 2 for the instructions, and Illustration 3 for an example of the supporting statement format.

A complete clearance package should include four copies of the following: (1) SF-83, Request for OMB Review; (2) supporting statement; (3) relevant supporting materials; and (4) any document that will be sent to respondents, such as the order requiring the filing of a report, the report or questionnaire, any transmittal letter or certification form or, in the case of a recordkeeping requirement, the text of the rule. The materials should be reviewed by the Clearance Officer for format and completeness.

The completed materials should be submitted to the appropriate Bureau Director for approval, then forwarded to the Executive Director, who is the designated official responsible for carrying out the Commission's responsibilities under the Paperwork Reduction Act. The Executive Director will review the clearance request and sign the SF-83 as the Approving Policy Official for the agency.

The Executive Director will forward the Request for OMB review and supporting materials to the Commission for review before submission to OMB.

Upon Commission approval, the Clearance Officer will prepare a transmittal letter to OMB, transmit the request and ensure that it is properly logged in at OMB. OMB then publishes notice in the Federal Register and places the documents on the public record. The Secretary's Office will maintain copies of all clearance requests submitted to OMB and, upon request, will make copies available to all interested persons who request them.

If any public comments are received during the time the material is on the public record, they will be forwarded to the Commission's Clearance Officer. If the comments raised substantive issues, the Clearance Officer may arrange a meeting between the Commission staff and OMB staff. Any contacts with OMB staff should be coordinated through the Clearance Officer. OMB is also empowered to hold an informal hearing on the clearance request.

The Clearance Officer is notified by letter from OMB when a request for information has been approved. The Clearance Officer then advises the staff as to the OMB control number and expiration date, which must be entered in the upper righthand corner of the form, questionnaire, or other document before mailing to respondents.

If OMB disapproves a "collection of information" submitted by the agency, the Bureau Director who approved the Request for OMB Review will consider any comments or objections offered by OMB and then recommend to the Commission whether to exercise its authority, under 44 U.S.C. § 3507(c), to override OMB's disapproval.

.1.3.6.4 Assessing Burden of Proposed Legislation

The Office of Congressional Relations will identify proposed legislation that involves a paperwork or reporting burden affecting the agency and refer it to the Executive Director. The Executive Director will arrange to have the appropriate bureau or office assess the paperwork or reporting burden. See 44 U.S.C. § 3506(c)(3).

.1.3.7 Foreign Corporations, Foreign Nationals or Foreign Interests

As a member of the Organization for Economic Cooperation and Development, the United States has agreed to notify other countries when investigating or proceeding against foreign corporations, nationals or interests. When an initial phase investigation has been approved, or when a major prosecutorial decision with foreign policy implications is anticipated in the course of an ongoing investigation, telephone notice should be given to the Bureau of Competition's Assistant Director for International Antitrust. Thereafter, if requested, a brief memorandum outlining the facts known and the proposed investigative steps affecting foreign interests should be prepared by the investigating section. This information should be provided by telephone or in writing prior to major steps in the discovery process which are likely to affect foreign interests. In the event prior notification of such events cannot be made, this information should be provided to the International Division by Commission personnel involved in the proceeding as soon as the event is made known to them. The International Division will also offer relevant expertise on procedures to follow when dealing with particular countries, whether a bilateral antitrust cooperation arrangement is in effect, whether particular sources of assistance abroad are known, and whether there are special issues of international law which may have to be considered. Additionally,

the International Division will, if appropriate, notify the Department of State, or initiate direct contacts with foreign governments. No other office has authority to notify the Department of State or initiate direct contact with foreign governments.

.1.3.8 Agreement for Cooperation with Federal Republic of Germany for Exchange of Information Regarding Restrictive Trade Practices

Pursuant to an agreement between the United States and the Federal Republic of Germany, the two countries cooperate in exchanging information regarding restrictive trade practices to the extent allowable under their respective domestic laws. Therefore, to the extent that the information is confidential, commercial, or financial as defined in § 6(f) of the FTCA and/or obtained pursuant to compulsory process or voluntarily in lieu of process, and thus exempt from FOIA disclosure in accordance with § 21(f) of the FTCA, the information can no longer be exchanged. See Commission Rules 4.10(d) and 4.11. Guidance in complying with the agreement may be obtained from the Assistant Director for International Antitrust, Bureau of Competition.

.1.3.9 Investigations in Foreign Countries

It may occur during an investigation that staff believes that essential information can be obtained only from a source in a foreign country. Based on international protocol principles, arrangements for inquiries in foreign countries are made with and through the U.S. Department of State. When the need arises, staff should consult the Assistant Director for International Antitrust, Bureau of Competition, who is the designated Liaison Officer for the Department of State.

Prior to requesting information, either on a voluntary basis or by compulsory process, from any party within the territory of a foreign nation, a notification to the foreign government in question is required. Such notifications may be in writing or oral and should be transmitted by the Bureau of Competition's International Division. If the foreign government, on receipt of such notification, requests consultation, the staff concerned should be prepared to consult with appropriate foreign officials. If the staff desires that the notification of the intent to request information is to be kept confidential from the parties to whom the request for information is to be directed, the nature and extent of confidentiality desired should be specified. Any questions concerning the notification called for should be addressed to the Assistant Director for International Antitrust, Bureau of Competition.

.1.3.10 Consultants and Expert Witnesses

See AM 3.200 for policies and procedures in hiring consultants and expert witnesses in investigations.

.1.3.11 Purchase of Exhibits

For guidance in the purchase of exhibits, see OM Ch. 18.6.

.1.3.12 Changes in Proposed Respondents or Other Entries on Initiating Form

After an investigation has been initiated, any significant changes in the data on the initiating form, e.g., changes in the name of the proposed respondent, or addition or deletion of proposed respondents, should be made by submitting a Matter Update Notice. (See FTC Information Handbook)

.1.3.13 Advertising of Books

The Commission ordinarily will not proceed against advertising claims which promote the sale of books and other publications, provided: the advertising only purports to express the opinion of the author or to quote the contents of the publication; the advertising discloses the source of statements quoted or derived from the contents of the publication; and the advertising discloses the author to be the source of opinions expressed about the publication. Whether the advice being offered by the publication will achieve, in fact, the results claimed for in the advertising will not be controlling if appropriate disclosures have been made. This policy does not apply, however, if the publication or its advertising is used to promote the sale of some other product as part of a commercial scheme.

.1.3.14 Record of Outside Contacts

Contacts with "noninvolved" persons during the course of investigations must be recorded by the staff using the "Record of Outside Contact" form. See OM Ch. 16.10.7 for further guidance.

.2 INVESTIGATIONAL (INITIAL PHASE)

.2.1 GENERAL

The initial phase of an investigation consists of the development of sufficient facts and data regarding possible violations required for a determination either that no further action is warranted or that authorization should be sought for continuation of the investigation beyond the initial phase.

.2.2 OPENING

.2.2.1 Clearance and Approval

.2.2.1.1 General

Before recommending an investigation, the staff must have secured a records search. If the records search has disclosed any pending or past matters involving the same or similar practices, the existence of an outstanding order to cease and desist against the proposed respondent, or other circumstances which affect the proposed investigation, the staff member recommending the investigation should bring such circumstances to the attention of the Regional Director, Assistant Bureau Director, or Bureau Director who will approve the investigation and explain why the new investigation is warranted. The staff should also determine whether the practices to be considered in the proposed investigation are covered by a trade regulation rule, guide, enforcement policy statement or other Commission action.

Before recommending the initiation of an investigation, staff should ordinarily obtain information indicating that the Commission is likely to have jurisdiction of proposed respondent and over the practices, that the volume of business in or affecting commerce is substantial, that the practices to be investigated are not the primary responsibility of another federal or state or local agency, and that there will be some benefit to consumers. Staff should also consider any applicable policy protocols, case selection criteria, program objectives, and other sources of guidance in determining whether the proposed investigation is appropriate.

For restrictions on contacting the proposed respondent before approval of competition investigations, see .2.2.2, below.

As a general matter, Regional Directors or Assistant Directors may open investigations and pursue them for 100 hours before seeking bureau review. (Note in competition matters, the investigation cannot be pursued at all until Justice Department clearance has been obtained.) After 100 hours, and at definable points thereafter, all investigations must be reviewed by the bureau.

.2.2.1.2 Consumer Protection Matters

Except as noted in .1.2.4, above, the Director, Deputy Director and Assistant Directors of the Bureaus, Regional Directors and the Director of Federal-State and Consumer Relations are authorized to approve the initiation of consumer protection investigations. Proposed Regional Office investigations involving advertising or labeling of foods, drugs, cosmetics and "devices" or of any other matters involving health or safety should be cleared with the Associate Director for Advertising Practices, the Bureau of Consumer Protection, and the appropriate program advisor for policy guidance, except where purely regional in nature.

.2.2.1.3 Competition Matters

Requests by headquarters staff for approval of an investigation should be made to the appropriate Assistant Bureau Director by the appropriate initiating form and Department of Justice clearance form (see Illustration 4), and routed to the Evaluation Office for processing. If the recommendation is approved by the Assistant Director, Department of Justice clearance will be sought. If the Department does not object and there is no overlapping internal investigation, an investigation number will be assigned and the matter returned to the responsible staff for further action. Requests for approval of investigations of mergers are reviewed by the Merger Screening Committee. See OM Ch. 2 for further discussion of the review and evaluation process within the Bureau.

Except for merger investigations, Regional Directors are authorized to approve the initiation of competition investigations if Department of Justice clearance is obtained. Proposed merger investigations must be reviewed by the Merger Screening Committee and approved by the Bureau Director.

Regional Office requests for Department of Justice clearance will ordinarily be initiated by submission of the initiating form and the clearance form (Illustration 4) to the Assistant Director for Regional Operations. If the Department of Justice has no objection, the matter will be assigned an investigation number by the bureau and returned to the originating regional office. If clearance is withheld, the originating regional office will be advised and the matter returned to the regional office for disposition.

.2.2.2 Limitations on Contacting Proposed Respondents and Others

Proposed respondents are not to be contacted with respect to the subject matter of proposed competition investigations until Department of Justice clearance has been obtained, and, if a merger investigation, the Bureau Director has approved. Staff should use discretion in contacting customers, suppliers and others dealing with proposed respondents prior to clearance and approval.

During the course of the investigation, staff must take care to ensure that letters sent outside the agency shall not state or imply that the proposed respondent has engaged in unlawful practices or otherwise violated the law.

.2.3 CONDUCT

.2.3.1 Utilization of Existing Data

To minimize the expenditure of resources during the initial phase of investigations, every effort should be made to utilize existing sources of facts and data. There are many sources of information, such as Dun & Bradstreet Reports, Moody's Manual, Standard & Poor's, published reports of the Bureau of the Census, trade journals, etc. See AM 1.800 regarding support services available from the Commission's Library.

.2.3.2 Investigational Techniques

Compulsory procedures are not ordinarily utilized in the initial phase of investigations; therefore, facts and data which cannot be obtained from existing sources must be developed through the use of voluntary procedures. If information is developed indicating that violations have occurred but certain essential information can be obtained only from proposed respondents or others who have refused to supply the information voluntarily, consideration should be given to submitting a request for approval of an investigational resolution. (See .3, below.)

Facts and data may be developed through interviews, written requests for the submission of facts and data, limited questionnaires, informal surveys and other voluntary methods. Even though information may be sought through an interview with the proposed respondent, it is ordinarily advisable to prepare in advance a detailed letter, signed by the staff conducting the investigation, which clearly requests the facts and data, and/or access that is being sought. The letter should include a statement that the right is specifically reserved to pursue such additional avenues of investigation as may appear appropriate in order to avoid any attempts by the proposed respondent to limit the future course of the investigation. Every effort should be made to draft the letter with precision and clarity to produce only the facts and data believed necessary for a determination as to the disposition of the investigation. Rule 2.6 required that any person under investigation compelled or requested to furnish information or evidence shall be advised of the purpose and scope of the investigation and of the nature of the conduct constituting the alleged violation and the applicable provision of law.

See Illustrations 5 and 6 for samples of letters which may be used in consumer protection and competition investigations. For further information regarding the conduct of interviews and the use of surveys and questionnaires, see discussion of those topics in .3, below.

If confidentiality is requested by the proposed respondent or other parties for any information, see OM Ch. 15 for guidance.

.2.3.3 Privacy Act and Freedom of Information Act

The investigation files of the Commission have been declared to be a system of records within the coverage of the Privacy Act. Therefore, when personal information is sought from individuals during an investigation, and such information will be so indexed as to be retrievable by the name of the individual, the requirements of the Privacy Act must be met. Investigation files must be established and maintained

in accordance with instructions for compliance with the Freedom of Information Act. See OM Ch. 15 for guidance for compliance with both statutes and requirements for custodial treatment of investigational files.

.2.4 DISPOSITION

.2.4.1 Clearance and Approval

.2.4.1.1 Consumer Protection Matters

Assistant Directors of the Bureau of Consumer Protection, Regional Directors, and the Director of Federal-State and Consumer Relations are authorized to close consumer protection investigations which have not exceeded 100 work-hours. However, if initiation of the investigation required approval by the Bureau Director, such approval must be obtained for closing. Additionally, if the investigation has received previous Commission consideration (approval of the investigation or process), Commission approval must be obtained. Recommendations for closing should be in the form of a memorandum addressed to the appropriate authority, with approvals indicated on it. The memorandum should briefly summarize the results of the investigation, discuss the methodology used in the investigation, and explain the rationale for the closing.

.2.4.1.2 Competition Matters

Assistant Directors of the Bureau of Competition and Regional Directors are authorized to close competition investigations during the initial phase. However, if initiation of the investigation required approval by the Bureau Director or the Commission, such approvals must also be obtained for closing. In such cases, a closing memorandum should be prepared. (See .2.4.1.1, above.)

.2.4.2 Closing - No Further Action Recommended

When the initial phase of an investigation reveals no violations of the laws or regulations enforced by the Commission, or no reason to believe that violations may have occurred, the investigation should be submitted for closing promptly. When an investigation reveals a minor violation and a recommendation for further action would not be warranted, the staff may consider obtaining informal correction of the practices if it appears that the proposed respondent has acted in good faith and will make the necessary changes promptly. The informal correction should be confirmed ordinarily by a letter from the proposed respondent outlining the steps taken to correct the alleged violations.

Attempts to obtain informal corrective action in the initial phase of investigations should be held to a minimum and will be appropriate in only a limited number of instances. As an alternative, staff may consider sending a suitable closing letter as discussed in .2.4.6 below.

.2.4.3 Closing - Referral Recommended

.2.4.3.1 To Another Unit of the Commission

After an investigation is initiated, if the staff believes that the matter would be more properly handled by another unit of the Commission (regional office or headquarters), staff should contact the appropriate unit and determine whether that unit will agree to handle the matter. When referral is accepted, the staff should submit the file for referral. The referring office should not commit the receiving office to any action. In consumer protection matters, referral of the investigation should be approved by the Bureau Director; in competition matters, the referral should be approved by the Bureau Director or the Assistant Director for Regional Operations, as appropriate.

.2.4.3.2 To the Division of Compliance

When the investigation indicates violations of an outstanding Commission order against the proposed respondent, the facts should be set out in a memorandum to the appropriate compliance division with a recommendation as to whether a compliance investigation should be conducted in conjunction with or in lieu of the investigation of practices not covered by the order. (See OM Ch. 12 regarding compliance investigations.)

.2.4.3.3 To Federal, State or Local Government Agencies

See OM Ch. 15.2.1.3 for referrals to and information-sharing with federal, state or local government law enforcement agencies.

.2.4.4 Closing - Consolidation with Another Investigation

When it becomes apparent during an investigation that the subject matter of the investigation would be more appropriately considered in connection with another investigation, the staff should submit the matter for closing and consolidation with the other investigation.

.2.4.5 Consent Settlements During the Initial Phase of Investigations

In certain instances, it may be appropriate to enter into consent settlement negotiations during the initial phase of an investigation when the violations are clear and the proposed respondent expresses a willingness to agree to an adequate order. Only exploratory negotiations should be undertaken without clearance by the Assistant Director or Regional Director as appropriate. The appropriate program advisor should also be consulted if a consumer protection matter, or the Associate Director for Evaluation if a competition matter.

Proposals for consent negotiations in regional office competition matters should be discussed with the appropriate Assistant Director for Regional Operations. See OM Ch. 6 for policies and procedures governing consent settlements.

.2.4.6 Closing Letters in Investigations (Initial Phase)

Closing letters may be sent to the applicant and the proposed respondent in appropriate circumstances (e.g., when the proposed respondent has requested to be advised of the disposition of the matter), but are not required. Closing letters are not appropriate when the investigation is being referred to some other office or agency for possible further action. A closing letter to the proposed respondent may be sent when minor violations have occurred that do not warrant a recommendation for corrective action, but the proposed respondent should be advised that the practices are questionable under a trade regulation rule, guide, policy statement, or other Commission precedents, and should be sent a copy of the relevant document. See section .3.7.4.5 below for guidance on the format of closing letters.

2.4.7 Responsibility for Files

At the close of the investigation, Records Processing (room 240 of the headquarters building) contacts the appropriate staff attorney to schedule the transfer of the files for processing and storage. (See OM Ch. 15.13)

3 FULL INVESTIGATIONS (BEYOND INITIAL PHASE)

.3.1 PURPOSE AND SCOPE

This section provides policies and procedures for the approval, conduct, and disposition of investigations beyond the initial phase. The various investigational procedures that may be used are discussed in some detail. Part .1 above should also be consulted for general policies and procedures applicable to investigations. When appropriate, cross references are made to other portions of the Operating Manual that bear upon investigations.

