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.1 ACCOUNTING SERVICES

Accountants in the Bureau of Competition are available to assist all Commission staff with investigations, rulemaking proceedings, and litigation. Staff should consider obtaining the services of an accountant in a wide range of situations. For example, an accountant should be consulted for analysis of a company's profitability, evaluation of alleged efficiency or failing company defenses to a merger, evaluation of price discrimination or sales below cost, compilation of market-share data, analysis of cost studies, tabulations of industry pricing policies, and analysis of a corporation's ability to make restitution to customers.

An accountant should be consulted as soon as it becomes apparent that financial or accounting information will be sought from a company, so that assistance can be provided in developing the information request.

.1.1 PROCEDURES FOR OBTAINING AN ACCOUNTANT'S SERVICES

To obtain an accountant's services, staff should contact by phone or memorandum the Chief of the Accounting Office, Bureau of Competition. Staff should briefly explain the type of services required and the expected length of the assignment. Commission accounting services are charged to the case or program code's budget.

.2 AUTOMATED SERVICES

.2.1 FOR INVESTIGATIONS, LITIGATION AND RULEMAKING

Computer services, consultation and technical assistance are available from the Litigation Support Team (LST) in the Automated Systems Division for attorney staffs assigned to specific cases. Coordination and consultation regarding automated data acquisition from respondents is also available from the LST.

.2.1.1 Services Available

- (1) Collection of Data - Services may include assistance in basic planning, such as designing a survey, as well as the data collection and analysis effort.

The information to be automated can be recorded by staff, or an outside contractor, on a Document Coding Form (DCF) for entry into the computer. Staff then can retrieve the information on a computer terminal, personal computer, or receive printed reports.

- (2) Economic and Data Analysis - Automated support can be useful where surveys, 6(b) questionnaires, and Civil Investigative Demands produce quantified information or the staff receives computerized business records that require analysis. Such information may require arithmetic tabulations or complex statistical analysis to make it useful.

- (3) Transcript Indexing - The official reporter of the Commission can supply a computer readable magnetic tape or disk copy of the traditional printed transcript. These media can then be used to generate a database containing the full, automatically-indexed text of the transcript.

(4) Document Indexing and Analysis - A large collection of documents, letters, books or manuals can be indexed by more than one filing feature without the use of cross references as is required in manual filing systems.

.2.1.2 Procedures

Call the Applications Systems Branch (ASB) and arrange a meeting to determine whether use a computer to collect, index, file, retrieve and analyze documents would be desirable. ASB staff will explain the advantages and disadvantages of using a computer, and will show you examples of computer support.

You and ASB will determine the:

- (1) type of information to be collected;
- (2) retrieval methods to extract the desired information;
- (3) classification method to be used for organizing the extracted information; and the schedule for implementation of proposals.

ASB will determine the technical feasibility and cost of automated support. If the requested litigation support activities require an outside contractor or consultant, the organization requesting the services may have to fund it. ASB will either provide the services directly or work with the Division of Procurement and General Services to obtain the necessary personnel to provide the requested services. Thereafter, ASB will serve as the liaison between staff and the contractor.

To get transcript indexing call the Records Branch, Information Services Division, at least two weeks before the first day of hearings. The Records Branch will then coordinate the request with ASD. Costs for a computer tape of transcripts are funded out of the stenographic contracts budget of the responsible office or bureau. Costs for indexing and analyzing the computer tape transcripts are funded from the requesting organization's program contract budget.

If, after consultation with ASB, a determination is made that litigation support services are needed, fill out an Information Systems Request (FTC Form 109) (See the FTC Information Handbook for instructions), have it signed by your ADP Liaison Officer, and submit it to the Chief, ASB. All requests for funding of support services must be forwarded in writing through the applicable bureau/office approval procedure.

.2 FOR MANAGEMENT

If information services are needed for general management purposes, review the description of available Management Information System Reports contained in the FTC Information Handbook, or call the Information Management Branch.

.2.1 Staff Time and Activity Reporting

FTC professional staff are required to report their work hours on a Staff Time and Activity Report (STAR) (FTC Form 48). This includes full-time and part-time (WAE) consultants within the Bureaus of Competition, Consumer Protection, and Economics, the Office of the General Counsel, the Office of the Administrative Law Judges and Regional Offices. The information is used to prepare reports for the Commission and the Office/Bureau directors and other managers.

