

## § 2.31

the laws administered by the Commission. The custodian shall have the powers and duties prescribed by section 21 of the FTC Act. Deputy custodians may perform all of the duties assigned to custodians. The appropriate Bureau Directors, Deputy Directors, Associate Directors in the Bureau of Consumer Protection, Assistant Directors in the Bureau of Competition, Regional Directors or Assistant Regional Directors shall take the action required by section 21(b)(7) of the FTC Act if it is necessary to replace a custodian or deputy custodian.

(b) *Copying of custodial documents.* The custodian designated pursuant to section 21 of the Federal Trade Commission Act (subject to the general supervision of the Executive Director) may, from among the material submitted, select the material the copying of which is necessary or appropriate for the official use of the Commission, and shall determine, the number of copies of any such material that are to be reproduced. Copies of material in the physical possession of the custodian may be reproduced by or under the authority of an employee of the Commission designated by the custodian.

(c) Material produced pursuant to the Federal Trade Commission Act, while in the custody of the custodian, shall be for the official use of the Commission in accordance with the Act; but such material shall upon reasonable notice to the custodian be made available for examination by the person who produced such material, or his duly authorized representative, during regular office hours established for the Commission.

[45 FR 36343, May 29, 1980, as amended at 46 FR 26291, May 12, 1981; 48 FR 41376, Sept. 15, 1983; 50 FR 53305, Dec. 31, 1985] **Subpart B**  
**[Reserved]**

### **Subpart C—Consent Order Procedure**

#### **§ 2.31 Opportunity to submit a proposed consent order.**

(a) Where time, the nature of the proceeding, and the public interest permit, any individual, partnership, or corporation being investigated shall be afforded the opportunity to submit through the operating Bureau or Re-

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gional Office having responsibility in the matter a proposal for disposition of the matter in the form of a consent order agreement executed by the party being investigated and complying with the requirements of § 2.32, for consideration by the Commission in connection with a proposed complaint submitted by the Commission's staff.

(b) After a complaint has been issued, the consent order procedure described in this part will not be available except as provided in § 2.32(b).

[40 FR 15235, Apr. 4, 1975]

#### **§ 2.32 Agreement.**

Every agreement in settlement of a Commission complaint shall contain, in addition to an appropriate proposed order, either an admission of the proposed findings of fact and conclusions of law submitted simultaneously by the Commission's staff or an admission of all jurisdictional facts and an express waiver of the requirement that the Commission's decision contain a statement of findings of fact and conclusions of law. Every agreement also shall waive further procedural steps and all rights to seek judicial review or otherwise to challenge or contest the validity of the order. In addition, where appropriate, every agreement in settlement of a Commission complaint challenging the lawfulness of a proposed merger or acquisition shall also contain a hold-separate or asset-maintenance order. The agreement may state that the signing thereof is for settlement purposes only and does not constitute an admission by any party that the law has been violated as alleged in the complaint. Every agreement shall provide that:

(a) The complaint may be used in construing the terms of the order;

(b) No agreement, understanding, representation, or interpretation not contained in the order or the aforementioned agreement may be used to vary or to contradict the terms of the order;

(c) The order will have the same force and effect and may be altered, modified or set aside in the same manner provided by statute for Commission orders issued on a litigated or stipulated record;

(d) Except as provided by order of the Commission, any order issued pursuant

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to the agreement will become final upon service;

(e) The agreement will not become a part of the public record unless and until it is accepted by the Commission; and

(f) If the Commission accepts the agreement, further proceedings will be governed by § 2.34.

[64 FR 46268, Aug. 25, 1999]

### § 2.33 Compliance procedure.

The Commission may in its discretion require that a proposed agreement containing an order to cease and desist be accompanied by an initial report signed by the respondent setting forth in precise detail the manner in which the respondent will comply with the order when and if entered. Such report will not become part of the public record unless and until the accompanying agreement and order are accepted by the Commission. At the time any such report is submitted a respondent may request confidentiality for any portion thereof with a precise showing of justification therefor as set out in § 4.9(c) and the General Counsel or the General Counsel's designee will dispose of such requests in accordance with that section.

[63 FR 32977, June 17, 1998]

### § 2.34 Disposition.

(a) *Acceptance of proposed consent agreement.* The Commission may accept or refuse to accept a proposed consent agreement. Except as otherwise provided in paragraph (c) of this section, acceptance does not constitute final approval, but it serves as the basis for further actions leading to final disposition of the matter.

(b) *Effectiveness of hold-separate or asset-maintenance order.* Following acceptance of a consent agreement, the Commission will, if it deems a hold-separate or asset-maintenance order appropriate, issue a complaint and such an order as agreed to by the parties. Such order will be final upon service. The issuance of a complaint under this paragraph will neither commence an adjudicatory proceeding subject to part 3 of this chapter nor subject the consent agreement proceeding to the

prohibitions specified in § 4.7 of this chapter.

(c) *Public comment.* Promptly after its acceptance of the consent agreement, the Commission will place the order contained in the consent agreement, the complaint, and the consent agreement on the public record for a period of 30 days, or such other period as the Commission may specify, for the receipt of comments or views from any interested person. At the same time, the Commission will place on the public record an explanation of the provisions of the order and the relief to be obtained thereby and any other information that it believes may help interested persons understand the order. The Commission also will publish the explanation in the FEDERAL REGISTER. The Commission retains the discretion to issue a complaint and a Final Decision and Order, incorporating the order contained in a consent agreement, in appropriate cases before seeking public comment. Unless directed otherwise by the Commission, such Decision and Order will be final upon service.

(d) *Comment on initial compliance report.* If respondents have filed an initial report of compliance pursuant to § 2.33, the Commission will place that report on the public record, except for portions, if any, granted confidential treatment pursuant to § 4.9(c) of this chapter, with the complaint, the order, and the consent agreement.

(e) *Action following comment period.* (1) Following the comment period, on the basis of comments received or otherwise, the Commission may either withdraw its acceptance of the agreement and so notify respondents, in which event it will take such other action as it may consider appropriate, or issue and serve its complaint in such form as the circumstances may require and its decision in disposition of the proceeding.

(2) The Commission, following the comment period, may determine, on the basis of the comments or otherwise, that a Final Decision and Order that was issued in advance of the comment period should be modified. Absent agreement by respondents to the modifications, the Commission may initiate a proceeding to reopen and modify the decision and order in accordance with