.3.2 POLICY

Full investigations usually require a substantial commitment of resources. The selection of matters for investigation involves a careful screening process to ensure that they will contribute to achieving the goals of the Commission in carrying out its consumer protection and competition missions. Because of the need for careful allocation of resources, there may be instances in which a full investigation will not be authorized even when the facts indicate that violations of law may have occurred. See OM Ch. 2 for further discussion of the review and evaluation process.

.3.3 STATUS

.3.3.1 Nonpublic

To promote orderly investigative procedures and to protect individuals or business entities under investigation from premature adverse publicity, the Commission treats the fact that a particular proposed respondent is under investigation and the documents and information submitted to or developed by staff in connection with the investigation as confidential information that can be released only in the manner and to the extent authorized by law and by the Commission. In general, even if a proposed respondent in a nonpublic investigation makes a public disclosure that an investigation is being conducted, Commission personnel may not acknowledge the existence of

the investigation, or discuss its purpose and scope or the nature of the suspected violation. See below and OM Chs. 15.4, 16.9, and 17.2 for further information.

In certain instances, the Commission may issue a news release announcing a nonpublic industrywide investigation or an investigation of practices involving a risk to public health or safety or a significant risk of economic harm. The news release ordinarily will be issued at the time of approval of the investigation, unless the Commission determines that the announcement will jeopardize the investigation. In the latter instance, the Commission may direct that the news release be issued when subpoenas or other forms of compulsory process are issued. Once such a news release has been issued, Commission personnel may confirm the existence of the investigation, although the identities of individual industry members in the investigation remain nonpublic unless otherwise disclosed by the Commission.

In addition, where a party to a proposed or consummated merger or other transaction under Sections 7 and 11 of the Clayton Act has publicly disclosed the existence of the transaction in a press release or public filing with a government body, Commission personnel may publicly acknowledge that the Commission is investigating the transaction under the Clayton Act, subject to such restraints on disclosure as office heads may impose on members of their staff. See 62 FR 18,630 (1997).

.3.3.2 Public

Public investigations into conduct or practices in an industry or group of industries may be authorized when the Commission determines that it would be in the public interest to do so. Such investigations may be particularly suitable to develop general information about the conduct or practices of the industry or group, rather than about the practices of particular individuals or entities, and to obtain public input from consumers or state agencies. Industrywide investigations should be entitled “_____ Industry, Various Unnamed Members of,” to facilitate indexing under the industry name. An appropriate news release is ordinarily issued when such an investigation is authorized. See OM Ch. 17 for further information about news releases.

.3.4 PURPOSE OF INVESTIGATION

.3.4.1 Law Enforcement -- Administrative

Investigations may involve detailed inquiries into alleged violations of the laws and regulations enforced by the Commission with the objective of obtaining enforcement or corrective action. Investigations may combine compliance investigations and consideration of practices not covered by the order to cease and desist. (See OM Ch. 12 for further information about compliance investigations.)

As noted in .1.3.3, above, in planning any investigation, the staff should consider the various forms of enforcement and correction mechanisms which are available. An evaluation of these alternatives during the early stages of an investigation is an integral part of investigational planning and strategy. For example, in appropriate circumstances, the staff should consider whether the apparent violations are of such a serious nature that efforts should be undertaken to seek injunctive relief under Section 13 FTCA. (See OM Chs. 11 and 13, regarding judicial enforcement.)

.3.4.2 Law Enforcement -- Criminal

Investigations may be conducted to obtain evidence of criminal violation of the Truth-in-Lending Act (15 U.S.C. § 1601, et seq.). Before recommending the approval of an investigation for such purpose, the staff should consult the appropriate program advisor for guidance. See OM Ch. 9 for further guidance.

.3.4.3 Collection of Data or Trade Regulation Rule Support

Investigations may be conducted to obtain data about industry practices to support a recommendation for the proposal of a trade regulation rule, legislation by Congress, guides or preparation of a staff report. Such investigations may be public when the Commission believes that public input is advisable. (See .3.3.2 above.) For further information regarding rulemaking proceedings, see OM Ch. 7. See also OM Ch. 18 for assistance available from the Bureau of Economics in planning investigations designed to develop data and for assistance available from the Information Systems Division in computerized organization and analysis of the data to be developed.

.3.5 AUTHORIZATION

.3.5.1 Clearance and Approval

.3.5.1.1 General

The Commission has delegated to the Directors of the Bureaus of Consumer Protection and Competition the authority to approve full investigations. Regional Directors may request approval of such investigations, but have not been delegated approval authority. If the Bureau Director does not approve the regional office request, whether or not accompanied by a request for approval of an investigational resolution by the Commission, the matter will be returned to the originating regional office for closing or such other action as may be appropriate.

Although it is understood that disagreements between a Regional Director and the Bureau Directors concerning the substance of a complaint recommendation, the terms of a consent agreement (and, in the case of the Bureau of Consumer Protection, a request for compulsory process, the proposed TRR, or a proposed industrywide investigation) can result in a great deal of wasted energy, Regional Directors may appeal decisions of Bureau Directors with respect to those matters to the Commission. However, effective integration of the regional offices into total mission planning and evaluation requires policy and program consistency. The Bureau Directors are charged with implementing Commission policy within each program area. The bureaus are also charged with developing and evaluating new programs, investigations, cases and projects within each mission. Therefore, Regional Directors must work with the Bureau Directors and limit appeals to matters of major import, e.g., significant differences in legal theory in complaint recommendations.

Dissenting staff recommendations regarding compulsory process, compliance, consent agreements, proposed trade regulation rules or proposed industrywide investigations should be submitted to the Commission by the originating offices, upon the request of the staff member.

An updated records search should be obtained prior to recommending approval of a full investigation even though a records search may have been made in connection with the initial phase of the investigation. See OM Ch. 18 for guidance concerning record searches.

.3.5.1.2 Consumer Protection Matters

Requests for approval of full investigations which are not accompanied by a request for approval of an investigational resolution by the Commission will be submitted in the form of a memorandum addressed to the Bureau Director. Requests submitted by headquarters or regional office staff will be routed to the Deputy Director for Policy and Evaluation. Information copies will be provided by the Deputy Director's Office to program advisors and to others within the Bureau who might provide input on the matter. The memorandum may be assigned to the Evaluation Committee for consideration. See OM Ch. 2 for details regarding the review and evaluation process within the Bureau.

Requests for approval of a full investigation which are accompanied by a request for approval of an investigational resolution by the Commission will be submitted in the form of a memorandum addressed to the Commission containing justification for the use of compulsory procedures in addition to other required information. The same routing procedures within the Bureau will be followed.

The Bureau furnishes to the Commission a list of all requests for approval of full investigations and the action taken thereon, and any Commissioner may request review of the action taken.

.3.5.1.3 Competition Matters

Requests for approval of full investigations are submitted by memorandum addressed to the Bureau Director. Proposed investigations of mergers must be reviewed by the Merger Screening Committee. Proposed investigations of other matters are ordinarily reviewed by the Bureau Evaluation Committee. Normally, the proposal includes a request for approval of an investigational resolution by the Commission and is addressed to the Commission via the Bureau Director. Requests for investigational resolutions will be sent to the Bureau of Economics for concurrence or comment after approval of the investigation. See OM Ch. 2 for further information on the review and evaluation process in the Bureau of Competition.

Requests for approval of full investigations submitted by the regional offices will be reviewed initially by the appropriate Assistant Director for Regional Operations. Otherwise, the internal evaluation and review process within the Bureau is the same.

In recommending a full investigation, staff should discuss the methodology used in the initial phase of the investigation, including those aspects of the matter that were not developed fully because of cost or time restraints. The staff should also discuss the proposed methodology of the full investigation. These discussions will facilitate the evaluation process.

The Bureau furnishes to the Commission a list of all requests for approval of investigations and the action taken thereon, and any Commissioner may request review of the action taken.

Note: If the scope of the proposed full investigation of a competition matter goes beyond the scope of the clearance granted by the Department of Justice for the initial phase of the investigation, the matter must receive further clearance. If clearance was not obtained previously, it must be secured before initiation of the recommendation for full investigation.

.3.5.1.4 Transmittal Memorandum

The memorandum requesting approval for full investigation should clearly and succinctly explain the need for approval of the full investigation, including a discussion of relevant factors among the following:

- (1) A description of the practices and their impact on consumers and/or on the marketplace;
- (2) Marketing area and volume of business of the proposed respondent and the overall size of the market;
- (3) Extent of consumer injury inflicted by the practices to be investigated, the benefits to be achieved by the Commission action and/or the extent of competitive injury;
- (4) When applicable, an explanation of how the proposed investigation meets objectives and, where adopted, case selection criteria or the program to which it has been assigned;
- (5) When applicable, responses to the policy protocol questions (see OM Ch. 2);

- (6) Whether there are any other matters involving the proposed respondent which would conflict with or should be consolidated with the proposed investigation or would otherwise have any bearing on the matter;
- (7) Whether the alleged violations may also involve state or local law in addition to the laws and regulations enforced by the Commission and if so whether these agencies have either taken any action or requested action by the FTC;
- (8) Whether the alleged violations may also be remedied by private legal action;
- (9) Legal analysis if any novel legal points are involved;
- (10) What forms of relief are contemplated;
- (11) Any other relevant information justifying the investigation;
- (12) When appropriate, justification for use of compulsory process; and
- (13) The name and address of the proposed respondent's counsel, if any.

.3.6 CONDUCT

.3.6.1 Policy Re: Notifying Proposed Respondent of the Investigation

The proposed respondent will ordinarily be contacted during the course of the investigation to obtain information and should be advised of the general nature of the inquiry including the statutes and the alleged violations involved. When the proposed respondent or its counsel is unfamiliar with Commission Rules, staff should discuss the relevant provision and may, upon request, furnish a copy of the Rules. However, if no contact was made during the investigation and if a recommendation for complaint is contemplated, the proposed respondent should be contacted at the conclusion of the investigation and offered the opportunity to submit the proposed consent agreement unless notification must be avoided to ensure preservation of evidence or other circumstances militate against contact. See Rule 2.31 and 3.7.1, below. Also, unless notification must be avoided, staff shall inform the proposed respondent that if a recommendation for complaint is forwarded to the Commission, the proposed respondent will have an opportunity to submit its views, in writing, to the Commission, and may also request meetings with Commissioners. It will be up to individual Commissioners, however, whether to grant such requests. In addition, if a proposed respondent chooses to submit its views to the Commission in writing, a copy of any material submitted should be sent to the staff at the same time. Staff should then inform the proposed respondent when a complaint recommendation is actually forwarded. If notification must be avoided, the reasons for not contacting the proposed respondent should be explained in the transmittal memorandum. See OM Ch. 6 for guidance in preparation of investigational consent agreements.

.3.6.2 Policy Re: Expressing Opinions About the Legality of Practices

During the course of an investigation, staff should not indicate to the proposed respondent that the Commission is committed to taking any particular action in the matter. If the proposed respondent requests the staff's opinion regarding the legality of the practices under investigation, the staff may furnish copies of applicable guides, trade regulation rules, Commission decisions and other readily available public information bearing upon the practices. It should be made clear to the proposed respondent that the staff may recommend that the Commission take certain action, but cannot commit the Commission as to the disposition of the matter.

.3.6.3 Policy Re: Dealing with Counsel When Parties Are Represented

When the proposed respondent or any third party has provided any form of notice that it is represented by counsel, any requests for information, documents, access or interviews to be obtained from the proposed respondent or the third party or their officers, if a corporation, should be made through counsel. Counsel for the proposed respondent or third party is not by that fact alone to be recognized as counsel for employees of the proposed respondent or the third party unless the employee is also an officer. However, it is customary to contact counsel prior to dealing with employees.

.3.6.4 Policy Re: Disposition of Material Upon Termination of Investigation

See OM Ch. 15.12.2 for the Commission's policy concerning the return of documents at the close of an investigation.

.3.6.5 Policy Re: Payment of Fees for Copying Records

To the extent possible, arrangements should be made for copying of documents on Commission reproduction equipment if the proposed respondent is unable or unwilling to provide copies during an investigation. If the proposed respondent is unwilling to permit removal of the records for copying purposes or to furnish copies without cost pursuant to compulsory process other than a CID, arrangements may be made in exceptional circumstances for payment of copying costs either to proposed respondent or an acceptable third-party source. However, where the recipient is responding to a CID, the Commission will reimburse that recipient who copies documents for the reasonable cost of reproduction. The following procedures should be followed for reimbursement:

The attorney in charge of the investigation should complete a standard 1034 Public Voucher Form. When filling out this form, the number of copies and the total cost should be verified. The Director of the Division of Budget and Finance (DBF) has determined that .10 per page is a reasonable cost of reproduction. The form should be signed by the attorney in charge and approved by the Assistant Bureau Director. The form should then be forwarded to the Director of DBF for disbursement. Where possible, advance notice, along with an estimated cost of copying, should be forwarded by the attorney in charge to the Director of DBF. Reimbursement will not be provided for search costs.

Proper receipts should be prepared evidencing the removal and return of the records, and an agreement obtained in writing establishing the authenticity of the copies.

.3.6.6 Noncompulsory Investigational Procedures

.3.6.6.1 Request for Access Letters

Depending upon the circumstances of the investigation, including the willingness of the proposed respondent to cooperate, it may be appropriate to seek voluntary production of information through the use of a detailed letter requesting the submission of the information or requesting access to the proposed respondent's records. Such letters should be drafted with the same care and specificity as investigational subpoena specifications and may be signed by the staff member conducting the investigation. If the investigation is being conducted initially by correspondence, the letter should request the submission of the information or documents in the form believed most appropriate. In lieu of the actual documents or copies, the proposed respondent may be permitted to submit verified tabulations or statements containing the desired information if such materials will be adequate for the purposes of the investigation. Preferably, such statements or tabulations should be on the proposed respondent's letterhead and verified by a responsible officer or employee. If the investigation is being conducted through direct contact, the letter should request access to the proposed respondent's records and/or the submission of documents as appropriate. The letter may be presented if the proposed respondent or its counsel requests that the demands for information and access be submitted in writing. The letter must include a statement notifying the proposed respondent that the Commission reserves the right to seek additional information and pursue other avenues of investigation. The letter must also notify the proposed respondent of the purpose of the investigation and the nature of the allegedly illegal conduct in accordance with Rule 2.6. Staff should also specifically instruct recipients to indicate when responsive material has been withheld based on claims of privilege or the like. For discussion of the procedures which must be followed to assert such claims, see OM Ch. 3.3.6.7.5.4. See Illustrations 5 and 6 for examples of voluntary request and access letters.

.3.6.6.2 Questionnaires

Questionnaires are detailed, written inquiries sent to groups of proposed respondents, prospective consumer witnesses, competitors, customers, and others seeking voluntary responses to the questions. Voluntary questionnaires can be a valuable investigational device in appropriate circumstances and must be distinguished from orders to file special reports sent under authority of § 6(b) FTCA which require a sworn response subject to legal sanctions, and in the case of BCP investigations must be issued in conformance with the CID requirements. See OM Ch. 3.3.6.7.5.3. When questionnaires are to be sent to 10 or more parties to obtain identical information from each, clearance may be required under the Paperwork Reduction Act, as amended. For policies and procedures for compliance with that statute, see .1.3.6, above.

It may be desirable to seek guidance from the Bureau of Economics in the drafting of other than simple consumer questionnaires. If the questionnaire will involve the development of financial information, consult the Assistant Director for Management and Budget in BC for accounting guidance. Depending on the volume and complexity of the information sought, it may also be desirable to consult the Information Systems Division for assistance in planning the questionnaires and in organizing and processing the information obtained. See OM Ch. 18 for available support services. For an example of a simple questionnaire, see Illustration 8. Headquarters staff originating questionnaires must use the following mailing procedures:

- (1) Provide the Correspondence Unit of the Information Management & Dissemination Division with a copy of the questionnaire, any cover letter and the name of the responsible staff member.
- (2) Prepare return receipts for certified or registered mail and notify the Mail Room when more than 10 questionnaires which require receipts will be mailed at one time; and consult with the Mail Room for further information on mailing procedures.

Regional offices originating questionnaires are responsible for mailing procedures and maintaining appropriate records. Solicitation of personal information may require the use of a Privacy Act Disclosure Statement. See OM Ch. 15.4.2 - 15.4.2.7.

.3.6.6.3 Formal Surveys

Formal surveys may be used to develop evidence for use in litigation, to support the development of a proposal for a trade regulation rule or for other investigational purposes. For example, a formal survey may be used to develop evidence that a proposed respondent is violating a trade regulation rule. Whether conducted through use of Commission personnel or obtained through contact with outside sources, such surveys should be carefully planned to produce evidence of probative value. Advice and assistance may be obtained from the Bureau of Economics in the preliminary planning stage (See OM Ch. 18). If the parties surveyed are required to complete a questionnaire or other form in connection with the survey, clearance of the form may be required under the Paperwork Reduction Act. See .1.3.6 above. Solicitation of personal information may require the use of a Privacy Act Disclosure Statement. See OM Ch. 15.4.2 - 15.4.2.7.

.3.6.6.4 Interviews

.3.6.6.4.1 Purpose

Direct interviews with persons who may be able to furnish relevant information concerning the subject of the investigation are one of the most effective tools used in the conduct of investigations. Interviews must be carefully planned and conducted to produce complete and accurate information. Interviews provide an

invaluable opportunity for staff to assess the value of prospective witnesses. Solicitation of personal information may require the use of a Privacy Act Disclosure Statement. See OM Ch. 15.4.2 - 15.4.2.7.