.2.2 Reporting Requirements

Each staff member required to report must complete a STAR form twice a month. All Staff Time and Activity Reports are submitted to the designated person within each organization immediately after the end of each reporting period. Instructions for completing the form are in the FTC Information Handbook.

.3 CLEARANCE TO PARTICIPATE IN FTC

MATTERS (Rule 4.1)

.3.1 GENERAL (Rule 4.1(b)(1), (b)(7))

Former Commissioners and employees of the FTC are required to obtain Commission clearance before participating in:

- (1) any proceeding or investigation that was pending while the employee was employed at the FTC;
- (2) any proceeding or investigation whose direct antecedent was pending while the employee was employed at the FTC;
- (3) any proceeding or investigation involving practices with respect to which the employee gained knowledge of nonpublic information containing specific enforcement or case selection criteria, if the former employee's participation would occur within three years of termination of employment with the Commission; or
- (4) any compliance or reopening proceeding for a matter in which the former employee participated personally and substantially.

.3.2 AUTHORITY OF THE GENERAL COUNSEL (Rule 4.1(b)(5))

The Commission has delegated to the General Counsel, without the power of redelegation, the authority to approve clearance requests and to decide whether an application for clearance need be filed. The Commission will decide requests if the General Counsel recommends denying clearance.

.3.3 PROCEDURES FOR PROCESSING A REQUEST FOR CLEARANCE (Rule 4.1(b)(2),(b)(6))

Applications for clearance are filed with the Public Records Branch, Office of the Secretary. That Branch will prepare a Clearance Request Memo (FTC Form S 42) establishing a timetable for processing the request and forward that Memo, and the application, to the appropriate office on the date the request is filed.

The original application will be referred to the Assistant/Associate Director or Regional Director responsible for the matter. If the request relates to more than one bureau, it is referred to the bureau before which a majority of the relevant cases are pending; if it relates to more than one division within a bureau, it is referred to the Assistant Director for Evaluation (Bureau of Competition) or the Director of the Bureau of Consumer Protection. When the clearance request relates only to matters pending before the Bureau of Economics, it is referred to the Bureau Director for Economics. Copies of the request also will be routed to the Assistant General Counsel for Ethics and Regulatory Affairs and to the Records Branch for placement on the public record, via the FOIA/PA Branch, after deletion of any information (other than the names of parties under investigation) that is exempt from disclosure under Rule 4.10(a).

The FOIA/PA Branch assigns a control number and places the request for clearance on the public record. The Office of the General Counsel monitors the progress of each request.

The responsible staff member must conduct an investigation of relevant Commission records and make inquiries among other Commission staff members to determine whether the facts supplied by the applicant are accurate, and whether there are any other facts that may raise questions as to the propriety of the applicant's participation. Where the investigation discloses that statements in the clearance application are inaccurate in a significant respect, and that denial of clearance therefore may be warranted, or where additional facts other than those presented by the applicant are uncovered and may be relevant to the

outcome of the clearance request, the applicant should be contacted and an accurate summary of his or her response (or any further submission from the applicant) should be forwarded with the request for the General Counsel's consideration. The applicant may be asked to submit supplemental information. The 15-day time limit for answering a request will be tolled until receipt of such supplemental information. Rule 4.1(b)(6)(ii).

Guidelines for granting or denying a request for clearance are discussed at .3.4 below. The Assistant General Counsel for Ethics and Regulatory Affairs can answer questions about application of the clearance rule.

Based in its investigation, staff must prepare a memo to the General Counsel analyzing the application of the clearance standards to the facts presented and recommending grant or denial. If the staff recommendation is to deny clearance, the memo must describe, as completely as possible, the reasons for that conclusion and should be addressed to the Commission for the General Counsel's concurrence.

The Assistant/Associate Director or Regional Director will forward the recommendation to the Bureau Director within seven working days after receipt by the Office of the Secretary.

The Bureau Director will forward the memorandum and the request for clearance to the General Counsel within eleven working days after receipt by the Office of the Secretary.

