

**Subpart B—Petitions Filed Under Section 7A of the Clayton Act, as Amended, for Review of Requests for Additional Information or Documentary Material**

AUTHORITY: 15 U.S.C. 18a(d), (e).

**§ 2.20 Petitions for review of requests for additional information or documentary material.**

(a) For purposes of this section, “second request” refers to a request for additional information or documentary material issued under 16 CFR 803.20.

(b) *Second request procedures*—(1) *Notice*. Every request for additional information or documentary material issued under 16 CFR 803.20 shall inform the recipient(s) of the request that the recipient has a right to discuss modifications or clarifications of the request with an authorized representative of the Commission. The request shall identify the name and telephone number of at least one such representative.

(2) *Second request conference*. An authorized representative of the Commission shall invite the recipient to discuss the request for additional information or documentary material soon after the request is issued. At the conference, the authorized representative shall discuss the competitive issues raised by the proposed transaction, to the extent then known, and confer with the recipient about the most effective way to obtain information and documents relating to the competitive issues raised. The conference will ordinarily take place within 5 business days of issuance of the request, unless the recipient declines the invitation or requests a later date.

(3) *Modification of requests*. The authorized representative shall modify the request for additional information or documentary material, or recommend such modification to the responsible Assistant Director of the Bureau of Competition, if he or she determines that a less burdensome request would be consistent with the needs of the investigation. A request for additional information or documentary material may be modified only in writing

signed by the authorized representative.

(4) *Review of request decisions*. (i) If the recipient of a request for additional information or documentary material believes that compliance with portions of the request should not be required and the recipient has exhausted reasonable efforts to obtain clarifications or modifications of the request from an authorized representative, the recipient may petition the General Counsel to consider and rule on unresolved issues. Such petition shall be submitted by letter to the General Counsel with a copy to the authorized representative who participated in the second request conference held under paragraph (b)(3) of this section. The petition shall not, without leave of the General Counsel, exceed 500 words, excluding any cover, table of contents, table of authorities, glossaries, proposed form of relief and any appendices containing only sections of statutes or regulations, and shall address petitioner’s efforts to obtain modification from the authorized representative.

(ii) Within 2 business days after receiving such a petition, the General Counsel shall set a date for a conference with the petitioner and the authorized representative.

(iii) Such conference shall take place within 7 business days after the General Counsel receives the petition, unless the request recipient agrees to a later date or declines to attend a conference.

(iv) Not later than 3 business days before the date of the conference, the petitioner and the authorized representative may each submit memoranda regarding the issues presented in the petition. Such memoranda shall not, without leave of the General Counsel, exceed 1250 words, excluding any cover, table of contents, table of authorities, glossaries, proposed form of relief and appendices containing only sections of statutes or regulations. Such memoranda shall be delivered to counsel for the other participants on the same day they are delivered to the General Counsel.

(v) The petitioner’s memorandum shall include a concise statement of reasons why the request should be

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modified, together with proposed modifications, or a concise explanation why the recipient believes it has substantially complied with the request for additional information or documentary material.

(vi) The authorized representative's memorandum shall include a concise statement of reasons why the petitioner's proposed modifications are inappropriate or a concise statement of the reasons why the representative believes that the petitioner has not substantially complied with the request for additional information and documentary material.

(vii) The General Counsel shall advise the petitioner and the authorized representative of his or her decision within 3 business days following the conference.

[66 FR 8721, Feb. 1, 2001]

### 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 Regional 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 §3.25(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 ex-

press 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 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