.3.6.6.4.2 Interview Reports

In general, all interview reports should be structured as accurate summarizations of the relevant portions of the interviewee's statements and should serve as a guide for the expected testimony of the party in subsequent litigation. The reports ordinarily organize and summarize the statements, accurately reporting the substance of what was said. The interviewer's subjective impressions, interpretations, comments or evaluations should be segregated from the factual portion of the report. Interview reports may be producible in litigation, e.g., as Jencks Act documents. See OM Ch. 10.13.6.4.5 and .6 for further information regarding discoverability and production of investigational interview reports in litigation. Any exhibits obtained from the interviewee during an interview, about which no relevant remarks were made by the interviewee, cannot be considered part of the interviewee's statement. However, the interview report should refer to the fact that such exhibits were furnished and should show identifying designations, i.e., Smith Exhibits 1-8. If more than the short description given on the accompanying exhibit list is necessary, a fuller description can be given in a separate memorandum. All other exhibits obtained from the interviewee during the interview should be described in the interview report and may be producible in conjunction with the interview report in litigation. Note: To the extent possible, unnecessary repetition of proper names or identities of interviewees and other persons should be avoided in interview reports in order to minimize the task of deleting such references as part of the segregation of the files for compliance with Freedom of Information Act access requests and other production of the documents. The term "interviewee" or "informant" may be used after the initial identification of the interviewee.

The staff is under no obligation to retain rough notes or other product of witness interviews, unless: (1) the notes or other nonverbatim written account of the interview is approved and signed or initialed by the interviewee, or the interviewee states explicitly and unambiguously that he adopts or approves the written account; or (2) the product of the interview is a stenographic, mechanical, electrical or other recording, or a transcription thereof, which is a substantially verbatim recital of an oral statement made by the interviewee and recorded contemporaneously with the making of such statement. If either of these requirements is satisfied, the notes or other product of witness interviews should be preserved whether or not the information in them is later incorporated into an interview report.

.3.6.6.4.3 Treatment of Information Obtained in the Course of Investigating

The FTC Improvements Act of 1980 and the Commission's implementing rules require that the Commission establish special procedures to handle documents received pursuant to compulsory process in a law enforcement investigation. A custodian and a deputy custodian are appointed to receive these documents and to insure that they are kept confidential. Custodians also must limit copies to those required for official Commission use. In addition, since all documents submitted to the Commission must be returned to the submitter on demand at the close of the proceeding, the custodian must preserve the integrity of documents submitted.

The concern for confidentiality and the obligation to return documents submitted extends beyond custodial documents to all documents received by the Commission in any investigation. Thus, the procedures outlined below should be followed for all documents received by the Commission. While it is unworkable to formulate highly detailed procedures that can apply to different bureaus and regional offices, due to space and other constraints, the following procedures are the minimum necessary to insure compliance with the statute.

1. When documents are first received by the custodian deputy custodian or person in charge of an investigation, each document must be marked with the name of the investigation and the submitter. This process must precede any other review or analysis of documents.
2. Each page of every document received in an investigation must be sequentially numbered. Documents should be numbered with colored ink (other than black) which will clearly differentiate the documents initially submitted from Commission-made copies.
3. Identifying information for all documents must be recorded in a log. Documents (and portions of documents if appropriate) should be identified as custodial documents, documents submitted in lieu of compulsory process in a law enforcement investigation, or documents identified as confidential by the submitter. For example, the log should include:
 - (a) Name of case, project or investigation;
 - (b) Number of case, project or investigation;
 - (c) Sequential numbers assigned;
 - (d) Date received;
 - (e) Name of custodian, if applicable;
 - (f) Name of submitter;
 - (g) Whether confidentiality has been asserted for any portion of the submission.
4. Once the initial processing is completed, the documents submitted should be stored in locking file cabinets. These should be contained in a central document room or (depending upon space and size of the division or office) in the office of the custodian or deputy custodian. Documents from different submitters should be maintained separately, but all files must be preserved intact throughout the course of the investigation and any resulting proceeding. The only exception is for making copies, after which the documents must be returned immediately to their previous location. Where feasible, subsequent copies should be made from the first Commission-made copy.
5. Other than the processing described above, no staff analysis or sorting should take place using the documents originally submitted to the Commission. Copies of those documents required for analysis should be made under the supervision of the custodian, deputy custodian or person in charge of the investigation. Copies should be made only when essential for efficient conduct of the investigation. Although the Commission need not return copies we make to the submitter, it nevertheless must safeguard the confidentiality of the information on Commission-made copies.

See also OM Ch. 15.11 on custodial treatment.

.3.6.6.4.4 Offers of Unauthorized Documents

During the course of an investigation, staff may be confronted with an offer by a present or former officer or employee of the proposed respondent or other party to furnish business records or other documents and the staff has reason to believe that the officer or employee may not have been specifically authorized to furnish such documents. If confronted by such an offer, the staff should defer acceptance of the offer until after the matter is discussed with their supervisor to determine whether the material is properly within the control or custody of the officer or employee for purposes of release to the Commission. The General Counsel's Office should be consulted informally before such material is accepted or examined.

.3.6.7 Use of Compulsory Procedures

.3.6.7.1 Purpose and Scope

Compulsory procedures consist of investigational subpoenas, civil investigative demands, orders of access and orders to file special, or § 6b FTCA reports. The circumstances surrounding a particular investigation will suggest whether voluntary compliance or compulsory process should be used to conduct an investigation. Compulsory procedures are enforceable in federal court and penalties may be invoked for failure to comply. This section will discuss policies and procedures for issuing compulsory process, the preparation of supporting documents, and the practical application of compulsory procedures in investigations.

With the exception of adjudicative subpoenas (see OM Ch. 10.13.6.4.7), all forms of compulsory process must be signed by a Commissioner acting pursuant to a Commission resolution. This power cannot be redelegated.

.3.6.7.2 Justification

Staff should set out in its memorandum requesting an investigational resolution the legal theory of the case, the relevant facts known, and the reasons for requesting authority to use compulsory process. Such reasons may include the desire to avoid delay, to obtain testimony under oath, to obtain evidence from persons who will not or who staff believe will not provide complete information voluntarily, or to prevent destruction or withholding of evidence and preserve the Commission's legal remedies against any such destruction or withholding. If staff has attempted unsuccessfully to obtain information voluntarily, the memorandum requesting an investigational resolution should note that fact.

.3.6.7.3 Clearance and Approval

Requests for approval of an investigational resolution, whether accompanying or subsequent to approval of a request for a full investigation by a Bureau Director, should be submitted by memorandum addressed to the Commission via the appropriate Bureau Director. If the request for approval of the resolution is submitted concurrently with the request for approval of a full investigation by a Bureau Director, the memorandum must include justification for the use of compulsory procedures in addition to the information required to support the recommendation for approval of the full investigation. If the resolution is requested in an approved full investigation, the memorandum to the Commission should include a general statement of the nature of the investigation in addition to the justification for the use of compulsory procedures. The memorandum to the Commission should be accompanied by a proposed investigational resolution and such other documents as may be relevant, depending on the type of compulsory procedure to be used. A cost summary should also be included. See OM Ch. 18.4.

Once a resolution authorizing compulsory process has been issued, the responsibility for signing the forms of compulsory process rests with the Commissioner who is the moving Commissioner for the matter.

The entire Commission ordinarily will not approve or be involved in the issuance of compulsory process, except where: (1) the moving Commissioner believes that novel or important questions are involved and decides to submit it to the entire Commission for approval; (2) the staff seriously disagrees with modifications prepared by the moving Commissioner, in which case the staff may present the matter to the full Commission.

Another Commissioner is authorized to sign compulsory process in those situations where the moving Commissioner is unavailable and time is of the essence. The Chairman is designated as the "alternate" signer if the moving Commissioner is unavailable. If both the Chairman and the moving Commissioner are unavailable, any other Commissioner may sign.

.3.6.7.4 Resolutions

.3.6.7.4.1 General

Investigational resolutions must adequately set forth the nature and scope of the investigation. The statement may be brief, but it must be specific enough to enable a court in an enforcement action to determine whether the investigation is within the authority of the Commission and the material demanded by the compulsory process is within the scope of the resolution. Investigational resolutions should be drafted to reflect the broadening of the commerce definition and the extension of § 6(b) to include "persons and partnerships." Resolutions in investigations which may involve consumer redress under § 19 FTCA should include appropriate language to indicate that the investigation may consider that issue. See Illustration 9 for an example of consumer redress language in a resolution. Consumer redress language should ordinarily be included in all consumer protection resolutions, unless there are compelling reasons for omitting it. The resolution should include a recitation of all the Commission's investigational authority to avoid the need to seek a new resolution in the event access orders or special report orders are later believed necessary. Resolutions in BCP investigations should cite § 20 of the FTC Act. There are three basic types of investigational resolutions which may be approved by the Commission: omnibus, blanket, and special.

.3.6.7.4.2 Omnibus Resolutions

An omnibus resolution is one designed to provide for an industrywide investigation to determine whether industry conduct or practices may warrant corrective or enforcement action by the Commission. Such resolutions should, to the extent possible, name specific proposed respondents as well as the group under investigation, e.g., "Widget Industry, Various Unnamed Members of."

Captions of omnibus resolutions should state that the document is a resolution directing use of compulsory process in a nonpublic or public (as appropriate) investigation, the identity of the industry or groups to be investigated, and the file number. The statement in the body of the resolution should include a general description of the conduct or the practices to be investigated, the products and the geographic area involved. For an example of an omnibus resolution, see Illustration 10.

.3.6.7.4.3 Blanket Resolutions

Blanket resolutions are designed to provide continuing authority for the issuance of subpoenas or CIDs by a Commissioner in certain circumstances. Blanket resolutions have been approved by the Commission in a limited number of instances such as in connection with the issuance of "second requests" under the Hart-Scott-Rodino Act. Blanket resolutions are broader than omnibus resolutions in that the investigation is ordinarily directed at certain types of practices rather than specific industries. See Illustration 11 for an example of a blanket resolution.

.3.6.7.4.4 Special Resolutions

A special resolution is one authorizing an investigation of the acts and practices of those particular individuals and entities named in the resolution. Ordinarily, those named are the proposed respondents; however, the specified names should be followed by the words "and others." The resolution may then be used as authority for a Commissioner to issue subpoenas or CIDs to obtain testimony and documents from other individuals or entities relating to the practices and entities identified in the resolution. See Illustration 12 for an example of a special resolution.

.3.6.7.5 Investigational Subpoenas and Civil Investigative Demands

.3.6.7.5.1 General

After approval of the investigational resolution by the Commission, investigational subpoenas and civil investigative demands may be issued by the Commission. These forms of compulsory process must be signed by a Commissioner acting pursuant to the resolution authorizing the issuance of compulsory process in that investigation. Unless this information previously has been provided to the Commission, staff should prepare a memorandum describing with specificity the information needed, the reasons why the information is relevant in the inquiry, and the cost and burden production will impose on target companies.

The authority to issue a subpoena or CID cannot be redelegated. Following the issuance of compulsory process, the Bureau Director, Deputy Directors, and Assistant Directors of the Bureaus of Competition and Economics, the Bureau Director, Deputy Directors, and Associate Directors of the Bureau of Consumer Protection, Regional Directors, and Assistant Regional Directors have the authority to modify the subpoena or CID, so long as modification is agreed to by the recipient. In addition, they may withdraw the CID or subpoena when satisfactory voluntary compliance has been obtained or extend the time for compliance. Consideration should be given to the use of staggered production schedules allowing companies to produce limited information initially and additional information if it is necessary.

Before any subpoena or CID is issued to an employee of a federal agency, staff should consult with the employee or agency involved with a view to obtaining voluntary cooperation. Subpoenas and CIDs should be used in such matters only where the needed information cannot be obtained voluntarily. In any case where the issuance of compulsory process to an employee of a federal agency may involve sensitive questions of intergovernmental relations because of the person or issues involved, the General Counsel's Office should be consulted before compulsory process is issued.

Ordinarily, the use of investigational subpoenas or CIDs contemplates the convening of an investigational hearing with testimony under oath and the preparation of a transcript. However, in appropriate circumstances, the staff may elect to receive an informal return of the subpoena or CID in lieu of convening a hearing. Such an alternative may be offered in the transmittal letter that accompanies the compulsory process or may be the subject of negotiation after service. If an informal return is agreed to, the staff should not cause the subpoena or CID to be withdrawn unless and until the staff is satisfied that the return is entirely adequate.

If an informal return is permitted in lieu of a formal return at an investigational hearing, it is the responsibility of the staff to determine what documents should be accepted as responsive to the compulsory process specifications. Documents which are irrelevant or redundant should be rejected.

Documents which are accepted should be properly marked as exhibits (.3.6.7.6.6, below) and an exhibit list should be prepared identifying those documents which have been accepted as responsive. A copy of the list should be furnished to the party under subpoena or CID.

.3.6.7.5.2 Criteria for Subpoenas

Investigational subpoenas may be used to require testimony and production of documents (duces tecum) or to require testimony without the production of documents (ad testificandum) in all investigations other than those where a CID is required.

(1) Duces tecum: The specifications, which are attached to and become part of a subpoena duces tecum, must be drafted with precision and clarity to produce the desired information and to withstand the test of an enforcement proceeding if one becomes necessary. Care should be taken in describing documents to avoid return of irrelevant or redundant materials. A subpoena duces tecum cannot require the construction of documents; however, if deemed appropriate by the staff, the party under subpoena may be offered the alternative of submitting verified written statements or tabulations in lieu of submitting the originals or copies of the actual records. Specifications need not be submitted at the time the resolution is forwarded to the Commission for approval.

Investigational subpoenas duces tecum directed to a corporation generally should be addressed to the corporation rather than to the president or other officer to avoid possible delays in compliance if the named officer is not the most appropriate individual to make the return. The corporation should be required to select the custodian of the records or other knowledgeable individual to make the return. Such matters may be the subject of informal negotiations between the staff and counsel for the proposed respondent. If the corporation is small, closely-held and an alter-ego of a corporate officer it may be appropriate to name the corporate officer to make the return. The Assistant General Counsel for Litigation and Environmental Policy may be consulted for advice on naming proper individuals in these matters.

If the staff has not been able to identify adequately the books and records to be sought by a subpoena duces tecum, staff may decide first to use a subpoena ad testificandum directed to appropriate officers or employees of the proposed respondent who will be able to provide information about the books and records maintained by the proposed respondent, such as the format of the records, their location and other factors which will assist in drafting the specifications of the subpoena duces tecum with precision. The use of such procedure may be particularly appropriate when the investigation will involve computerized records. The data processing manager should be subpoenaed to explain the proposed respondents recordkeeping systems if the information cannot be obtained voluntarily.

(2) Ad testificandum: A subpoena ad testificandum requires the appearance and testimony of the individual named in the subpoena and should be used when the staff desires the appearance and testimony under oath of a particular corporate officer or other witness.

.3.6.7.5.3 Criteria for CIDs

For investigations with respect to unfair or deceptive acts or practices, the only form of compulsory process available to the Commission is the authority to issue civil investigative demands. This means that the authority to require § 6(b) reports and access orders is no longer available in such investigations. (However, once a complaint issues, discovery can proceed in accordance with Part 3 of the Rules, including the issuance of subpoenas.) Where law violations occur that have consumer protection as well as antitrust aspects, staff should look to the primary nature of the illegal conduct to determine whether subpoenas or CIDs should be issued. In most cases, staff can assume that matters arising in BCP require CIDs, while BC matters require subpoenas. Likewise, where the investigation contemplates violations of other statutes which BCP has the authority to enforce, such as the Consumer Credit Protection Act and the Fair Packaging and Labeling Act,

the CID is the form of compulsory process to be used. In all other investigations, subpoenas may be used. The CID authority is patterned closely after the CID authority of the Department of Justice under the Antitrust Civil Process Act, 15 U.S.C. §§ 1311-14, and case law under that statute should be referenced when interpreting Section 20. Leading cases include Aluminum Co. v. DOJ, 444 F. Supp. 1342 (D.D.C. 1978); U.S. v. GAF, 596 F.2d 10 (2d Cir. 1979); and Petition of Gold Bond Stamp Co., 221 F. Supp. 391 (D. Minn. 1963), aff'd, 325 F.2d 1018 (8th Cir. 1964).

There are three basic types of CIDs (see Illustration 7 for sample language for CIDs, and OM Ch. 18 for forms).

- (1) CIDs for the production of documentary materials are similar to subpoenas duces tecum. They must describe each class of material to be produced with such definiteness and certainty as to permit such material to be fairly identified, prescribe a return date or dates which will provide a reasonable period of time within which the material so demanded may be assembled and made available for inspection and copying or reproduction, and identify the custodian to whom such material is to be made available.

CIDs for the production of documentary material directed to a corporation should be addressed in accordance with the procedures prescribed for addressing an investigational subpoena duces tecum to a corporation. (See Criteria for Subpoenas, .3.6.7.5.2, supra.)

- (2) CIDs for written reports or answers to questions are similar to reports under Section 6(b) of the FTC Act with the addition of specific authority to obtain answers to interrogatories. They must propound with definiteness and certainty the reports to be produced or the questions to be answered, prescribe a return date or dates, and identify the custodian to whom such reports or answers are to be submitted.
- (3) CIDs for the giving of oral testimony parallel subpoenas ad testificandum. They must prescribe a date, time and place at which oral testimony will be taken, and identify the Commission investigators who will conduct the investigation and the custodian to whom the transcript of such investigation will be submitted.