The General Counsel will approve the request for clearance within fifteen working days of its receipt by the Office of the Secretary. If the recommendation is denial, the General Counsel will forward the recommendation, and a draft response letter for signature by the Secretary, to the Commission within that time period. After signature by the General Counsel or the Secretary, as appropriate, copies of the letter mailed to the applicant granting or denying the clearance request will be forwarded to the Public Records Section for use as the decision document closing the matter, and to the Public Reference Branch for placement on the public record. The General Counsel will delete from the response any information that is exempt from disclosure under Rule 4.10(a) (other than the names of parties under investigation) prior to placement on the public record. The Bureau or Regional Office's recommendations to the General Counsel, any recommendation by the General Counsel to the Commission, and any correspondence, including a copy of the letter of response will be forwarded by the General Counsel to the appropriate Regional Director or Assistant/Associate Director to be included in the official investigatory file(s).

.3.4

GUIDELINES FOR GRANTING OR DENYING A REQUEST

The standards set forth in Rule 4.1(b)(3) for granting or denying clearance must be applied and all relevant information necessary to apply those standards must be marshalled by the responsible staff member(s). The Commission denies clearance when:

- a. The employee participated personally and substantially in the matter.
- b. The clearance request is filed within two years after termination of employment, and the employee had official responsibility for the matter within one year prior to leaving the Commission.
- c. If the employee was exposed to, or was likely to have been exposed to, non-public documents or information, as described in Rule 4.10, pertaining to the proceeding or investigation for which clearance is sought, except that clearance will not be denied on this grounds if the Commission

finds that the nature of the documents or information is such that no present advantage could be derived from such "inside" information.

Since the application of basis b is relatively clear and should involve a more limited factual inquiry, the following discussion will address only bases a and c. In the case of most staff attorneys, the application of a also will be clear. If the applicant was an Assistant Director or similar employee, the nature of his/her participation in the matter must be ascertained by assessing any memos the applicant may have seen or any discussion the applicant may have had with staff responsible for the matter.

In assessing the application of c, the facts necessary and the approach to gathering them may vary. In some instances, the easiest method is first to identify the former employee's assignments or the matters in which information would have likely come to the attention of the employee, and then consider whether any of those matters involve non-public information relevant to the clearance matter. For example, a former employee assigned solely to energy matters in BC ordinarily would not have had access to any pertinent non-public information concerning a warranty matter conducted by BCP. However, the mere fact that a former BC employee seeks clearance in a BCP matter does not automatically foreclose application of the third standard. For example, a former employee assigned to a merger investigation involving a parts manufacturer may have had access to information that could confer an advantage in a BCP warranty investigation involving a competitor.

In other cases, the most efficient approach is first to determine what matters involving similar legal or factual issues, or the same industry, were pending with the Commission during the employee's tenure and then consider whether it is likely that circulations or other information regarding such matters would have come to the applicant's attention, either by virtue of his/her position or duties or because of association with personnel involved in those matters. The second approach is usually necessary where the applicant is a former Commissioner, Bureau Director or Assistant Director, or for some other reason would have come into contact with a wide variety of matters. Nonpublic information with some potential for conferring a present advantage is unlikely to arise frequently in rulemaking proceedings. Nevertheless, staff should describe the nature of the employee's involvement in such matters.

If staff believes that the former employee's access to nonpublic information could confer a present advantage, the reasons for that belief must be set out in detail in the staff memo. This should include a statement of why that information will not otherwise be disclosed in the proceeding or elsewhere.

3.5 APPLICATION OF THE ETHICS ACT TO SENIOR COMMISSION OFFICIALS Rule 4.1(b)(4)

Rule 4.1(b)(4) incorporates the restrictions of 18 U.S.C. § 207(c) on postemployment activities by Commissioners and others designated by the Office of Government Ethics (OGE) as "Senior Employees." OGE has identified the Commissioners and Bureau/Office Heads and their Deputies as Senior Employees. These individuals are barred, within the year following their departure, from: (1) appearing or otherwise representing anyone (other than the U.S.) in any formal or informal appearance before the Commission and; (2) with intent to influence, making any oral or written communication to the agency on behalf of anyone (other than the U.S.) in any proceeding or investigation that is before the Commission or in which it has a direct and substantial interest.

