

## § 2.8A

## 16 CFR Ch. I (1-1-06 Edition)

### § 2.8A Withholding requested material.

(a) Any person withholding material responsive to an investigational subpoena or civil investigative demand issued pursuant to § 2.7, an access order issued pursuant to § 2.11, an order to file a report issued pursuant to § 2.12, or any other request for production of material issued under this part, shall assert a claim of privilege or any similar claim not later than the date set for the production of material. Such person shall, if so directed in the subpoena, civil investigative demand or other request for production, submit, together with such claim, a schedule of the items withheld which states individually as to each such item the type, 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.

(b) A person withholding material solely for reasons described in § 2.8A(a) shall comply with the requirements of that subsection in lieu of filing a motion to limit or quash compulsory process.

(Sec. 5, 38 Stat. 719 as amended (15 U.S.C. 45))

[44 FR 54042, Sept. 18, 1979, as amended at 45 FR 36342, May 29, 1980]

### § 2.9 Rights of witnesses in investigations.

(a) Any person compelled to submit data to the Commission or to testify in an investigational hearing shall be entitled to retain a copy or, on payment of lawfully prescribed costs, procure a copy of any document submitted by him and of his own testimony as stenographically reported, except that in a nonpublic hearing the witness may for good cause be limited to inspection of the official transcript of his testimony. Where the investigational hearing has been conducted pursuant to a civil investigative demand issued under section 20 of the Federal Trade Commission Act, upon completion of transcription of the testimony of the witness, the witness shall be offered an opportunity to read the transcript of his testimony. Any changes in form or substance which the witness desires to make shall 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 shall then be signed by the witness unless the witness cannot be found, is ill, waives in writing his right to signature or refuses to sign. If the transcript is not signed by the witness within thirty days of his being afforded a reasonable opportunity to review it, the Commission investigator shall take the actions prescribed by section 20(c)(12)(E)(ii) of the Federal Trade Commission Act.

(b) Any witness compelled to appear in person in an investigational hearing may be accompanied, represented, and advised by counsel as follows:

(1) Counsel for a witness may advise the witness, in confidence and upon the initiative of either counsel or the witness, with respect to any question asked of the witness. If the witness refuses to answer a question, then counsel may briefly state on the record if he has advised the witness not to answer the question and the legal grounds for such refusal.

(2) Where it is claimed that the testimony or other evidence sought from a witness is outside the scope of the investigation, or that the witness is privileged to refuse to answer a question or to produce other evidence, the witness or counsel for the witness may object on the record to the question or requirement and may state briefly and precisely the ground therefor. The witness and his counsel shall not otherwise object to or refuse to answer any question, and they shall not otherwise interrupt the oral examination.

(3) Any objections made under the rules in this part will be treated as continuing objections and preserved throughout the further course of the hearing without the necessity for repeating them as to any similar line of inquiry. Cumulative objections are unnecessary. Repetition of the grounds for any objection will not be allowed.

(4) Counsel for a witness may not, for any purpose or to any extent not allowed by paragraphs (b) (1) and (2) of this section, interrupt the examination of the witness by making any objections or statements on the record. Petitions challenging the Commission's authority to conduct the investigation

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or the sufficiency or legality of the subpoena or civil investigative demand must have been addressed to the Commission in advance of the hearing. Copies of such petitions may be filed as part of the record of the investigation with the person conducting the investigational hearing, but no arguments in support thereof will be allowed at the hearing.

(5) Following completion of the examination of a witness, counsel for the witness may on the record request the person conducting the investigational hearing to permit the witness to clarify any of his or her answers. The grant or denial of such request shall be within the sole discretion of the person conducting the hearing.

(6) The person conducting the hearing shall take all necessary action to regulate the course of the hearing to avoid delay and to prevent or restrain disorderly, dilatory, obstructionist, or contumacious conduct, or contemptuous language. Such person shall, for reasons stated on the record, immediately report to the Commission any instances where an attorney has allegedly refused to comply with his or her directions, or has allegedly engaged in disorderly, dilatory, obstructionist, or contumacious conduct, or contemptuous language in the course of the hearing. The Commission, acting pursuant to §4.1(e) of this chapter, will thereupon take such further action, if any, as the circumstances warrant, including suspension or disbarment of the attorney from further practice before the Commission or exclusion from further participation in the particular investigation.

(18 U.S.C. 6002, 6004)

[32 FR 8446, June 13, 1967, as amended at 45 FR 36343, May 29, 1980; 45 FR 39244, June 10, 1980; 46 FR 26290, May 12, 1981; 50 FR 53304, Dec. 31, 1985; 61 FR 50645, Sept. 26, 1996]

### §2.10 Depositions.

In investigations other than those conducted under section 20 of the Federal Trade Commission Act, the Commission may order testimony to be taken by deposition at any stage of such investigation. Such depositions may be taken before any person having power to administer oaths who may be designated by the Commission. The

testimony shall be reduced to writing by the person taking the deposition, or under his direction, and shall then be subscribed to by the deponent. Any person may be compelled to appear and be deposed and to produce documentary evidence in the same manner as witnesses may be compelled to appear and testify and produce documentary evidence as provided in §§2.7 through 2.9.

[45 FR 36343, May 29, 1980, as amended at 50 FR 53304, Dec. 31, 1985]

### §2.11 Orders requiring access.

(a) In investigations other than those conducted under section 20 of the Federal Trade Commission Act, the Commission may issue an order requiring any person, partnership or corporation being investigated to grant access to files for the purpose of examination and the right to copy any documentary evidence. The Directors, Deputy Directors and Assistant Directors of the Bureaus of Competition and Economics, the Director, Deputy Directors and Associate Directors of the Bureau of Consumer Protection, the Regional Directors, and Assistant Regional Directors of the Commission's regional offices, pursuant to delegation of authority by the Commission, without power of re-delegation, are authorized, for good cause shown, to extend the time prescribed for compliance with orders requiring access issued during the investigation of any matter.

(b) Any petition to limit or quash an order requiring access shall be filed with the Secretary of the Commission within twenty (20) days after service of the order, or, if the date for compliance is less than twenty (20) days after service of the order, then before the return date. Such petition shall set forth all assertions of privilege or other factual and legal objections to the order requiring access, including all appropriate arguments, affidavits and other supporting documentation. All petitions to limit or quash orders requiring access shall be ruled upon by the Commission itself, but the above-designated Directors, Deputy Directors, Assistant Directors, Associate Directors, Regional Directors and Assistant