For each type of CID, the Commission is required to state in the demand, "the nature of the conduct constituting the alleged violation . . . and the provisions of law applicable to such violation." The Senate Report is helpful in clarifying the scope of CIDs, as follows:

"This procedure . . . does not imply that the Commission must possess a minimum quantity of evidence before it issues a CID. One entirely valid purpose of a CID is to aid Commission investigators in determining whether there exists evidence of a violation. For example, the Commission may avail itself of the CID procedure in aid of an advertising substantiation investigation, in which the Commission seeks to ascertain whether any of a class of advertisers have violated their legal duty to have possessed adequate substantiating information relied upon as a reasonable basis for a product claim, at the time the claim was made. Similarly, CID procedures may be used in aid of the Commission's examination of a reporting agency's compliance with the Fair Credit Reporting Act." S. Rep. No. 96-500, 96th Cong. 1st Sess. 24 (1979).

Where practical, staff is encouraged to minimize the burden and inconvenience on the CID recipient by making appropriate use of staggered production schedules. This would allow companies to produce limited

information initially and additional information only if the Commission determined, after receiving the initial submission, that more information is required.

When a CID for documents is served, the recipient must produce the material for inspection and copying at the principal place of business of the recipient or at another place agreed to by the recipient. Based upon DOJ's experiences, it is expected that in practice, the CID recipient will usually mail copies of the requested documents to the Commission rather than having Commission attorneys go through the process of inspecting and copying materials designated as responsive. In that case, the Commission will generally pay the reasonable costs of copying such documents. (See OM Ch. 3.3.6.5.) The Commission is not obligated to pay search or other costs associated with compliance.

.3.6.7.5.4 Forms and Procedures for Subpoenas and CIDs

The staff submits the proposed subpoena or demand to the Commission, together with the resolution authorizing compulsory process, and a short justification memorandum (1 or 2 pages). The memorandum should describe with specificity the legal theory of the investigation, the facts known, the information needed, the reasons why the information is relevant to the inquiry, and the cost and burden production will impose on target companies.

The party to whom a subpoena or CID is directed receives the subpoena or CID, a copy of the resolution, a copy of the specifications (if duces tecum) or a demand for the production of documentary material, a blank voucher and a copy of Part 2 of the Commission's Procedures and Rules of Practice. See OM Ch. 18 for the forms included by the Secretary's Office. Staff may prepare a transmittal letter incorporating information such as the alternative of making an informal return, where appropriate. Such transmittal letters should be prepared for the signature of the Commissioner issuing the subpoena or CID. Subpoenas are usually served by certified mail with return receipt requested but may also be served by any method reasonably certain to inform the respondent. However, a CID may only be served by registered mail, certified mail with return receipt requested or personally. See Section 20(c)(7) and (8) of the FTC Act. The staff member making the service prepares an affidavit of service using either the back of a copy of the subpoena or CID or a separate affidavit, setting forth the circumstances under which service was made.

All subpoena and CID requests should be submitted to the Commission via the Minutes Branch, Room 174 of the headquarters building, in the following manner:

- (1) The original plus three (3) copies of the subpoena or CID (assembled with carbon paper), specifications, definitions, and signed copies of the resolution, should be clipped to the right-hand side of a manila folder with a plastic cover protecting them.
- (2) Three (3) copies of the resolution, specifications, justification memorandum and definitions should be placed on the left-hand side of the folder. The original justification memorandum should be placed on top of those packages.
- (3) An Expedite tag must be stapled to the outside.

Once a subpoena or CID and related documents are forwarded to the Minutes Branch, the matter is immediately transmitted to the responsible Commissioner.

Whenever a Commissioner determines that a subpoena or CID should be modified before signature, it is the responsibility of the Bureau or R.O. staff to prepare appropriate revised documents. The same number of /copies of each revised document should be prepared as were prepared for the original documents.

When a subpoena or CID has been signed, one copy is retained by the Commissioner's office. The other documents are transmitted back to the Minutes Branch, and from there to the Public Records Branch for official service. If the staff has not previously inserted a return date or indicated what the return date should be in its justification memorandum (e.g., 10 days from the date of signature), the Public Records Branch will call staff to arrange for an appropriate date. A copy stamped "mailed" will be sent to the Deputy custodian. If personal service is necessary, the staff should include a note to this effect clipped it to the outside of the manila folder.

.3.6.7.5.5 Material Withheld Based on Privilege

In drafting investigational subpoenas or CIDs (or any request for production of material), staff should instruct recipients to assert all claims for privilege or the like, such as claims for protection based on judicial order, on or before the date set for compliance. See Rules of Practice § 3.38A. See also Rules of Practice § 2.8A. Statutory protection may also be asserted in this manner in the rare instance where a statute shields material from the reach of any agency compulsory process. One such statute is § 9 of the Census Act, 13 U.S.C. § 9(a)(3), which prohibits all government agencies, other than the Department of Commerce, from issuing compulsory process for copies of census reports retained by persons or corporations. Staff should note, however, that trade secrets and confidential commercial or financial information are not privileged and their production may be compelled.

Staff may also require, by placing appropriate instructions in the subpoena, CID or other request for production, that persons who assert claims of privilege or the like submit, together with any such claim, a schedule of the items withheld which states individually as to each such item the type, title, specific subject matter, and date of the item; the names, addresses, positions, and organizations of all authors and recipients of the item; and the specific grounds for claiming that the item is privileged. See Rules of Practice §§ 2.8A(a), and 3.38A(a). While this requirement need not be included in every subpoena, CID, or other documents request, staff will find the requirement extremely useful when contesting privilege claims. [See OM Ch. 10.13.6.4.12 for further discussion.]

Staff should inquire about the recipient's practices regarding document retention or destruction. To avoid possible destruction of relevant material, staff should request that the recipient suspend routine document destruction for the duration of the investigation and any ensuing litigation, or otherwise take appropriate measures, to avoid destruction of potentially relevant material. Staff may also draft the compulsory process instructions to require recipients to account for any unusual loss or destruction of responsive material.

All claims of privilege should be carefully evaluated to determine if the requirements for asserting privilege have been satisfied and whether or not the claims have been waived.

Compulsory process instructions should also indicate that recipients should not file a petition to limit or quash such compulsory process solely to raise claims of privilege or similar claims. Nonetheless, a petition to limit or quash would still be necessary for asserting objections to a subpoena or CID on the grounds of burden, relevance, jurisdiction or constitutional claims, among others.

A person who withholds documents without asserting claims of privilege or the like in the manner set forth above has not fully complied with the compulsory process. Accordingly, it may be appropriate in such instances to request the General Counsel to seek full compliance through a compulsory process enforcement proceeding in federal district court. Where there is reason to believe this omission was deliberate or the result of gross negligence, staff should consider recommending that the Commission institute disciplinary proceedings under Rules of Practice § 4.1(e)(2) against the responsible attorney(s).

See Illustration 7 in Chapter 10 for sample subpoena and CID instructions. See Illustrations 5 and 6 in Chapter 3 for sample instructions in letters requesting voluntary production of material. See also Illustrations 16 and 17 in Chapter 3 for a sample Access Order and Order Requiring Filing of Special Report, respectively.

.3.6.7.5.6 Extensions of Time

Extensions of time to comply with investigational subpoenas or CIDs may be granted by the Directors, Deputy Directors, and Assistant Directors of the Bureaus, and by the Regional Directors and Assistant Regional Directors, pursuant to the authority delegated to them. Unless otherwise directed by the Commission at the time of approval of the investigational resolution, extensions of time need not be reported to the Commission. Extensions of time should ordinarily be granted only upon adequate justification submitted in writing by the party under compulsory process or counsel. The need for extensions of time can be minimized by setting a return date which is realistic based upon the volume of records sought and the difficulty involved in producing them but not ordinarily in excess of 30 days. The granting of an extension should be confirmed by a certified letter to the party under compulsory process, signed by the official granting the extension, with a copy to counsel if the party is represented.

.3.6.7.5.7 Petitions to Quash or Limit

To avoid confusion, the Commission has adopted the term "petition to quash or limit" in lieu of "motion to quash or limit" for all investigational subpoenas and orders as well as CIDs. Petitions to quash or limit investigational subpoenas or CIDs are filed with the Office of the Secretary. Such petitions must be filed within 20 days after service of the subpoena or CID, or, if the return date is less than 20 days after service, prior to the return date. When the petition is filed, a copy is sent to the Compulsory Process Commissioner (the member of the Commission designated to consider petitions to quash or limit). A copy of the petition will thereafter be served on the Compulsory Process Commissioner and the staff, and a copy sent to the FOIA/PA Branch. The staff need only submit such response as may be requested by the Commissioner. The response should consist of a memorandum to the Compulsory Process Commissioner providing the requested information. A copy of the memorandum should be sent to the appropriate Bureau Director at the same time for the Director's information. The Compulsory Process Commissioner will prepare a proposed disposition of the petition for consideration by the Commission, which may either deny or grant the petition in whole or in part. Petitions to quash or limit, and the Commission's responses thereto are placed on the public record except for trade secrets or confidential commercial or financial information which is deleted by the FOIA/PA Branch. For further guidance, see Commission Rule 2.7(d) and OM Ch. 15. The staff's memorandum to the Compulsory Process Commissioner is not placed on the public record and is not available to opposing counsel.

The timely filing of a petition to quash or limit an investigational subpoena or CID stays the requirement of a return on the portion challenged if the Commission has not ruled upon the petition by the return date. If it rules on or subsequent to the return date and its ruling denies the petition in whole or in part, the Commission's response will specify the time and place for full compliance on a new return date determined by

the Secretary in consultation with the staff. The certified letter of notification will be forwarded by the Secretary to movant's counsel with a copy to the movant.

Requests to withdraw petitions to quash or limit investigational subpoenas or CIDs are filed with the Secretary and referred to the Compulsory Process Commissioner. The responsible staff will be notified by telephone of the filing of the request. If the request for withdrawal is received by the staff instead of being filed with the Secretary, the Compulsory Process Commissioner should be immediately notified. Upon withdrawal of the petition by the Commission, the Secretary will determine, in consultation with the staff, a new date for compliance with the subpoena or CID. Movant's counsel will be notified of the new return date by certified letter from the Secretary, with a copy to the movant. The request to withdraw, and the Commission's disposition thereof are placed on the public record.

.3.6.7.5.8 Enforcement of Compulsory Subpoenas

Pursuant to Rule 2.13, the General Counsel has been delegated, without power of redelegation, the authority to institute, on behalf of the Commission, an enforcement proceeding in connection with the failure or refusal of a person, partnership or corporation to comply with, or to obey, a subpoena or CID if the return date or any extension thereof has passed. It is the responsibility of the staff confronted with such failure or refusal to bring the matter to the attention of the General Counsel by memorandum via the appropriate Bureau Director. See OM Ch. 13 for further guidance.

.3.6.7.6 Investigational Hearings

.3.6.7.6.1 Purpose and Scope

Investigational hearings are held to formalize the interview process by requiring the presence of a person at a given time and place, to be sworn and to produce documents and/or testimony. A verbatim transcript is made of the proceedings which are presided over by a duly authorized representative of the Commission. Investigational hearings may be authorized for any of the purposes set forth in Rule 2.8, including compliance investigations. Following is a discussion of the conduct of the hearings and the development of the record.

.3.6.7.6.2 Conduct of Hearings

Investigational hearings must be conducted in conformity with Part 2A of the Commission's Rules. The hearings may be recessed as necessary but should not be adjourned or the witnesses released unless and until the staff is fully satisfied that an adequate return has been made.

.3.6.7.6.3 Participation in Hearings

.3.6.7.6.3.1 Hearings in General

Members of the staff other than attorneys may participate in investigational hearings either as presiding officer or managing staff. However, due to the additional duties imposed on presiding officers in hearings conducted pursuant to CIDs (described below), an attorney should be the presiding officer in those instances.

.3.6.7.6.3.2 Hearings Conducted Pursuant to a CID

In investigational hearings conducted pursuant to a CID for the giving of oral testimony, the Commission investigators must exclude from the hearing room all other persons except the person being examined, his counsel, the officer before whom the testimony is to be taken, and the stenographer recording such testimony.

The Commission investigators include only those staff persons (including attorneys) whose presence is required to assure an orderly and efficient hearing. Thus, economists as well as Commission consultants and contractors who have signed pledges of confidentiality may also be present.

.3.6.7.6.4 Presiding Officer's Responsibilities

The presiding officer is responsible for the conduct of the hearings, including the administration of oaths, the receipt of testimony and exhibits, the maintenance of an accurate transcript of the proceedings, and the delivery of the transcript to the custodian (see OM Ch. 15). The presiding officer ordinarily makes an opening statement for the record to explain the purpose of and authority for the hearings, including the rights and obligations of witnesses and counsel. An example of such an opening statement will be found as Illustration 13. The opening statement should be repeated when other counsel appear on behalf of witnesses who were not present at the initial convening of the hearings. If the hearings involve a compliance investigation, the opening statement should note that the purpose of the hearings will include consideration of respondent's compliance with the order and a copy of the applicable decision and order should be included in the record of the proceedings. In addition to other responsibilities, the presiding officer may question witnesses if necessary to ensure that the record is fully developed. In a nonpublic investigation, the presiding officer may exclude from the hearing room witnesses and counsel other than the witness testifying and his or her counsel.

.3.6.7.6.5 Managing Submitted Documents

When the witness is appearing in response to a subpoena duces tecum or a CID for the production of documentary material, it is the primary responsibility of the authorized staff conducting the examination of the witness to ensure that a satisfactory return is made on the subpoena, that the documents sought by the subpoena are submitted in proper form and are properly identified and explained in the record, with reference to the exhibit numbers for each exhibit and to the subpoena specification to which it is responsive. If the witness desires to submit authenticated copies in lieu of originals, any such agreement should be made on the record to avoid any future questions as to the authenticity of the copies. Any agreements regarding the subsequent admission of documents or as to the substitution and subsequent appearance of other witnesses should also be made on the record. If there is any question about the adequacy of the return, the hearings should be recessed subject to recall of the witness or the calling of additional witnesses. The witness should not be released until the staff is fully satisfied as to the adequacy of the return. See OM Ch. 10.13.6.4.7 for further guidance on subpoena and CID returns.

.3.6.7.6.6 Marking and Identifying Exhibits

To expedite the identification of documents during a hearing, particularly when a large volume of documents will be produced, staff should attempt to meet with the witness and counsel in advance of the hearings to discuss any problems and to identify and mark the exhibits. This advance preparation will facilitate an orderly production of documents during the hearing without the necessity for substantial recesses to mark documents. A separate question which references each subpoena or CID specification should be asked of each witness responding to a subpoena duces tecum or a CID for the production of documentary material. The record should clearly show what documents the witness is producing in response to each specification.

Each document produced should be marked in a manner similar to that used in marking exhibits in litigated matters and in the numbering sequence set out in the Commission's Official Reporter Contract, a copy of which may be obtained from the Records Branch. The witness should be asked to identify and describe each document or group of related documents, making reference to the exhibit numbers. The exhibits should then be turned over to the official reporter for marking and authorized staff should then request the presiding officer to admit each exhibit into the record. There should be a clear understanding with the official reporter regarding the custody of the exhibits whether staff wishes to retain custody or have the reporter retain custody, except when the witness is appearing in response to compulsory process in a law enforcement investigation. In those situations, the appointed custodian or deputy custodian will retain custody of all exhibits submitted (See OM Ch. 15). Any deficiencies in the identification of exhibits submitted during the investigational hearing may cause problems particularly if those exhibits are later used in a litigated matter.

.3.6.7.6.7 Rights of Witnesses and Counsel

The rights of witnesses and counsel are set out in Rule 2.9. Counsel for the witness should be furnished a copy of the Rules prior to the hearing if a copy has not previously been provided.

.3.6.7.6.8 Transcripts

Arrangements for the services of the official reporter are made by request directed to the Records Branch. Oral requests should be confirmed by written memorandum. The services of the reporter are governed by the provisions of the Official Reporter Contract and the staff should be familiar with the relevant portions. See OM Ch. 18 for further guidance regarding the scheduling of reporting services. Ordinarily, the reporter provides three copies of the transcript - one for the presiding officer, one for Commission staff, and an official copy for the Office of the Secretary. The official copy of the transcript is incorporated into the investigational file. The right of a witness to obtain a copy of the witness's testimony is governed by Rule 2.9(a).

As soon as possible, staff should review the transcript of the hearing to determine if there are any errors of substance in the testimony of the witness or other errors or omissions which should be corrected. If there are such errors or omissions staff should contact counsel for the witness (or the witness if not represented) and attempt to secure an agreement in writing specifying the agreed-upon changes. If such agreement is obtained, staff should request the presiding official to direct that necessary changes be made in the transcript pursuant to the provisions of the Official Reporter Contract.

In addition, where the investigational hearing has been conducted pursuant to a CID, upon completion of transcription of the testimony of the witness, the witness must be offered an opportunity to read the transcript of his or her testimony. Any changes in form or substance which the witness desires to make, must be entered and identified upon the transcript by the Commission investigator with a statement of the reasons given by the witness for making such changes. The transcript must then be signed by the witness unless the witness cannot be found, is ill, waives in writing his or her right to sign, or refuses to sign. If the transcript is not signed by the witness within thirty days of being afforded a reasonable opportunity to review it, the Commission investigator must sign the transcript and state on the record the fact of the waiver, illness, absence of the witness, or the refusal to sign, together with any reasons given for the failure to sign.

Depending on the circumstances, staff may request accelerated, daily, or rush copy. Request for such copy must be directed to the Secretary by memorandum containing justification and routed through the appropriate

Regional Director or Bureau Director. See the appropriate provisions of the Official Reporter Contract for further information.