3.6 CLEARANCE AFFIDAVITS Rule 4.1(b)(8)

A law firm participating in a Commission matter is required to file an affidavit with the Secretary whenever a member or associate of the firm participated personally and substantially in the matter while employed at the Commission and is therefore barred from representing a client in the matter. Such affidavits must include a description of the mechanism employed to screen the disqualified employee from the participating firm's members. A copy of the affidavit will be routed to the General Counsel's Office.

4 COSTS

The Commission has directed that each request for an investigational resolution, complaint, or Trade Regulation Rule should include a cost summary.

The lead attorney submitting the matter to the Commission is responsible for including cost information in the recommendation memo. The discussion should include an estimate of the following costs:

- (1) reporting services,
- (2) witness fees and travel,
- (3) consultant fees and travel,
- (4) staff salary and travel,
- (5) contracts, and
- (6) printing.

4.1 COST/BENEFIT ANALYSIS

All Commission actions have positive and negative impacts. One technique for analyzing these impacts is through cost/benefit analysis. The difference between positive and negative impacts is called the "net benefit" and estimating this value is the goal of cost/benefit analysis. This goal can be fully achieved only when all impacts can be measured in quantitative terms, a condition that rarely occurs. Consequently, judgement is usually a major factor in cost/benefit analysis.

Cost/benefit analysis is not to produce correct policy decisions itself, but rather to identify issues and trade-offs, and to organize thinking so as to assist decision-makers in the exercise of judgment. The trade-offs and value judgments that the cost/benefit approach highlight are inherent in the decision-making process; and the application of an analytic approach to a policy problem is simply a statement that it is generally better to confront those trade-offs and judgments directly than to allow them to remain hidden or obscure. This analytic tool can be useful in a number of Commission policy areas, including case selection, program development, TRR development, and program and rule impact evaluation.

5 ECONOMIC SUPPORT

The Bureau of Economics is responsible for providing analytical support for antitrust and consumer protection matters, advising the Commission, the Congress, the President, and other government agencies on the impact of regulation on competition in various industries, and conducting research on antitrust, consumer protection, and regulatory issues.

5.1 ECONOMIC SUPPORT SERVICES FOR INVESTIGATIONS, LITIGATION AND RULEMAKING

Economists can assist the attorney staff with analytical support in all phases of a matter, such as: framing the issues to be investigated and formulating questions to resolve those issues; providing an initial

assessment of the available economic data; deposing witnesses; preparing Commission experts for testimony; preparing cross-examination questions for respondent's witnesses; and serving as expert witnesses.

In the antitrust area, economists can provide a better understanding of market definition, levels of concentration and competition, and possible remedies.

In the area of consumer protection, economists can evaluate consumer injury, analyze demographic and other data, and propose remedies.

.5.2 PROCEDURES FOR REQUESTING AN ECONOMIST'S SERVICES

For economic support in the antitrust area, call the Assistant Director for Antitrust. In the Consumer Protection area, call the Assistant Director for Consumer Protection. In rare cases, the Bureau of Economics may arrange for the use of outside expert consultants.

All time expended and costs incurred by the Bureau of Economics is charged to the underlying matter.

.5.3 INFORMATION RESOURCES

The Bureau of Economics has a wide array of data sources in both the antitrust and consumer protection areas. For further information, call the Bureau's Computer Center Supervisor. [This reference must be conformed to the transfer of computer people to ASD]

.6 EXHIBITS

Requests for purchase of exhibits are submitted on a Purchase Requisition (FTC Form 3-19) and must have the approvals specified on the form. This form is available from your administrative officer or head secretary. Staff should identify on the form the requested item(s), cost estimate(s), and suggested vendor(s) or supplier(s). Assistance in preparing a request can be obtained from your administrative officer or the Division of Procurement and General Services. Completed forms should be submitted to that Division.

