

§ 2.12

privilege or protection is resolved, the investigation is closed, or any enforcement proceeding is concluded.

(2) When a disclosure is made that waives attorney-client privilege or work product, the waiver extends to an undisclosed communication or information only if:

- (i) The waiver is intentional;
- (ii) The disclosed and undisclosed information or material concern the same subject matter; and
- (iii) They ought in fairness to be considered together.

[77 FR 59308, Sept. 27, 2012]

§ 2.12 [Reserved]

§ 2.13 Noncompliance with compulsory processes.

(a) In cases of failure to comply with Commission compulsory processes, appropriate action may be initiated by the Commission or the Attorney General, including actions for enforcement, forfeiture, civil penalties, or criminal sanctions. The Commission may also take any action as the circumstances may warrant under § 4.1(e) of this chapter.

(b) The General Counsel, pursuant to delegation of authority by the Commission, without power of redelegation, is authorized, when he or she deems appropriate:

(1) To initiate, on behalf of the Commission, an enforcement proceeding in connection with the failure or refusal of a recipient to comply with, or to obey, a subpoena, a CID, or an access order, if the return date or any extension thereof has passed, or if the recipient breaches any modification regarding compliance;

(2) To approve and have prepared and issued, in the name of the Commission, a notice of default in connection with the failure of a recipient of an order to file a report pursuant to section 6(b) of the Federal Trade Commission Act to timely file that report, if the return date or any extension thereof has passed; to initiate, on behalf of the Commission, an enforcement proceeding; or to request to the Attorney General, on behalf of the Commission, to initiate a civil action in connection with the failure of such recipient to timely file a report, when the return

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date or any extension thereof has passed;

(3) To initiate, on behalf of the Commission, an enforcement proceeding under section 7A(g)(2) of the Clayton Act (15 U.S.C. 18a(g)(2)) in connection with the failure to substantially comply with any request for the submission of additional information or documentary material under section 7A(e)(1) of the Clayton Act (15 U.S.C. 18a(e)(1)), provided that the General Counsel shall provide notice to the Commission at least 2 days before initiating such action; and

(4) To seek an order of civil contempt in cases where a court order enforcing compulsory process has been violated.

[77 FR 59309, Sept. 27, 2012]

§ 2.14 Disposition.

(a) When an investigation indicates that corrective action is warranted, and the matter is not subject to a consent settlement pursuant to subpart C of this part, the Commission may initiate further proceedings.

(b) When corrective action is not necessary or warranted in the public interest, the investigation shall be closed. The matter may nevertheless be further investigated at any time if circumstances so warrant.

(c) In matters in which a recipient of a preservation demand, an access letter, or Commission compulsory process has not been notified that an investigation has been closed or otherwise concluded, after a period of twelve months following the last written communication from the Commission staff to the recipient or the recipient's counsel, the recipient is relieved of any obligation to continue preserving information, documentary material, or evidence, for purposes of responding to the Commission's process or the staff's access letter. The "written communication" may be in the form of a letter, an email, or a facsimile.

(d) The Commission has delegated to the Directors of the Bureaus of Competition and Consumer Protection, their Deputy Directors, the Assistant Directors of the Bureau of Competition, the Associate Directors of the Bureau of Consumer Protection, and the Regional Directors, without power of