If the investigational hearings will be unusually long or complex, the staff may request approval for obtaining a computer-readable magnetic tape as well as the regular form of transcript. Staff should consult with the Information Systems Division in advance of the hearing to determine whether such procedure would be appropriate in the particular case. Magnetic-tape transcripts must be requested in advance by memorandum to the Secretary, containing justification and routed through the appropriate Bureau Director or Regional Director, with a copy to the Information Systems Division.

.3.6.7.6.9 Grants of Immunity

The Organized Crime Control Act of 1970 repealed that part of FTCA § 9 which granted automatic immunity against self-incrimination to any natural person compelled to testify or produce records. Under this Act, such immunity may be granted only by the Attorney General or designee and attaches only when the prospective witness has invoked or is likely to invoke the privilege against testifying on the specific ground that the witness's answers may tend to be self-incriminating and an order compelling the testimony has been issued. The following procedures apply to both investigational hearings and hearings in adjudicative matters under Part 3 of the Rules. See also Rule 3.39.

When staff desires the issuance of an order requiring a witness to testify or provide other information under grant of immunity, Directors and Assistant Directors of the Bureaus and Regional Directors and Assistant Regional Directors are authorized to determine: (1) that the testimony or other information sought from a witness or deponent, or prospective witness or deponent, may be necessary to the public interest, and (2) that such individual has refused or is likely to refuse to testify or provide information on the basis of the witness's privilege against self-incrimination.

- (1) A written memorandum incorporating these determinations shall be executed and retained in the files in a form suitable for placement in the record, if necessary, with a copy furnished to the Commission's liaison officer with the Department of Justice.
- (2) Thereafter, the Bureau or Regional Office will prepare a letter for the signature of the General Counsel, to the appropriate Immunity Unit of the Criminal Division, Department of Justice, requesting authorization to issue an order requiring the witness to testify and provide other information and to grant immunity. See Illustration 14 for an example of such letter. The letter will include, insofar as possible, the information required by the Attorney General. See Appendix A for an outline of the required information. The letter (original and five copies) will be forwarded by memorandum to the General Counsel via the Commission's liaison officer with the Department of Justice. See Illustration 15 for an example of such memorandum.
- (3) The General Counsel, after review, will sign the letter to the Department of Justice and will advise the Commission. Unless the request concerns a witness or prospective witness in a matter pending in adjudication, the General Counsel will furnish the Commission with copies of the letter.
- (4) Thereafter, the General Counsel, through the Commission's liaison officer with the Department of Justice, will advise the appropriate Bureau or Regional Office of the result of the request for authority to issue the order, which will be in the form of a letter from the Assistant Attorney General.

- (5) The staff will then advise the presiding officer or Administrative Law Judge that the order has been obtained, and that the hearing should be reconvened.

Where an order requiring a witness to testify or provide other information and granting immunity is desired by counsel other than Commission staff, the above procedures shall be followed except that the presiding officer or Administrative Law Judge shall make the required determinations and initiate the request.

Ordinarily, the staff will become aware of possible immunity questions prior to the hearing. When the privilege against self-incrimination is first asserted during the hearing, neither staff nor the presiding officer or Administrative Law Judge may direct the witness to answer. Staff may, however, ask the presiding officer or Administrative Law Judge to recess the hearing pending receipt of an immunity order, or may continue to question the witness until the examination is completed, except for those questions as to which the witness has claimed privilege.

In either instance, the witness will not be directed to answer such questions unless the staff obtains an authorization to grant immunity by following the above procedures.

If immunity is authorized, it will be in the form of a letter from an Assistant Attorney General to the General Counsel of the Commission. The General Counsel will forward the letter to the staff via the Commission's liaison officer with the Department of Justice. The staff will submit the letter to the presiding officer or Administrative Law Judge, who, upon refusal of the witness to testify, will read the letter into the record and include it as an exhibit in the record of the proceedings. The presiding officer or Administrative Law Judge will order the witness or deponent to testify which will have the effect of granting the witness immunity pursuant to Title II of the Organized Crime Control Act of 1970. If the witness or deponent continues to refuse to testify despite being granted immunity, the matter will be reported to the Commission via the General Counsel for consideration of possible enforcement proceedings or criminal prosecution or both.

If immunity is not granted by the Department of Justice, the staff will be so advised, and, if the hearing is reconvened, the witness will be advised that immunity has not been granted. Under such circumstances, if the witness refuses to testify and if there appears to be no justification for the refusal and such testimony is essential, the staff should discuss the matter with the General Counsel's Office to determine what further action, if any, should be taken by the Commission.

After the witness or deponent has testified pursuant to the immunity order, the staff will forward, via the Commission's liaison officer, a further letter to the Department of Justice furnishing the information required in such cases. See Appendix B for a checklist of the required information. In each instance when testimony or other information is produced under a grant of immunity, it is the responsibility of the staff to notify the Records Division, Office of the Secretary, that the Attorney General has requested that a transcript of the testimony be preserved for a period of five years from the date of the testimony.

.3.6.7.7 Access Orders

Another compulsory procedure which is authorized under FTCA § 6 is an order requiring access. See Rule 2.11. In investigations conducted with respect to unfair or deceptive acts or practices, the authority of the Commission to issue access orders has been repealed. Authorization for such orders requires approval of an investigational resolution. An access order may be used alone or in conjunction with an investigational subpoena, and requires the party to grant access for the purpose of examination and the right to copy any documentary evidence. Access orders are issued only by the Commission and the proposed order should be

forwarded with the request for an investigational resolution. Extensions of time for compliance and petitions to limit or quash orders requiring access are handled in the manner provided in Rule 2.11. For a case involving the use of access orders, see Memorandum Order by Judge Gasch in FTC v. Jorgensen, 9 S. & D. 1352 (D.D.C. 1975). For an example of an access order, see Illustration 16.

.3.6.7.8 Orders to File Special, Section 6(b) FTCA, Reports

.3.6.7.8.1 Purpose and Scope

Orders to file special reports are an investigative tool specifically designed to compel sworn responses to detailed questions concerning the nature and operation of a business or industry. Section 6(b) orders cannot be used in investigations with respect to unfair or deceptive acts or practices. In those instances, CIDs for a written report or answers to questions must be employed. Carefully prepared special report orders will produce uniform responses, and are particularly useful in industry-wide investigations. In contrast to investigational subpoenas duces tecum which are limited to the production of existing documents, orders to file special reports may require the recipient to create documents based upon record searches, calculations, physical inventories, audits and other data developed by the recipient of the order. Special report orders may be directed to persons, partnerships and corporations subject to the Commission's jurisdiction. If time is an important factor in the proposed investigation, staff should consider whether, because of time required for drafting the orders and obtaining approval and clearance under the Paperwork Reduction Act, if required, another investigative tool may be more appropriate. See .1.3.6 above for further information about the Paperwork Reduction Act.

.3.6.7.8.2 Clearance and Approval

The Commission cannot delegate the authority to approve orders to file special reports. Like investigational subpoenas and CIDs in which a Commissioner acting pursuant to a Commission resolution must approve the actual subpoenas, CIDs and specifications, the Commissioner also must approve and sign the actual orders to file special reports. If identical special report orders are to be sent to two or more parties, the staff ordinarily submits for approval a sample order and a list of the intended recipients. However, all of the orders must be signed by a Commissioner.

Proposed special report orders should be prepared with the guidance of the Bureau of Economics, or when appropriate, other sources, such as an industry expert, to ensure that the terminology used to obtain the desired information will permit ready analysis of uniform data. See OM Ch. 18 for support services. Other government agencies with the requisite expertise may also be consulted for assistance in drafting the orders. The designated Commission liaison officer for that agency should be consulted for assistance. (See OM Ch. 14 for liaison officers.) The staff is cautioned that information obtained from the recipients of the special report orders should not be disclosed to those individuals or agencies assisting in the drafting except in accordance with Commission directives and procedures for the disclosure of confidential information.

Another method of evaluating the reliability of a proposed special report order that the staff may consider is consultation with the appropriate industry trade association. If a large number of orders are to be sent, a pretest on an industry member may also be used to identify potential problems; however, a pretest requires advance Commission approval. Where necessary consultation is not available without cost, staff may consider obtaining the services of a paid consultant. (See AM 3.200)

To avoid possible duplication of effort or conflict, a proposal for an economic study using special report orders should be discussed with the Department of Justice to determine if the Department has an interest in the field to be studied. Such coordination should ordinarily be conducted through the Commission's liaison officer with the Antitrust Division. (See OM Ch. 14.)

If the orders to file special reports are to be sent to 10 or more parties, clearance by OMB may be required under the Paperwork Reduction Act. See .1.3.6 above for guidance.

If the special report orders are expected to produce large amounts of data, the staff should determine if the Commission's computer facilities may be used to organize and analyze data. (See OM Ch. 18)

.3.6.7.8.3 Forms and Procedures

Requests for authorization to use special report orders should be submitted by memorandum to the Commission forwarded via the same review and evaluation process required for approval of investigational resolutions, subpoenas, and CIDs. If the Commission has previously approved an investigational resolution, the memorandum should: (1) describe the nature of the investigation; (2) justify the use of special report orders in contrast to other forms of compulsory process; (3) describe the nature of the data to be sought; (4) identify those parties who will be required to file the reports (name, address and status); and (5) describe the expected uses to which the information will be put. If the Commission has not previously approved an investigational resolution, the memorandum should also contain justification for the use of compulsory procedures in contrast to voluntary procedures for obtaining the desired information. If a pretest is contemplated, approval should be sought at this time.

The transmittal memorandum should be accompanied by an appropriate investigational resolution, either proposed or previously approved; the Order Requiring Filing of Special Report (Illustration 17) and the Special Report Form with Certification.

If more than one type of special report order is to be sent, e.g., to different classes of customers, a sample of each different form of special report order should be attached. The staff should also prepare and submit cover letters to the recipients of the orders which explain the purpose of the investigation and urge the recipients to contact the responsible staff member if questions arise. The letter should give the name and address of the official responsible for granting time extensions and procedures for filing a petition to quash or limit. See Illustration 18 for an example of such letter. (Enclosing a copy of the FTCA, as amended, and the Commission's Rules is also recommended.)

Note: Each page of the special report orders should bear the investigation number for identification purposes.

.3.6.7.8.4 Service of Special Reports Order

If the Commission approves the orders to file special reports, the orders will be signed by a Commissioner and returned to the staff. Headquarters staff transmit the assembled cover letters, with signed originals of the orders, a Special Report Form with Certification, copy of the FTCA, as amended, and a copy of the Commission's Rules to the Office of the Secretary, for mailing (by certified mail). The return receipts are received by the Office of the Secretary and forwarded to the responsible staff members or may be returned directly to the staff member if requested. The staff should maintain a list of certified mail receipt numbers and ensure that the receipts are returned. If an order is lost in the mail, the staff may request the Office of the

Secretary to send a duplicate to the party. The return receipts must be carefully preserved because they will be necessary in any subsequent enforcement action if the party fails to comply with the order to file a special report. Regional Offices may have special report orders mailed by the Office of the Secretary by following the above procedures, or may have the special report orders returned to the regional office for mailing.

.3.6.7.8.5 Extensions of Time to File Special Reports

Bureau Directors, Deputy Directors and Assistant Bureau Directors and Regional Directors and Assistant Regional Directors are authorized to grant extensions of time for the filing of special reports. Extensions should ordinarily be granted only upon a showing of good cause by the recipient and should be for the minimum time necessary for the recipient, acting in good faith, to file the report. The granting of the extension should be confirmed by certified letter to the recipient of the order and signed by the official granting the extension. The return receipt should be preserved for use in any subsequent enforcement proceedings. Any unusual extensions of time should be reported to the Commission.

.3.6.7.8.6 Petitions to Quash or Limit

Bureau Directors, Deputy Directors and Assistant Bureau Directors and Regional Directors and Assistant Regional Directors are authorized to grant extensions of time for the filing of petitions to quash or limit special report orders. Petitions to quash or limit are filed with the Secretary and will ordinarily be routed to the General Counsel, who prepares a recommendation for the Commission. The staff may respond to such petitions, but need not do so unless requested by the General Counsel. Responses should not deal at length with grounds cited in support of the petition which have been dealt with exhaustively by the Commission in the past.

The petitions to quash or limit, and the Commission's responses thereto, are placed on the public record except for trade secrets and other confidential information which will be deleted by the Freedom of Information Branch. See Commission Rules 2.12 and 2.13 for further guidance.

The timely filing of a petition to quash or limit a special report order stays the requirement of a return on the portion challenged if the Commission has not ruled upon the petition by the return date. If it rules on or subsequent to the return date and its ruling denies the petition in whole or in part, the Commission's response will specify a new return date determined by the Secretary in consultation with the staff.

.3.6.7.8.7 Notice of Default

In the event of complete or partial failure on the part of the recipient of an Order to File Special Report to comply with the order, the responsible staff member ordinarily prepares an appropriate Notice of Default which should be transmitted to the Commission by explanatory memorandum via the appropriate Bureau Director or Regional Director with recommendation for issuance to the recipient of the special report order. Such notice of default is required by § 10 FTCA before the sanctions authorized by that section can be invoked. See Illustration 19 for an example of a Notice of Default. See also Rule 2.13 for further guidance regarding enforcement.

.3.6.8 Investigative Liaison with the U.S. Postal Service

.3.6.8.1 General

The use of the mails or interstate wire communications is frequently involved in practices under investigation in consumer protection matters. The Postal Service investigates matters involving mail fraud (18 U.S.C. § 1341, 1342) and fraud through interstate wire communications (18 U.S.C. § 1343). Because these are criminal statutes, intent to commit fraud must be established. The Postal Service also utilizes civil proceedings, and it is important that the staff maintain liaison with the Postal Service to avoid possible conflicting investigations. The staff should also be aware of possible investigational assistance that can be obtained from the Postal Service under certain circumstances which will be discussed in the following paragraphs.

.3.6.8.2 Clearance

If facts come to the attention of the staff indicating that a proposed respondent in an investigation may be engaged in mail or wire fraud, the staff should communicate with the Postal Service to determine if it has a pending investigation. To accomplish this, headquarters staff should use FTC Form 6-59 (Illustration 20), which will be transmitted through the Commission's liaison officer with the Postal Service. The use of this form by Regional Office staff is optional. If the form is not used, the answers to essential questions appearing on the form must be obtained and a memorandum for the file prepared. Inquiries by regional office staff should be directed to the appropriate postmaster, ordinarily the one responsible for the area where the proposed respondent's principal office or place of business is located.

If the Postal Service has no pending investigation, the staff may proceed with the investigation. If the Postal Service does have a pending case, and indicates that a Commission investigation would interfere, the Commission may defer to the Postal Service investigation. However, such deferment would only follow a careful weighing of the public interest, e.g., would a consumer redress action by the FTC be the best remedy or would criminal prosecution by the Postal Service be the best method of halting the practices? If the staff believes that the Commission's investigation should be closed, an appropriate closing memorandum will be prepared and submitted with an appropriate letter to the Postal Service prepared for the Secretary's signature and advising of the closing. No closing letter is sent to the proposed respondent. Before recommending closing, the staff must determine that both the charges and the products involved in the investigations are identical and that the public interest does not otherwise indicate that the Commission should proceed. If there is any question, it should be resolved by further liaison. If the Postal Service and the Commission are considering different aspects of the proposed respondent's business, the staff may proceed with its investigation. If the Postal Service has a pending case but does not oppose continued investigation by the Commission, the staff may proceed but should not seek an immunity order from the Attorney General without approval by the Postal Service.

.3.6.8.3 Mail Covers

A mail cover is an extraordinary investigative technique by which the Postal Service makes a record of any data appearing on the outside cover of any class of mail matter received or sent by the party under investigation, and in addition checks the contents of any second, third or fourth class mail matter as sanctioned by law. A mail cover is now used only to obtain information in the interest of: (1) protecting the national security; (2) locating a fugitive; or (3) obtaining evidence of the commission or attempted commission of a crime which is punishable by law by imprisonment for a term exceeding one year. The use of mail covers by the Commission is thus restricted to those instances in which the Commission is requested by a United States Attorney to investigate possible criminal violations of the Truth-in-Lending Act. In such cases the staff must obtain authorization from the Commission to request the Postal Service to place a mail cover, that the U.S. Attorney has been informed of the possibility of a criminal violation, and that the U.S.

Attorney has requested that the Commission conduct the investigation. See OM Ch. 9 for further information regarding investigation of criminal violations of the Truth-in-Lending Act.

.3.6.8.4 Bulk-Rate Mail Volume Readings

The use of bulk mail volume readings as a mode of investigation is less restricted than mail covers. The staff must obtain authorization from the Commission to request the Postal Service to report the number of bulk pieces mailed by an investigated party for a designated time period. The memorandum to the Commission must recite the background of the case and the necessity for the bulk-rate mail volume reading, and state that efforts by the staff to obtain the desired information voluntarily have failed. An appropriate letter should accompany the memorandum.

.3.6.8.5 Box Holder Information

Information as to the names, addresses and telephone numbers of post office box holders may be obtained by requesting such information from the postmaster or postal inspector in the town where the box is located. Such information will be provided only as to commercial box holders. Normally this information can be obtained in person, but if a letter is requested by the postmaster, an appropriate letter may be signed by the staff.

.3.6.8.6 Monitoring of Metered Mail

The Commission has delegated to the Director of the Bureau of Consumer Protection, with power of redelegation, the authority to request from the Postal Service the results of investigations of the monitoring of metered mail. The Bureau of Competition will still be required to seek Commission authorization. Such requests may be appropriate when the mailing date of metered mail is relevant to a Commission investigation and should be made by memorandum to the Bureau Director explaining the justification for the request. An appropriate letter of request should accompany the memorandum.