.7 THE FEDERAL REGISTER

The Federal Register is the publication established by Congress to inform the public about the regulations of the U.S. Government. The Federal Register Act establishes a uniform system for handling of agency issuances. It provides for:

- (1) Filing, by delivering or mailing the documents to the Office of the Federal Register;
- (2) Placement on the public record for inspection, i.e., two days after filing and one day before publication the document may be inspected at the Office of the Federal Register;
- (3) Publication in the Federal Register, i.e., the actual printing in the publication entitled "Federal Register"; and
- (4) Permanent codification, when applicable, in the Code of Federal Regulations (CFR). Almost all FTC documents published in the "Rules and Regulations" section are codified in 16 CFR. Exceptions include documents published in the "Proposed Rules" section, which are appropriately numbered for later codification when final, and documents published in the "Notices" section.

Publication of a document in the Federal Register carries with it a number of legal effects. It serves as official notice of a document's existence and its contents. It also establishes the official text and the date of a regulation's promulgation. A document published in the Federal Register may incorporate other materials by reference, but only if specific requirements are met, including written approval by the Director of the Federal Register. 1 CFR § 51.3.

The Federal Register is published by the Office of the Federal Register, National Archives and Records Administration.

.7.1 FTC DOCUMENTS PUBLISHED IN THE FEDERAL REGISTER

Most FTC documents that appear in the Federal Register are required by law to be published there and are later codified. A document not required to be published by law may be published in the Federal Register if the Director of the Office of the Federal Register considers its publication to be in the public interest. Such a document may or may not be codified. A news release, prepared and released by the Office of Public Affairs, may be issued at the time of Federal Register publication.

The following categories of documents, among others, are published in the Federal Register and codified in 16 CFR:

- * Federal Trade Commission Organization, Procedures, Rules of Practice and Standards of Conduct;
- * Regulations under specific Acts of Congress, e.g., the Wool, Fur, and Textile Acts and the Hobby Protection Act;
- * General policy statements and interpretations of general applicability issued by the Commission;
- * Final trade regulation rules;
- * Final industry guides;
- * Any other matter that the Commission specifically directs, e.g., administrative interpretations, opinions, and rulings.

Other categories of FTC documents that are published in the Federal Register but are not codified in the CFR include the following:

- * Agreements with other agencies;
- * Notices and advance notices of proposed rulemaking proceedings;
- * Proposed trade regulation rules and industry guides;
- * Early terminations of premerger waiting periods granted under the Hart-Scott-Rodino Act;
- * Notices of closed and open Commission meetings pursuant to the Sunshine Act;
- * Miscellaneous documents having general applicability and legal effect, such as notices of Systems of Records and Routine Uses under the Privacy Act and Availability of Agency Index Material under the Freedom of Information Act.

Consent agreements and staff analyses that are placed on the public record for comment for 60 days are published in the "Proposed Rules" section of the Federal Register. When the final Decision and Order is entered by the Commission, an appropriate notice, prepared by the Information Management Branch, Information Services Division, Office of the Deputy Executive Director for Planning and Information, is published in the "Proposed Rules" section. Final orders in litigated matters are also published in that section. For both consent and litigated matters, the orders are not codified, but each such notice contains a

listing of prohibited trade practices and affirmative corrective actions, prepared by the Information Management Branch.

Staff should consult with the Information Management Branch for guidance in determining whether or not a document should be published and codified in the CFR.

.7.2 DOCUMENT PREPARATION AND TRANSMITTAL

Staff is responsible for ensuring that documents are prepared according to the format requirements established by the Office of the Federal Register. These requirements, which must be precisely followed, are contained in the Federal Register Document Drafting Handbook which can be obtained from the Information Management Branch.

Staff working on rulemaking matters should consult with the Chief Presiding Officer for advice on CFR numbers as well as document preparation and guidance on publishing rulemaking documents in the Federal Register. Staff working on other than rulemaking matters which will be published in the Federal Register may consult with the Information Management Branch for guidance on Federal Register format requirements.

Federal agencies are required to reimburse the Government Printing Office for the cost of printing, binding, and distributing the Federal Register and Code of Federal Regulations. The FTC's billing code should be typed or handwritten in ink at the top of the first page on all documents submitted for publication as follows: BILLING CODE: 6750-01.

All FTC documents published in the Federal Register are done so "By direction of the Commission," that is, pursuant to specific Commission approval, with the following exceptions:

- (1) Documents correcting obvious errors (typographical, omissions, sequencing errors [?], etc.);
- (2) Rulemaking documents issued by the presiding officer under Rule 1.13 (c)(1); and
- (3) any other documents for which the responsibility has been specifically delegated to another Commission official.

A proposed Federal Register document in its final form should accompany the staff memorandum to the Commission. Matters that involve a document to be published in the Federal Register are reviewed and routed according to normal procedures for the subject matter.

After the Commission has approved publication of the document in the Federal Register, the Office of the Secretary sends the document to the Information Management Branch for transmittal to the Office of the Federal Register. Publication is generally coordinated with the Office of Public Affairs, which makes the final determination as to the need for a news release.

To be eligible for filing and publication in the Federal Register, a document must be typewritten on white bond paper approximately 8 1/2 by 11 inches in size, double spaced, with a left-hand margin of approximately 1-1/2 inches and a right-hand margin of approximately 1 inch. 1 CFR 18.4.

All documents prepared for publication in the Rules and Regulations or Proposed Rules sections of the Federal Register (e.g., Rule changes, Trade Regulation Rules) should include a list of the appropriate

indexing terms for each CFR part affected by the document. The terms should be chosen from the Federal Register Thesaurus of Indexing Terms, available from the Information Management Branch. These terms should be listed at the end of the Preamble Section. For example, if a rule change is proposed in 16 CFR 228 the reference at the end of the Preamble Section would be:

List of Subjects
16 CFR 228
Advertising
Motor Vehicles
Tires
Trade Practices.

Staff should include this list of index terms in the Federal Register notice before it is sent to the Information Management Branch.

The heading of rulemaking documents prepared for Federal Register publication should also include a Regulation Identifier Number (RIN). Staff should consult the most recent Regulatory Agenda for a listing of RIN's. If no RIN has been assigned, staff should contact the Assistant General Counsel for Ethics and Regulatory Affairs.

The original document to be published in the Federal Register becomes a part of the National Archives of the United States. The original and three copies must have an original signature, in ink, by the approving official, usually the Secretary of the Commission. See the Federal Register Document Drafting Handbook for additional requirements pertaining to original document and copies.

.7.3 SCHEDULING FOR PUBLICATION

Staff is responsible for ensuring that the Information Management Branch is apprised of any special circumstances warranting a particular publication date in the Federal Register. Generally, a document received by 2 pm is published in the Federal Register on the third business day following the day it is received by the Office of the Federal Register, e.g., received by 2 pm Monday, filed for inspection on Wednesday, published Thursday. If the document to be published pertains to a matter that will involve a news conference or is of great public interest, staff is responsible for coordinating the timing of these events to be consistent with the public inspection date of the Office of the Federal Register. The Office of Public Affairs is responsible for conducting news conferences at headquarters and for coordinating plans for news conferences held in the regional offices. (See OM Ch. 17)

.8 RECORDS

The Records Branch, Information Services Division, is responsible for the maintenance and disposition of the Commission's investigation, consent and docket case files.

These records are maintained in Room 240 of the Headquarters Building for three years after closing or a final order issues, after which time the files are transferred to the Washington National Records Center in Suitland, Maryland.

Records are loaned to Commission staff for a period of 30 days. The Records Branch must be notified if records are to be used for a longer period of time. Borrowed records are not transferrable.

.8.1 ASSIGNMENT OF NUMBERS

All official Commission matters are assigned an identification number.

.8.1.1 [Reserved]

.8.1.2 7-DIGIT INVESTIGATIONS

The Bureaus assign numbers for investigations.

1st and 2nd positions = fiscal year the matter opened

3rd and 4th positions = 10 for Competition, 23 for Consumer Protection

last three positions = numerical sequence within the fiscal year and mission

.8.1.3 DOCKETS

The Office of the Secretary assigns the number when a complaint is approved and issued.

first position = D

last five positions = numerical sequence

.8.1.4 PART II CONSENTS

The Office of the Secretary assigns the number when the order is issued following Commission approval of the consent agreement.

first position = C

last four positions = numerical sequence

.8.1.5 RULES AND GUIDES

The responsible Bureau assigns the number for a Rule or a Guide.