.3.6.9 Investigative Liaison with the Department of Justice Re: Criminal Violations of the Sherman Act

If the staff develops information during the course of a competition investigation indicating possible criminal violations of the Sherman Act, the Commission's liaison officer with the Antitrust Division of the Department of Justice should be consulted for guidance as to applicable policies and procedures.

.3.6.10 Investigative Liaison with State or Local Agencies

Ordinarily, the possibility of a state or local agency being able to deal effectively with the subject matter of an investigation will have been dealt with in the initial phase of the investigation. When an allegedly unlawful practice is being used primarily intrastate, an effort should usually be made to obtain corrective action at the state or local level, the objective being to obtain corrective action at the lowest practicable level of government which has the authority and resources to deal with the matter. In recommending action by the Commission against practices which are also covered by state or local law, the staff should explain why state or local action cannot be taken or will not be effective. When possible, the staff should obtain a request, preferably in writing, from the state or local agency asking that the Commission proceed.

During the course of an investigation, when contact is made with a state or local agency, staff may disclose to state or local officials the existence of the investigation, the identity of the parties under investigation and the

practices being considered, but the staff should make it clear that such information is non-public (unless and to the extent the Commission had directed that the investigation be public) and should not be further disclosed.

For procedures pertaining to requests from state or local agencies for access to other non-public information in investigational files, see OM Ch. 15. Also see OM Ch. 15 for special procedures applicable to consumer protection coordinating committees.

.3.7 DISPOSITION OF FULL INVESTIGATIONS

.3.7.1 By Investigational Consent Agreement

Pursuant to Rule 2.31, a proposed respondent under investigation is ordinarily offered the opportunity to submit a proposal for disposition of the investigation in the form of an executed consent agreement which complies with the requirements of Rule 2.32. See OM Ch. 6 for policies and procedures governing investigational consent agreements.

.3.7.2 By Recommendation for Complaint

If a recommendation for issuance of complaint under Part 3 of the Commission's Rules is to be made, see OM Ch. 4 for further information.

.3.7.3 By Recommendation for Enforcement or Corrective Action Other than Acceptance of Investigational Consent Agreement or Issuance of Complaint

Investigations may be disposed of through recommendation for other forms of enforcement or corrective action such as: (1) trade regulation rulemaking (OM Ch. 7); (2) issuance of a staff report (OM Ch. 8); (3) promulgation of industry guides (OM Ch. 8); (4) FTCA administrative complaint proceedings with notice of possible consumer redress under FTCA § 19(a)(2) (OM Ch. 11); (5) enforcement of orders against nonrespondents under § 5(m)(1)(B) FTCA; (6) TRR enforcement through institution of judicial action for civil penalties or consumer redress (OM Chs. 11 and 12); or (7) recommendation for compliance investigation (OM Ch. 12). For further information regarding these dispositions, consult the appropriate chapter as indicated.

Note: If a recommendation for consent agreement, complaint or other enforcement or corrective action pertains to only certain proposed respondents and the staff wishes the investigation to remain open to other proposed respondents, the transmittal memorandum should so indicate.

In civil penalty actions, once judgment has been entered, a brief memorandum should be submitted closing the matter. An exception to this procedure may occur where the judgment includes consumer redress or other action which requires staff effort. In these cases, the file may be kept open until all staff participation is completed, at which time the staff would draft a closing memorandum.

.3.7.4 Closing -- No Further Action

.3.7.4.1 General

As soon as it becomes apparent during an investigation that no violation of the laws or regulations enforced by the Commission has occurred which would justify a recommendation for enforcement or corrective action, or that for other good reasons the matter should be closed, the investigation should be discontinued and the matter submitted for closing. It is not ordinarily necessary to continue an investigation for the sole purpose of obtaining additional information to justify closing.

.3.7.4.2 Clearance and Approval

The Directors of the Bureau of Consumer Protection and Competition have been delegated the authority to close investigations which they have approved unless:

- (1) The investigation was authorized by the Commission;
- (2) Compulsory process was authorized.

Recommendations for closing matters falling in the above-numbered categories must be directed to the Commission via the appropriate Bureau Director. Recommendations for closing investigations which do not fall in the above numbered categories will be directed to the appropriate Bureau Director.

.3.7.4.3 Reasons for Closing

The underlying reasons supporting a recommendation to close an investigation without corrective action should be discussed in the closing memorandum. In most instances a closing recommendation is justified by one or more of the following reasons; however, the following are only examples of reasons upon which a closing may be based and should not be interpreted by themselves as a mandate for closing or as being an all-inclusive listing of bases upon which an investigation may be closed:

- (1) Insufficient evidence of jurisdiction
- (2) Excessive cost of investigation or testing
- (3) Out of business
- (4) Insubstantiality of practice or business
- (5) Proceedings by another government agency
- (6) Private litigation
- (7) Insufficient evidence of violation
- (8) Practice abandoned
- (9) General inquiry
- (10) Policy directive
- (11) Private controversy
- (12) Scientific controversy
- (13) Consolidation with another file
- (14) Cessation by federal court action
- (15) Insufficient evidence of effect (§ 7, Clayton Act; § 5 FTCA, unfair methods)

- (16) Advisory opinion rendered
- (17) Scarcity of Commission resources or existence of matters of higher priority. (In such case, the Commission must be provided with sufficient information upon which it can base its decision whether such matter should be pursued.)

.3.7.4.4 Closing Memorandum

When staff determines that an investigation should be closed without corrective action, the matter should be submitted with a memorandum addressed to the Secretary or the Commission as appropriate. Closing memoranda should be complete in themselves and limited to information concerning the investigation and the recommendation for disposition. Any recommendation for separate action, such as a proposal for an industry study or a recommendation for legislation, based on information developed in the investigation, should be incorporated in a separate memorandum to the Bureau Director or Commission as appropriate which may accompany the file or may be sent separately. The closing memorandum should be as brief as possible, consistent with clarity, and its contents segregated in accordance with the requirements of the Freedom of Information Act. (See OM Ch. 15 for guidance and for applicable procedures for compliance with that statute.)

The following topics should ordinarily be covered in the closing memorandum:

- (a) Applicant and applicant's counsel, if any;
- (b) Proposed respondent and respondent's counsel, if any;
- (c) Origin and scope of investigation;
- (d) Proposed respondent's organization, products and method of doing business;
- (e) Practices investigated and summary of findings;
- (f) Commerce;
- (g) Reasons for recommendation;
- (h) Conclusions;
- (i) Where applicable, reasons for not sending a closing letter or for issuance of a news release;
- (j) Where applicable, recommendation for referral of evidentiary materials to a federal, state or local agency; and
- (k) Recommendation.

Important statements in (d), (e), (f) and (g), above, may be supported by citations to the file in appropriate cases. Ordinarily, the conclusions section will not contain citations to the file because the conclusions will be based on statements which have been supported previously in the memorandum.

If staff recommends that closing letters not be sent, the reasons supporting that recommendation must be included in the closing memorandum, e.g., the file is to be referred to another agency which may take action. Although the staff recommends that no closing letters be sent, appropriate closing letters should be transmitted with the memorandum for use in the event the staff's recommendation is not approved. If closing is being recommended prior to the conclusion of a full investigation, a succinct closing memorandum discussing the reasons for closing may be all that is necessary.

For procedures involving referrals to a state or local law enforcement agency, see .2.4.3.3, above.

.3.7.4.5 Closing Letters

.3.7.4.5.1 Policy

In investigations which have been approved by Bureau Directors, closing letters are ordinarily sent to both the applicant and the proposed respondent, with copies to their attorneys, if any. Closing letters may also be sent to other interested parties, but an explanation of their interest should be included in the closing memorandum. See OM Ch. 12 regarding closing letters in compliance matters. Closing letters prepared for the signature of the Secretary or Bureau Director are submitted with the closing memorandum. The Commission has also directed that copies of closing letters to proposed respondents be forwarded to applicants who requested and were denied access to investigational files while the matter was in active status.

.3.7.4.5.2 Format

The following statement is included in all closing letters unless otherwise directed by the Commission:

"Upon further review of this matter, it now appears that no further action by the Commission is warranted at this time. Accordingly, the investigation has been closed. This action is not to be construed as a determination that a violation may not have occurred, just as the pendency of an investigation should not be construed as a determination that a violation has occurred. The Commission reserves the right to take such further action as the public interest may require."

The Commission has emphasized that care and judgment must be used by the staff in all public communications to avoid inclusion of any statement indicating that the Commission has taken a position on the merits of an investigation.

In closing letters to applicants, unless a specific reason exists for using different language, a final paragraph thanking applicants for their interest may be included as follows:

"Your interest in calling this matter to the attention of the Commission is appreciated."

This statement should be used with discretion; its use would not be appropriate, for example, where the investigation disclosed that the applicant's complaint involved only a private controversy between the applicant and the proposed respondent.

Unless otherwise directed by the Commission, it is not ordinarily necessary to state specific reasons for closing in closing letters, because the statement set forth at the beginning of this section will generally be sufficient.

In matters which are being closed where the determination that no violation has occurred is a close question, the staff should give consideration to informing the proposed respondent that the wisdom of pursuing such practices would be questionable. Proposed respondent may also be informed that the staff has been instructed to examine such practices closely in the future. When applicable, reference should also be made to guides, trade regulation rules, or other published statements of Commission policy. Proposed respondent should be furnished copies of such material, and may also be furnished copies of applicable Commission decisions and orders.

In investigations which required Commission approval for initiation, closing letters should be prepared for the signature of the Secretary. All other closing letters should be prepared for the signature of the Bureau Director, Assistant Bureau Director or Regional Director, as appropriate. See Illustrations 21, 22, 23 and 24 for examples of closing letters to applicants and proposed respondents. Copies of closing letters to proposed respondents in investigations are sent to the Records Branch for placement on the public record.

All closing letters must be addressed to the appropriate individual within each company. Where reasonable inquiry fails to identify the appropriate company official, then the undetermined recipient should be addressed with the more appropriate modern salutation, "Dear Sir or Madam."

.3.7.4.5.3 Closing Letters -- Referral to Other Agencies

Closing letters are not ordinarily sent when the recommendation for closing is based upon referral to another agency because of the possibility that the other agency will take action.

.3.7.4.6 News Releases

News releases are not ordinarily issued in closing individual investigations unless otherwise directed by the Commission. Releases may be issued when an industry-wide investigation is being closed without corrective action, particularly when a news release was issued to announce the investigation. If the staff believes that a news release should be issued, appropriate justification should be included in the closing memorandum. See OM Ch. 17 for further information regarding news releases.

.3.7.4.7 Closing Forms

Whenever a full investigation is closed, the Office of the Secretary must be notified. To accomplish this, staff must use a Matter of Action Notice Form (FTC Form 80). See the FTC Information Handbook. If this form is not used, the case will remain open in the Management Information System.

Request for OMB Review

An electronic version of Illustration 1 is not available.

Instructions for Requesting OMB Approval
Under the Paperwork Reduction Act
and Executive Order 12291

An electronic version of Illustration 2 is not available.

Supporting Statement

SUPPORTING STATEMENT ISSUED IN CONJUNCTION WITH REQUEST
FOR AND NOTICE OF OFFICE OF MANAGEMENT & BUDGET CLEARANCE ACTION

The Bureau of Competition of the Federal Trade Commission is conducting an industrywide investigation into the production, distribution, and pricing practices [describe business entities and practices involved] to determine whether such acts, practices, and methods of competition violate the Federal Trade Commission Act.

1. Justification

- (i) Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, prohibits unfair methods of competition and unfair or deceptive acts or practices in or affecting commerce. The Commission is charged with responsibility to prevent and eliminate such violations, in the interest of the public. Industry analysis of the structure, conduct, and performance of the [industry] furnishes adequate reason to believe the law is being violated to warrant conducting a survey of all the leading members of that industry in order to identify those courses of conduct that may require enforcement effort.
- (ii) The information will be collected by attorneys in the Bureau of Competition and it will be analyzed and evaluated by the attorney and economist staff to identify those firms and courses of action that are likely to be in violation of law.
- (iii) Comprehensive information concerning structure, conduct, and performance that can be used for antitrust and trade regulation evaluation, case selection, and enforcement is not presently available publicly or in the Federal establishment and cannot be obtained without collection of information from the persons involved.
- (iv) We have reviewed records of prior law enforcement efforts and researched files that are available in libraries and the records of other departments and agencies. We have eliminated from the proposed survey all items of information for which other reliable sources already are available to the Commission.
- (v) Instructions issued with the survey forms advise small organizations of less than [specify what particular size or estimated market share] that they are not required to furnish responses to items [explain what portion of the form small organizations do not have to complete].

2. Description of Information Collection

- (i) Orders requiring filing special reports will be sent to the largest firms in the industry, representing total production of approximately - % and total sales of more than \$ _____. These respondents were selected by [describe the selection method or criteria].
- (ii) Forms will be mailed to the selected respondent companies by certified mail, return receipt. Respondents are given __ days initially in which to respond, in writing, under oath.

The collection of information covers narrative descriptions of business practices and conditions of competition as well as policies, planning documents, financial statements, cost data, prices, and other information that is used customarily by attorneys and economists for analyzing the structure, conduct, and performance of an industry and identifying potential law violations or other circumstances that might warrant enforcement effort.

- (iii) No pretest of the form is planned. However, it has been designed by attorney and economist staff who have extensive prior experience drafting subpoena specifications, interrogatories, requests for admissions, letters for access and other request for information in other industries of a similar type.
- (iv) Anticipated response rate is 100%. Failure to file a full and adequate response will result in enforcement proceedings by the Commission in Federal Court to obtain civil penalties and entry of a court order directing compliance with the order requiring filing of special reports, unless full compliance is excused by action of the Commission or its staff as a result of consultations or negotiation. Noncompliance will not be excused if it might impair the ability of the Commission to pursue effective law enforcement.
- (v) The survey contains no items that have statistical aspects for tabulation and analysis.
- (vi) No personal information subject to provisions of the Privacy Act is being requested. All other information is subject to the "custodial" provisions of Section 21 of the FTC Act, 15 U.S.C. § 57b-2, and is exempt from the provisions of the Freedom of Information Act, 5 U.S.C. § 552.
- (vii) No remuneration is available to respondent companies for participating in this survey.
- (viii) The information is being collected for law enforcement purposes. We have no plans to tabulate or publish any part of the information collected.

3. Time Schedule

Orders requiring filing of reports will be issued as soon as forms are printed showing an OMB approval number. They will allow ___ days for each company to respond. Extension of time for filing reports may be requested pursuant to the Commission's rules of practice and procedure, 16 CFR Part 2, and will be granted for periods of as much as ___ additional days to relieve unreasonable burden or for other good cause. Court actions for enforcement of the orders will be initiated within 60 days after a determination is made that any person has failed to fully and adequately comply with the orders.

4. Consultation Outside the Agency

Due to the specialized law enforcement character of this agency and the nature of the proposed information collection activity, no consultations outside the agency were deemed appropriate.

5. Estimate of Information Collection Burden

- (i) Orders will be issued to ___ persons ranging in size from [describe the size range in terms of sales, number of plants or offices, number of products, or whatever other criterion is relevant to the breakdown of a wide variety in size]. One full response is required by each company covering all its

operating branches, divisions, and closely held subsidiaries. We have attempted to estimate the burden of respondents on the basis of past experience with other investigations and surveys of the same type, such as [refer to any earlier, similar kind of study and our experiences in that instance].

- (ii) Preliminary information obtained from published sources provides a profile of the industry indicating that it has clusters of firms in three size categories. There are ___ larger firms with [describe the common characteristics of this group], ___ medium size firms with [common characteristics], and ___ smaller firms with [common characteristics]. Based upon experience, we estimate the respondent burden as:

___ firms at ___ hours each = ____ hours
 ___ firms at ___ hours each = ____ hours
 ___ firms at ___ hours each = ____ hours
 Total hours ____ hours

We therefore calculate the average burden for all members of the respondent group as ___ hours apiece.

6. Sensitive Questions

The survey includes questions concerning the costs of production, prices, gross, profits, and net profit after taxes for each respondent in each of its 5 largest product lines, which information is of a confidential commercial nature and is not ordinarily made available outside the company. Respondents are advised that the Commission is prohibited under Section 6(f) of the FTC Act, as amended, 15 U.S.C. § 46(f), from making this information publicly available. In addition, the information will be received, processed and maintained pursuant to the special custodial provisions of Section 21 of the FTC Act, 15 U.S.C. § 57(b).

7. Estimate of Cost to Federal Government

Reasonably anticipated costs to the Government in planning, preparing, and processing this request and the information collection itself are the following:

Salaries and benefits	\$ ____
Consisting of:	
Attorney/Economist	
Clerical	
Overhead at Commission	
average of .25 of	
salaries and benefits	\$ ____
Total cost	\$ ____

Evaluation of the responses has not been included in the above calculation because this is regarded as an enforcement function of the agency rather than as part of its information collection activity.

Request for Department of Justice Clearance

FEDERAL TRADE COMMISSION

DATE _____

OFFICE MEMORANDUM

TO : (name)
Liaison Officer

FROM :

SUBJECT : Department of Justice Preliminary
Information Request

Preliminary Information is requested from the Department of Justice on the following matter:

RESPONDENT(S) - ADDRESS:

CHARGE: (If Section 5, FTC Act, please summarize exact alleged violation)

COMMODITY:

AREA:

CORRESPONDENCE FILE NO.:

(Please make original and 2 copies; original will be returned to attorney after the Department of Justice interposes no conflict or interference.)

Access Letter - Competition

XYZ Company
1562 McNally Boulevard
Anytown, New York 10234

Re: File No.

Dear []: (If the identity of the Corporate Official is unknown, "Dear Sir or Madam" should be used)

This office is conducting an inquiry into the practices of XYZ to determine whether any of its activities may be in violation of the Federal Trade Commission Act (15 U.S.C. 41, et seq.). [or other statute].

The purpose of this inquiry is to determine whether XYZ has engaged in unfair or anticompetitive acts or practices in attempting to solicit the purchase of (product) by offering cash and merchandise premiums to employees of potential customers and whether XYZ has engaged in other unfair or predatory practices which may restrict, hinder or eliminate actual or potential competition.

It is, therefore, requested that you make available to the undersigned the following business records of XYZ and any of its subsidiaries or affiliated companies. As used hereinafter, the term "business records" shall refer to all corporate books, records, correspondence files, computer printouts, code books and other documentation maintained by XYZ and its subsidiaries and affiliates. The time period covered by this inquiry is from (date) to the date of receipt of this letter unless otherwise specified.

1. Such business records as will disclose the correct legal name and address of XYZ, the date and state of its incorporation; and the name, title, duties and business address of each of its officers and directors.
2. Such business records as will disclose the information requested in (1) above for the parent company of XYZ and the nature of the relationship between XYZ and its parent company.
3. Such business records as will disclose the information requested in (1) above for each subsidiary and affiliate of XYZ and the nature of the relationship between XYZ and each such subsidiary and affiliate.
4. Such business records as will disclose the internal organization and management structure of XYZ; the location of all branch offices and sales offices, marketing and trade areas, warehouses and other facilities of XYZ; and the products manufactured, sold or distributed by XYZ or any of its subsidiaries or affiliates.
5. Such business records as will disclose the gross dollar volume of sales for XYZ and specifically the gross volume of its sales of (product) for each of the years during the time period specified herein.

[Follow with specific requests to develop information about acts and practices under investigation.]

It is also requested that arrangements be made for representatives of the Commission to interview those corporate officers and employees who are knowledgeable about the policies, procedures and practices followed by XYZ, as may be deemed necessary.

It must be understood that although an effort has been made to be as comprehensive as possible, the foregoing requests are not to be considered all-inclusive. The right is specifically reserved to seek access to additional business records and to pursue such additional avenues of inquiry as may be deemed appropriate.

You are also advised that all claims based on privilege (e.g., attorney-client privilege or the Fifth Amendment), or judicial order must be asserted on or before the date set for compliance with this request. If any responsive material is withheld, please submit a schedule of the items withheld which states individually as to each such item the type, title, specific subject matter, and date of the item; the names, addresses, positions, and organizations of all authors and recipients of the item; and the specific grounds for claiming that the item is privileged.

Your cooperation and assistance in this matter will be greatly appreciated.

Very truly yours.

[name]
[title]

Enclosure

Privacy Act Disclosure Statement (if required)

Certified Mail
Return Receipt Requested

NOTE: If used in full investigations, include reference to statutory authority for conducting investigation. See Ill. 6. Statutory authority may also be cited in initial-phase investigation access letter.

Access Letter - Consumer Protection

XYZ Corporation
3452 Smith Street
Anytown, New York 10234

Re: File No.

Dear []: (If the identity of the Corporate Official is unknown, "Dear Sir or Madam" should be used)

This office is currently conducting an inquiry into the practices of XYZ Corporation to determine whether any of its activities are in violation of Section 5 of the Federal Trade Commission Act (15 U.S.C. 45) and Regulation Z, the implementing Regulation of the Truth-in-Lending Act (P.L. 90-321, 15 U.S.C. 1601 et seq.). This inquiry is undertaken pursuant to the provisions of Section 6, 9, and 10 of the Federal Trade Commission Act (15 U.S.C. 46, 49, and 50). The purpose of the inquiry is to determine whether XYZ Corporation may be engaged in unfair or deceptive acts or practices in connection with the advertising, offering for sale and sale of its XYZ [insert description of product or service] and the extension of consumer credit in regard thereto.

In order to determine the facts in this matter, it will be necessary to examine all books, correspondence, memoranda, records, files and documents relating to the subject matter herein. You may comply with this request by either granting access to these books, records and files at your place of business or by furnishing copies to the undersigned. Unless otherwise indicated, the relevant time period is (date) to the present. If calendar year information is unavailable, supply fiscal year data, indicating the twelve month period covered.

Access is requested to the following records:

1. Such records and documents, or a written statement in lieu thereof, as will disclose the correct legal name and address of the company; the names and titles of all officers, directors and principal stockholders or owners; the date and state of incorporation, if applicable; the correct legal names and addresses of any affiliated or subsidiary companies and the nature of their relationships; and the names and titles of all officers, directors and principal stockholders or owners of said affiliates or subsidiaries.
2. Such records and documents, or a written statement in lieu thereof, as will disclose the principal place of business of XYZ Corporation and each place and state in which it does business. Similar information should be furnished for all affiliates and subsidiaries.
3. Such records and documents, or a written statement in lieu thereof, as will disclose the annual gross dollar volume of sales made by XYZ Corporation and each affiliate and subsidiary during the relevant time period.
4. Copies of all advertising and promotional material used at any time during the relevant time period, including radio and television commercials, government or private publications, brochures, signs or leaflets, newspaper or magazine articles; records disclosing the company officials responsible for the preparation, use and distribution of such material; the names and addresses of any advertising agency

or other person or firm responsible for printing or preparing any of the above-mentioned advertising and promotional material; and the date, media identity, manner, quantity and frequency of publication of each advertisement.

5. Copies of all contracts, invoices, bills of sale or memoranda of sale of each and every customer of XYZ Corporation, including any corresponding consumer credit applications and corresponding financing statements, for the period (through) and the period (through).

[Follow with specific requests to develop information about acts and practices under investigation.]

All written replies or statements furnished in response to this letter should be made on the company letterhead and signed by a responsible company official. It is requested that such reply or statement be submitted to this office within 30 days from the date of this letter. It is also requested that representatives of the Commission be allowed to interview such officers and employees as may be necessary to fully develop the facts in this matter.

It must be understood that, although an effort has been made to be as comprehensive as possible, the foregoing requests are not to be considered as all-inclusive. The right is specifically reserved to seek access to additional records and to pursue such additional avenues of inquiry as may be deemed appropriate.

You are also advised that all claims based on privilege (e.g., attorney-client privilege or the Fifth Amendment), or judicial order must be asserted on or before the date set for compliance with this request. If any responsive material is withheld, please submit a schedule of the items withheld which states individually as to each such item the type, title, specific subject matter, and date of the item; the names, addresses, positions, and organizations of all authors and recipients of the item; and the specific grounds for claiming that the item is privileged.

You are invited to furnish any additional information which you may feel is relevant to this inquiry.

Your prompt cooperation and assistance in this matter will be appreciated.

Very truly yours.

[name]

[title]

Enclosure

Privacy Act Disclosure Statement (if required)

Certified Mail
Return Receipt Requested

Language for Civil Investigative Demand

CIDs issued by the Commission in BCP investigations should describe the investigation so that the recipient is afforded notice of the nature and scope of the investigation and can determine the relevancy of the materials sought. A similar requirement extends to all requests or demands for information from persons under investigation pursuant to Rule 2.6.

The following language may be used as a guide:

This civil investigative demand is issued pursuant to Section 20 of the Federal Trade Commission Act, 15 U.S.C. § 57b-1, in the course of an investigation to determine whether there is, has been, or may be a violation of § 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, and (other relevant statute) by conduct, activities or proposed action of the following nature:

1) advertising of household cleaning products without substantiation for the claim made in such ads.

or

2) failing to disclose credit terms relating to automobile sales.

or

3) failure to provide adequate warranty information.

Questionnaire

Re: XYZ Corporation
File No.

Dear :

This office is engaged in a review of the advertising and other business practices of the XYZ Corporation, which is located at (address). Records which have been made available for official Commission use indicate that you may have responded to such advertising and purchased an automobile from this company.

In determining whether this company is complying with the laws administered by the Commission, it will be helpful to receive the information requested by the enclosed questionnaire. You will note that a space has been provided for any additional comments which you may wish to make. The information which you provide will be restricted to the official use of the Federal Trade Commission.

Your cooperation in this matter will be greatly appreciated.

Sincerely yours,

[name]
[title]

Enclosures

Questionnaire
Privacy Act Disclosure Statement

FEDERAL TRADE COMMISSION
Washington, D.C. 20580

XYZ CORPORATION, INC.
Customer Questionnaire

Name _____

Home Address _____

Telephone _____

Business Address _____

Telephone _____

I. XYZ CORPORATION, Inc. advertisement(s) observed:

A. Newspaper _____

Section & page _____

Date _____

(Please enclose the advertisement if available)

B. Automobile advertised:

Make _____

Year _____

Model _____

Style _____

Price _____

II. Automobile purchase:

A. Dates of first and subsequent contacts with XYZ

B. Name of salesman _____

C. Oral representations concerning automobile __

D. Was the advertised automobile as represented? ___

If not, in what manner? _____

E. Oral or written guarantee(s) _____

F. Name and address of previous owner (if known)

G. Mileage shown on odometer at time of purchase

H. Automobiles purchased:

Year _____

Make _____

Model _____

Body style _____

Manufacturer's Serial No. _____

III. Title Information:

- A. State in which previously titled _____
- B. State in which presently titled _____

(Copies of all documents pertaining to the automobile and the transaction will be helpful. If copies are not available, please supply the information contained on such documents along with the titles of such documents.)

IV. Credit Purchase

Was Financing arranged by XYZ? _____

If so, please list all disclosures made with regard to the cost of financing you automobile _____

V. Additional Comments:

Name (please print)

Date

Signature

Consumer Redress Language
in Resolution

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS:

RESOLUTION DIRECTING USE OF COMPULSORY
PROCESS IN NONPUBLIC INVESTIGATION

File No.

Nature and Scope of Investigation:

To determine whether XYZ Corporation and others may be engaged in unfair or deceptive acts or practices or unfair methods of competition in violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, as amended, including but not limited to the advertising of merchandise not readily available for sale, fictitious price and savings claims and failures to disclose material facts in connection with the sale of home furnishings and other products or services in (state) and other states of the United States in or affecting commerce. The investigation is also to determine whether Commission action to obtain redress of injury to consumers or others would be in the public interest.

The Federal Trade Commission hereby resolves and directs that any and all compulsory processes available to it be used in connection with this investigation.

Authority to Conduct Investigation:

Sections 6, 9, 10 and 20 of the Federal Trade Commission Act, 15 U.S.C. §§ 46, 49, 50 and 57b-1, as amended; FTC Procedures and Rules of Practice, 16 C.F.R. § 1.1 et seq., and supplements thereto.

By direction of the Commission.

[name]
Secretary

Dated:

Omnibus Resolution

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS:

RESOLUTION DIRECTING USE OF COMPULSORY PROCESS IN A NONPUBLIC
INVESTIGATION OF THE (identify industry or practice)

File No.

Nature and Scope of Investigation:

To investigate the advertising and marketing of (identify products and/or services), for the purpose of determining whether unnamed persons, partnerships, or corporations, or others, engaged in the advertising and marketing of (identify products and or services) have engaged or are engaging in unfair or deceptive acts or practices or unfair methods of competition in violation of Section 5 of the Federal Trade Commission Act in or affecting commerce.

The Federal Trade Commission hereby resolves and directs that any and all compulsory processes available to it be used in connection with this investigation.

Authority to Conduct Investigation:

Sections 6, 9, 10 and 20* of the Federal Trade Commission Act, 15 U.S.C. §§ 46, 49, 50 and 57b-1*, as amended; FTC Procedures and Rules of Practice, 16 C.F.R. § 1.1 et seq., and supplements thereto.

By direction of the Commission.

[name]
Secretary

Dated:

*Delete references to Section 20, 15 U.S.C. 57b-1 for BC matters.

Blanket Resolution

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS:

RESOLUTION DIRECTING NONPUBLIC INVESTIGATION INTO
THE ACTS AND PRACTICES OF UNNAMED PERSONS, PARTNER-
SHIPS AND CORPORATIONS ENGAGED IN ACTS OR PRACTICES
IN VIOLATION OF 39 U.S.C. 3009.

File No.

Nature and Scope of Investigation:

An investigation to determine whether unnamed persons, partnerships or corporations engaged in the sale of merchandise have engaged in unfair methods of competition or unfair or deceptive acts or practices in violation of 39 U.S.C. 3009 and Section 5 of the Federal Trade Commission Act (15 U.S.C. § 45) in connection with that advertising, promotion, offering for sale, sale or distribution in or affecting commerce of merchandise by mail or in connection with communications in or affecting commerce to recipients of said merchandise. Such investigation shall, in addition, determine whether Commission action to obtain redress of injury to consumers or others would be in the public interest.

The Federal Trade Commission hereby resolves and directs that any and all compulsory processes available to it be used in connection with this investigation.

Authority to Conduct Investigation:

Sections 6, 9, 10 and 20 of the Federal Trade Commission Act, 15 U.S.C. §§ 46, 49, 50 and 57b-1, as amended; FTC Procedures and Rules of Practice, 16 C.F.R. § 1.1 et seq., and supplements thereto.

By direction of the Commission.

[name]
Secretary

Dated:

Special Resolution

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS:

RESOLUTION AUTHORIZING USE OF COMPULSORY
PROCESS IN NONPUBLIC INVESTIGATION

File No.

Nature and Scope of Investigation:

To determine whether (name of proposed respondents) or others may be engaging or may have engaged in any unfair methods of competition or unfair or deceptive acts or practices in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act or Section 2(a), 2(d), or 2(e) of the Clayton Act (describe practices and products).

The Federal Trade Commission hereby resolves and directs that any and all compulsory processes available to it be used in connection with this investigation.

Authority to Conduct Investigation:

Sections 6, 9, 10* of the Federal Trade Commission Act, 15 U.S.C. §§ 46, 49, and 50*, as amended; FTC Procedures and Rules of Practice, 16 C.F.R. § 1.1 et seq., and supplements thereto.

By direction of the Commission.

[name]
Secretary

Dated:

*For BCP investigations using CIDs, insert § 20 of the FTC Act, 15 U.S.C. 57b-1.

Opening Statement by Presiding Officer

This proceeding will come to order.

Let the record show this proceeding was convened at the hour of ____ o'clock on _____ in the _____.

The reporter will note for the record the appearance of Counsel. Appearing for the Federal Trade Commission are Attorneys _____. Appearing for XYZ, Company, Inc., is Attorney _____.

This proceeding is in relation to the Commission's investigation to¹ determine whether or not XYZ and various others may be engaged in unfair and deceptive practices involving the advertising and sale of homes, home improvements, or any other work in violation of Section 5 of the Federal Trade Commission Act, and violations of Regulation Z, the implementing regulation of the Truth in Lending Act, in the advertising and extending of credit in the sale of homes, home improvements, or any other work.

The procedures which will be followed in this investigational hearing are outlined in the Commission's Rules of Practice, specifically Part 2, Non-adjudicative Procedures, Subpart A, which pertain to investigations and investigational hearings, beginning with Section 2.1 through 2.14.

The attention of counsel is invited to Section 2.9 of these Rules which provides, *inter alia*, that any person compelled to appear and testify or produce documentary evidence may be accompanied, represented, and advised by counsel according to Federal Trade Commission Rules. Representation by counsel in this hearing will be in accordance with said Rules as prescribed by Section 2.9, Subparts (b)(1) through (6).

Attention is invited to Title II of the Organized Crime Control Act of 1970 (Part V, Title 18, U.S. Code Secs. 6001, *et seq.*). Under this Act immunity from criminal prosecution can be ordered only after the witness claims his privilege against self-incrimination and the Attorney General approves the order of the agency.

The purpose of this proceeding is to receive the return of specified documents and the testimony under a form of compulsory process duly served upon the XYZ Company, Inc., by certified mail on []. The original date of the return of said form of compulsory process was []. An extension of time was granted in a letter from [], Director, [] Regional Office, to [] dated [], which established a new return date of today's date, []. Said form of compulsory process was authorized and issued pursuant to the Federal Trade Commission resolution dated [].

In order to facilitate reference during this hearing I have requested Federal Trade Commission counsel to place into the record as Commission's exhibits, copies of the Commission's resolution, form of compulsory process, specifications and cover letter to XYZ Company, Inc.

I would like to add that all exhibits submitted in the course of this hearing will be retained for copying purposes by Commission counsel and are not the responsibility of the reporter.

¹ Read from resolution.

Immunity Request

FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

Office of the General Counsel

[Date]

Honorable [name]
The Attorney General
Department of Justice
Washington, D.C. 20530

Attention: [name], Esquire
Chief, Legislation & Special
Project Section
Criminal Division, Room [number]

Re: Immunity Request under Organized Crime Act
of 1970, 18 U.S.C. § 6001 et seq., in
[title of investigation].

Dear Attorney General:

As required by Title II of the Organized Crime Control Act of 1970 (Part V. Title 18, United States Code, Section 6001 et seq.), the Federal Trade Commission hereby requests the approval of a Commission order directing a prospective witness to testify in response to subpoena (or CID) in the captioned investigation, which is being conducted pursuant to a Resolution of the Commission dated []. The prospective witness is [name] of the [name] Company.

We would appreciate receiving a reply by [date] as the hearing to take Mr. [name]'s testimony is scheduled for [date]. In connection with this request, the following information is hereby submitted.

The Commission staff have learned from [name], counsel for [name], that his client will broadly invoke his Fifth Amendment privilege to cover all substantive testimony. Mr. [name] requested a grant of immunity for his client and indicated that Mr. [name] will testify freely if immunity is granted.