1st position = R for Rule or G for guide

2nd position = last digit of the fiscal year in which the matter was opened

3rd and 4th positions = organization

07 Office of General Counsel
10 Bureau of Competition
11 Bureau of Consumer Protection
12 Bureau of Economics
71 Atlanta Regional Office
75 Boston Regional Office
76 Chicago Regional Office

77	Cleveland Regional Office
80	Dallas Regional Office
83	Denver Regional Office
84	Los Angeles Regional Office
88	New York Regional Office
89	San Francisco Regional Office
91	Seattle Regional Office

last three positions = numerical sequence within the fiscal year

When the notice of proposed rulemaking is published in the Federal Register, the Office of the Secretary assigns a 5 digit number, which is the official recordkeeping number identifying the Trade Regulation Rule.

first three positions = 215

last two positions = numerical sequence

.8.1.6 PROJECTS

Project numbers are assigned by the originating organization.

1st position = P

2nd and 3rd positions = fiscal year in which the project was opened

4th and 5th positions = last two digits in the organization responsible for the project

6th and 7th positions = numerical sequence within the fiscal year

.8.1.7 ADVOCACY MATTERS

The Office of Consumer and Competition Advocacy assigns Advocacy numbers.

1st position = V

2nd and 3rd positions = current fiscal year

4th through 7th positions = sequential number within the fiscal year

.8.1.8 EXTERNAL MATTERS

The External Court numbers are assigned by the Management Information System Protection.

1st position = X

2nd and 3rd positions = current fiscal year

last four positions = sequential number within the fiscal year

.9 REPORTING SERVICES

Stenographic reporting services are provided through a standing contract. The contract's negotiated terms may change annually. These terms include, among others, the cost per page, provisions regarding outside purchase of transcripts, and provisions regarding the copying of transcripts. The Supervisor, Records Branch, Information Services Division, is the Contracting Officer's Technical Representative (COTR) and can answer specific questions concerning the contract terms and court reporter services.

.9.1 TRANSCRIPTS

The court reporter supplies an original and two copies of the transcript to the Records Branch. Except for news conferences and special events, that office keeps the original transcript and sends one copy to the Presiding Officer/Administrative Law Judge and one copy to the staff. Normally the transcript is delivered 10 working days after the hearing. Staff must request and receive the approval of the Director, Information Services Division, after obtaining authorization from the Assistant/Associate Director or Regional Office Director, to establish other than a normal transcript delivery schedule. Staff must specify if a computer tape of the proceedings is required when scheduling for stenographic services. See ¶ .2.2.2 of this Chapter. The contract specifies that indirect audio reporting by means of a stenomask can be used only with the permission of the presiding officer.

.9.2 SCHEDULING A COURT REPORTER

Staff is responsible for scheduling a court reporter for nonpublic docketed matters (e.g., a deposition), nonpublic investigations and rulemaking hearings open to the public. The Administrative Law Judge, not staff, is responsible for scheduling a court reporter for an adjudicative hearing before the Administrative Law Judge. Staff should contact the Records Branch, Information Services Division, to obtain the services of a court reporter for other than adjudicative hearings.

Scheduling a court reporter, regardless of the matter's status, requires the approval of the Assistant/Associate Director or Regional Office Director or other person who has been delegated this authority for the office/division. Contact by telephone the Records Branch, Information Services Division, to provide the information requested on Reporting Services Order (FTC Form 92). After scheduling the hearing, the Records Branch will send confirmation copies of the completed form to the reporting company and to staff requesting the reporting service.

If the staff is unable to obtain the deponent's signature, the reporting company will, for a fee, forward the deposition for signature.

If the transcript is not signed by the witness during the 30 day period following the date upon which the witness is first afforded a reasonable opportunity to examine it, the Commission investigator shall 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. (Rule 2.9(A) and 3.33(F))

.9.3 Cancelling a Court Reporter

Staff is responsible for notifying the Records Branch if reporter services are to be cancelled. The initial notification should be by telephone followed by a memo confirming the cancellation. This notice must be

given 24 hours before a hearing scheduled in Washington, D.C., or 48 hours if the hearing is scheduled outside of Washington, D.C. The Commission is otherwise obligated to pay an appearance fee.