It is the opinion of the staff attorneys that the testimony sought from Mr. [name] is necessary to the public interest for the following reasons. The Compliance Division of the Bureau of Competition, Federal Trade Commission, pursuant to Commission investigational Resolution, is conducting an investigation into the compliance of respondents and others with a Section 5, Federal Trade Commission Act price-fixing order issued against certain manufacturers of [product] (including the [name] Company) in Docket No. []. A copy of the order is enclosed for your information.

The Compliance Division has advised me that, through returns of documents and testimony thus far in this investigation, they have received substantial evidence of identical bidding and price exchange activities among competing [product] manufacturers. Testimony in connection with [name] return on a [form of

compulsory process] on [date] supported existing evidence of identical bidding and disclosed methods by which the respondent companies exchange price information. Mr. [name], an employee of [name] was identified as the employee having the most direct and comprehensive information about bidding practices and price-exchange activities in the industry. The Commission attorneys intend to solicit that information from Mr. [name] in the upcoming hearing, and he has indicated that he will provide testimony only if immunity is granted to him.

The following additional information about the witness is provided in support of this request for approval of an immunity order.

1. Name:
2. Address:
3. Employer and Position:
4. Date of Birth:
5. Social Security Number:
6. FBI or local Police Number: Unknown
7. Whether any state or federal charged are presently pending against the witness:
8. Whether the witness is currently incarcerated:

Accordingly, it is respectfully requested that immunity be granted to Mr. [name] pursuant to the provisions of the Organized Crime Control Act of 1970 and that he be required to testify.

Sincerely,

[Name]
General Counsel

Enclosure

cc: [name], Esquire
 Liaison Officer, Room [number]
 Antitrust Division

Transmittal Memorandum
for Immunity Request

UNITED STATES GOVERNMENT
MEMORANDUM

DATE:

TO: [name]
General Counsel

VIA: [name], Liaison Officer

FROM: [name], Attorney
[name], Attorney
Bureau of Competition

SUBJECT: Bureau of Competition Compliance Investigation under Section 5 FTC Act Price-Fixing Order;

Request for Justice Department Approval under 18 U.S.C. § 6001 et seq. of Order to Testify, Granting Immunity to Prospective Witness [name]

The attorney for prospective witness [name] in this investigation has informed us that [name] will invoke his privilege against self-incrimination under the Fifth Amendment and is requesting a grant of immunity for his testimony. Mr. [name] is an employee of the [] Company, a respondent to the Commission's order in Docket No. [] and a concern currently under investigation in this matter. [], counsel for Mr. [name], advises that [name] will broadly invoke his Fifth Amendment privilege to preclude any substantive testimony, but will provide such testimony if immunity is granted to him.

It is our opinion that the testimony sought from [name] is essential to this investigation and necessary to the public interest. The investigation involves the compliance of the [name] Company and others with a Section 5, Federal Trade Commission Act order to cease and desist from, inter alia, conspiring to fix prices in connection with the sale of [product].

This investigation has thus far revealed substantial evidence of identical bidding by and among the [name] Company and other respondents to the Commission's order. Testimony in connection with [name] return on a subpoena duces tecum on [date] supported existing evidence of identical bidding and disclosed methods by which the respondent companies exchange price information.

Mr. [name], an employee of [], was identified as the employee having the most direct and comprehensive information about bidding practices and price-exchange activities in the industry.

We believe that an immunity grant is justified by the following considerations:

(a) We anticipate that the witness will testify about identical bidding activities in the [product] industry and his company's role in those activities. Additionally, we expect the witness to testify as to his participation in price information exchanges in the industry, which may be the basis for identical bidding, facts which strongly suggest a violation of the Commission's order in [].

(b) Such testimony with other evidence received in this investigation would serve the public interest, if probative of collusion in violation of the Commission's order in Docket No. [], in that it would

be a strong basis for a civil penalty action under Section 5(l) of the amended FTC Act, 15 U.S.C. § 45(l), providing for civil penalties of up to \$10,000 per day, and injunctive relief; such evidence would also permit a Justice Department determination of whether a criminal conspiracy case is warranted under the Sherman Act.

(c) It is clear to the staff that Mr. [name] will invoke his Fifth Amendment privilege to preclude all substantive testimony. If he is granted immunity, however, he will give testimony which is very important to this investigation.

Accordingly, it is requested that the General Counsel request approval of a use immunity order from the Attorney General to compel testimony by the name witness. Attached is a proposed letter for the signature of the General Counsel, to the Immunity Unit of the Criminal Division, Department of Justice, requesting approval of an order requiring [name] to testify and granting him immunity, to be forwarded to the Department of Justice via the Liaison Officer.

We respectfully request that every effort be made to obtain such immunity approval within two weeks, as the hearing to Mr. [name] testimony is scheduled for [date].

APPROVED:

[Regional Director/Assistant Bureau Director

Access Order
(Not for Use in BCP Matters)
UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS:

)
)
In the Matter of)
) FILE NO.
[name or title of)
investigation])
-----)

ORDER REQUIRING ACCESS

Pursuant to a resolution of the Federal Trade Commission dated [], entitled "RESOLUTION DIRECTING USE OF COMPULSORY PROCESS IN NONPUBLIC INVESTIGATION" of certain unnamed [identify proposed respondents], a copy of which is attached hereto and made a part hereof, [], a corporation, is ordered, pursuant to Section 9 of the Federal Trade Commission Act, to grant the right of access to duly authorized agents of the Federal Trade Commission at the herein listed places of business of its corporate subsidiary engaged in [identify business] under the name of [name] for the following purposes:

(a) [name] shall make available for examination during ordinary business hours all individual files containing agreements not to compete entered into by [name] during the months of October, November, and December, 19 .

(b) Commission agents shall withdraw necessary documents from the files unless [name] elects to have its employees perform that function.

(c) In the event the Commission agents desire to copy information from the documents withdrawn under (b) above they may do so. In the event the Commission agents wish to make copies of any such documents they may remove such document or documents from the premises where normally stored for a reasonable period of time necessary for the purpose of making copies, unless [name] elects to supply such copies to the Commission.

In the event that any material responsive to this Access Order is withheld on the basis of privilege (e.g., attorney-client privilege or the Fifth Amendment), or judicial order [name] shall assert all such claims of privilege or the like on or before [date set for compliance with this order] and shall also provide Commission agents with a

schedule of the items withheld which states individually as to each such item the type, title, specific subject matter, and date of the item; the names, addresses, positions, and organizations of all authors and recipients of the item; and the specific grounds for claiming that the item is privileged.

[list of addresses]

by direction of the Commission.

[name]
Commissioner

ISSUED:

Order Requiring Filing of
Special Report

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS:

ORDER REQUIRING FILING OF SPECIAL REPORT

Pursuant to a Resolution of the Federal Trade Commission dated [], entitled [] attached hereto and made a part hereof, you are required to file with the Commission within [] days of receipt of the attached Special Report Questionnaire, the information and documentation required therein.

In your response to the Special Report Questionnaire, please restate each question immediately prior to providing any information or documentation required by the Special Report Questionnaire. In the event that any material responsive to this Order is withheld on the basis of privilege (*e.g.*, attorney-client privilege or the Fifth Amendment), or judicial order, you are required to assert all such claims of privilege or the like on or before [date set for compliance with this order] and provide the Commission with a schedule of the items withheld which states individually as to each such item the type, title, specific subject matter, and date of the item; the names, addressees, positions, and organizations of all authors and recipients of the item; and the specific grounds for claiming that the item is privileged. Please direct all inquiries regarding the Special Report Questionnaire to [Commission staff members].

The Certification must be subscribed and sworn to by an officer, partner or owner who has prepared or supervised the preparation of the Special Report. The Subscriber is to state his or her full name and business address and official capacity.

You are advised that penalties may be imposed under applicable provisions of federal law for failure to file special reports or for the filing of false reports.

By direction of the Commission.

[name]
Commissioner

Transmittal Letter for
Special Report Order

Re: (identify investigation)

Dear :

The Federal Trade Commission is conducting an industrywide investigation of [identify industry and insert appropriate language regarding general nature of practices]. Attached are copies of the Commission's resolution authorizing the investigation, an Order Requiring Filing of Special Report and a Special Report Questionnaire.

These Orders and Questionnaires are being sent to a group of [identify industry and state number of industry members receiving 6(b) orders].

Your response to the questionnaire is mandatory. Penalties may be imposed for failure to file Special Reports or for the filing of false reports.

Please read the questionnaire specifications carefully and if you have any questions concerning the meaning of any item (e.g., the exact type of information requested) or if you have a specialized problem in response to an item, (e.g., your accounting procedures do not permit a response), please do not hesitate to contact me by telephone [000/000-0000] or in writing.

Sincerely,

[name]

[Title]

Enclosures

Notice of Default

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS:

-----)	
In the Matter of)	
)	
[name or title of investigation])	File No.
)	
-----)	

TO: [Name and address of party to whom notice is sent]

NOTICE OF DEFAULT

WHEREAS, the Federal Trade Commission on [date] pursuant to the authority granted to it by Sections, 6, 9, and 10* of the Federal Trade Commission Act, 15 U.S.C. 49, 59, and 50*, as amended; and its published Procedures and Rules of Practice, 16 C.F.R. 1.1 et. seq. and supplements thereto, adopted a resolution authorizing and directing an investigation into the acts and practices of [identify industry] for the purposes stated in the said resolution; and

WHEREAS, the Commission, on [date] pursuant to the said resolution, did issue its order requiring [name] to submit to the Commission within forty-five (45) days of the receipt of such order a Special Report containing the information and documents described in the order; and

WHEREAS, the resolution and the said order requiring the filing of a Special Report were served on [name] by certified mail on [date]; and

WHEREAS, an extension of time was thereafter granted by a duly authorized official of the Federal Trade Commission which extended the time for complying with such order until [date];* and

WHEREAS, [name] has failed to supply information required by item 18 of the Order of [date], on or before the required time of compliance [date], or at any time thereafter prior to the date of this Notice of Default and no further extension of time having been granted for the filing of the Special Report; and

WHEREAS, Section 10 of the Federal Trade Commission Act, 15 U.S.C. 50, as amended, provides in part as follows:

If any persons, partnership, or corporation required by this Act to file any annual or special report shall fail to do so within the time fixed by the Commission for filing the same, and such failure shall continue for thirty days after notice of such default, the corporation shall forfeit to the United States the sum of \$100 for each and every day of the continuance of such failure, which forfeiture shall be payable to the Treasury of the United States, and shall be recoverable in a civil suit in the name of the United States brought in the case of a corporation or partnership in the district where the corporation or partnership has its principal office or in any district in which it shall do business, and in the case of any person in the district where such person resides or has his principal place of business.

NOW, THEREFORE, YOU, [name], are hereby notified as provided in Section 10 of the Federal Trade Commission Act, as amended, that you are in default having failed to comply with the said order issued on [date], by the Federal Trade Commission in that you failed to supply in your Special Report information required by Item 18 on or before [date], or at any time thereafter.

By direction of the Commission.

[Name]
Secretary

ISSUED:

Note: This example involves partial failure to comply. If there was total failure, appropriate changes should be made in wording of the Notice of Default.

* Include if appropriate

Inquiry as to Postal Investigation

UNITED STATES GOVERNMENT

MEMORANDUM

DATE:

TO :

FROM :

SUBJECT: Inquiry as to Postal Investigation

Name and address of Proposed FTC Respondent(s):

Allegation(s):

Does the Postal Service have an investigation pending against the above? ___ Yes, File No. _____. ___ No.

If an investigation is pending, please state the commodity or service involved and the nature of the charges.

Would current FTC investigation, without recourse to subpoenas directed to individuals, prejudice or conflict with Postal Service proceedings? ___ Yes ___ No.

Does the Postal Service have record of a closed investigation? ___ Yes, File No. _____. ___ No.

REMARKS:

Closing Letter to Applicant
(Commission Level)

FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

Office of the Secretary

(Name of Applicant)
(Address)

Re: File No. 000 0000
(Name of Proposed Respondent)

Dear []: (If the identity of the Applicant is unknown, "Dear Sir or Madam" should be used)

The Commission has conducted an investigation involving possible violation of the Federal Trade Commission Act (or other statute) by (name and address of proposed respondent), through use of false and misleading advertising (or other practice) in connection with the sale of (product). (If addressee has not been contacted lately, it may be appropriate to include a sentence such as: "This is the matter about which you wrote to us, or which a Commission representative discussed with you, on (date).")

Upon further review of this matter, it now appears that no further action is warranted by the Commission at this time. Accordingly, the investigation has been closed. This action is not to be construed as a determination that a violation may not have occurred, just as the pendency of an investigation should not be construed as a determination that a violation has occurred. The Commission reserves the right to take such further action as the public interest may require.

(Final paragraph, if appropriate, see OM Ch. 3.3.7.4.5.2)

Your interest in calling this matter to the attention of the Commission is appreciated.

By direction of the Commission.

[name]
Secretary

Closing Letter to Proposed Respondent
(Commission Level)

FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

Office of the Secretary

(Name of Proposed Respondent)
(Address)

Re: File No. 000 0000

Dear []: (If the identity of the Proposed Respondent is unknown, "Dear Sir or Madam" should be used)

The Commission has conducted an investigation involving your possible violation of the Federal Trade Commission Act (or other statute), through use of false and misleading advertising as to therapeutic benefit (or other practice) in connection with the sale of (product).

Upon further review of this matter, it now appears that no further action is warranted by the Commission at this time. Accordingly, the investigation has been closed. This action is not to be construed as a determination that a violation may not have occurred, just as the pendency of an investigation should not be construed as a determination that a violation has occurred. The Commission reserves the right to take such further action as the public interest may require.

By direction of the Commission.

[name]
Secretary

Closing Letter to Applicant
(Bureau Level)

FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

(Name of Applicant)
(Address)

Re: File No. 000 0000
(Name of Proposed Respondent)

Dear []: (If the identity of the Applicant is unknown, "Dear Sir or Madam" should be used)

The Commission has conducted an investigation involving possible violation of the Federal Trade Commission Act (or other statute) by (name and address of proposed respondent), through use of false and misleading advertising (or other practice) in connection with the sale of (product). (If addressee has not been contacted lately, it may be appropriate to include a sentence such as: "This is the matter about which you wrote to us, or which a Commission representative discussed with you, on (date).")

Upon further review of this matter, it now appears that no further action is warranted by the Commission at this time. Accordingly, the investigation has been closed. This action is not to be construed as a determination that a violation may not have occurred, just as the pendency of an investigation should not be construed as a determination that a violation has occurred. The Commission reserves the right to take such further action as the public interest may require.

(Final paragraph, if appropriate, see OM Ch. 3.3.7.4.5.2)

Your interest in calling this matter to the attention of the Commission is appreciated.

[name]
Bureau Director, Assistant Director
or Regional Director

Closing Letter to Proposed Respondent
(Bureau Level)

FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

(Name of Proposed Respondent)
(Address)

Re: File No. 000 0000

Dear []: (If the identity of the Proposed Respondent is unknown, "Dear Sir or Madam" should be used)

The Commission has conducted an investigation involving your possible violation of the Federal Trade Commission Act (or other statute), through use of false and misleading advertising as to therapeutic benefit (or other practice) in connection with the sale of (product).

Upon further review of this matter, it now appears that no further action is warranted by the Commission at this time. Accordingly, the investigation has been closed. This action is not to be construed as a determination that a violation may not have occurred, just as the pendency of an investigation should not be construed as a determination that a violation has occurred. The Commission reserves the right to take such further action as the public interest may require.

[name]
Bureau Director, Assistant Director
or Regional Director

Information for the Department of Justice
To Request Permission to Immunize Witnesses

INFORMATION TO BE SUBMITTED TO THE DEPT. OF JUSTICE IN
REQUESTING PERMISSION TO IMMUNIZE PROSPECTIVE WITNESSES.

All requests to immunize prospective witnesses must be in writing, allowing at least 2 weeks for consideration, and must contain the following information:

1. Name, citation, or other identifying information of the proceeding in which the order is to be used.
2. Name of the individual for whom the immunity is requested.
3. Name of the employer or company with which he is associated.
4. Date and place of birth, if known, of the witness.
5. FBI number or local police number, if any, and if known.
6. Whether any State or Federal charges are pending against the prospective witness and the nature of the charges.
7. Whether the witness is currently incarcerated, under what conditions, and for what length of time.
8. A brief resume of the background of the investigation or proceeding before the agency or department.
9. A concise statement of the reasons for the request, including:
 - (a) What testimony you may expect the prospective witness to give;
 - (b) How this testimony will serve the public interest;
 - (c) Whether the witness (i) has invoked the privilege against self-incrimination; or (ii) is likely to invoke the privilege.
 - (d) If (c)(ii) is applicable, then why you anticipate that the prospective witness will invoke the privilege.
10. An estimate as to whether the witness is likely to testify in the event immunity is granted.

Information for the Department of Justice
After Witness Has Invoked Privilege Against Testifying

Information to be submitted to the Department of Justice after a witness has testified, where the witness has invoked the privilege against testifying on the ground that the answers may tend to incriminate him and immunity has been granted by the immunity unit of the Department of Justice.

1. Name, citation, or other identifying information, of the proceeding in which the order was requested.
2. Date of the examination of the witness.
3. Name and residence address of the witness.
4. Whether the witness invoked the privilege.
5. Whether the immunity order was used.
6. Whether the witness testified pursuant to the order.
7. If the witness refused to comply with the order, whether contempt proceedings were instituted, or are contemplated, and the result of the contempt proceeding, if concluded.