.10 SUBMISSIONS TO COMMISSION

.10.1 RE-SUBMISSION TO THE COMMISSION OF MATTERS RETURNED TO STAFF FOR FURTHER ACTION OR REPORT

Any matter returned by the Commission for staff action must be resubmitted, or its status reported, within 90 days, unless another time limit has been set. A response to a Commission minute must include the exact date and caption of the minute containing the directive. A copy of the minute should be attached to the re-submission. The Document Coding Form accompanying the re-submission should also reference the directive.

If a staff response to a Commission directive deals with a matter that is collateral or incidental to, or an outgrowth of a 7-digit file, the staff memorandum must identify both the file and the collateral matter by subject.

.10.1.1 Form and Substance of Status Reports

When staff is requested to furnish the Commission with a status report during the course of an investigation, the following should be included:

- (1) Investigative actually steps taken and a comparison with the steps that were planned;
- (2) Whether the investigation is on schedule and a description of any difficulties encountered and the proposed or implemented solution;
- (3) Preliminary general findings and a statement of determinations that remain to be made;
- (4) Any tentative conclusions that are possible based on findings to date;
- (5) Brief analysis of the legal issues raised by the investigation. (Such analysis should be very short in instances where the law is well established.);
- (6) Responses to any specific instructions or questions previously raised by the Commission or Bureau Director; and
- (7) Future course of the investigation, including any remaining steps to be taken, changes in direction or plan, need for time or resources, and an assessment of the likelihood of accomplishing the investigation's goals.

.10.2 NOTIFICATION TO COMMISSION WHEN DEADLINE FOR COMMISSION ACTION IS IMMINENT

The Commission has instructed staff that a minimum period of three days should be allowed for the Commission to review recommendations for action. See OM Ch. 13.10 for procedures for meeting this requirement where the circumstances impose a strict deadline for Commission action (e.g., filing legal documents in court).

.11 SUBPOENAS AND CIVIL INVESTIGATIVE DEMANDS (CIDs)

.11.1 INVESTIGATIONAL SUBPOENAS OR CIDs, FORMS AND PROCEDURES

.11.1.1 Headquarters Procedures

A subpoena, CID, or any other form of compulsory process for an investigational hearing must be issued (and signed) by a Commissioner acting pursuant to a Commission resolution. (See OM Ch. 3 for guidelines in preparing and processing subpoenas or CIDs during investigations.)

After the subpoena or CID is signed by a Commissioner, the Public Records Branch, Office of the Secretary, affixes the seal, and encloses a Claims for Witness Attendance Fees, Travel, and Miscellaneous Expenses (SF 1157), and a copy of Part 2 and Part 4 of the Commission's Rules. The subpoena or CID package is then mailed by certified mail or, if necessary, by overnight service.

.11.1.2 Regional Office Procedures

Regional Offices may obtain copies of blank subpoena and CID forms from the stockroom at headquarters. For procedures for preparing and processing subpoenas, see OM Ch. 3. After signature by the appropriate Commissioner, the subpoena or CID is processed for mailing by the Public Records Branch as outlined above.

.11.2 ADMINISTRATIVE LITIGATION SUBPOENAS, FORMS AND PROCEDURES

The forms and procedures for subpoenas authorized under Rule 3.34 are the same for both headquarters and regional offices. These subpoenas are prepared for signature by the ALJ. The ALJ sends the signed subpoena, and specifications if duces tecum, to the Public Records Branch, Office of the Secretary. The Public Records Branch affixes the seal and encloses a Claims for Witness Attendance Fees, Travel, and Miscellaneous Expenses (SF 1157); and a copy of Part 3 and Part 4 of the Commission's Rules. The completed subpoena package is then mailed by certified mail or, if necessary, by overnight service. A copy of the subpoena and its return receipt are filed in the Records Processing Section. The Public Records Branch submits A Request for Return Receipt (After Mailing) (PS Form 3811A) to the Postal Service if certified cards have not been returned within 14 days after mailing. When the card is returned, the Public Records Branch notifies the Counsel Supporting the Complaint.