The Fair Trade Commission's View on New Rules of the Amended Antimonopoly Act

-Comments Addressed to the Commission Regarding the Draft of its Rules and the Point of View of the Commission-

1 The Commission's view on the items revised taking into consideration of comments addressed to the Commission concerning the draft rules

Item	Gist of an opinion	JFTC's view
＜Rules on administrative investigations＞ Peruse and copy of materials submitted by order (Section 18, etc.)	・ Perusing and copying of materials submitted in compliance with orders should be fully permitted, from the standpoint of the right of defense of the person concerned in the case, and the requirement of "materials which are necessary to conduct business" should be deleted (The Japan Business Federation and others). ・ It should be specified in the Rules that "the date and time, place and method" of perusing and copying shall be designated in writing, taking into consideration the opinion of the person concerned in the case, and that complaint may be filed against such designation (The Kansai Economic Federation and others).	・ Taking into consideration the opinion expressed, the requirements of "materials which are necessary to conduct business" will be deleted and it will be specified in the Rules on Administrative Investigations that the related materials may be perused or copied except in the case where there is a danger of destruction of evidence by the person who was ordered to submit, or where perusing and copying of the materials may otherwise impede the subsequent investigation. ・ Based on the opinion expressed, it will be specified in the Rules on Administrative Investigations that the date and time, place, and method of perusing and copying shall be designated, taking into consideration the opinion of the person who was ordered to submit. We are of the view that, since the designation of date, time, place, and method of peruse and copy, will take into consideration the opinion of the person who was ordered to submit, it should not be necessary to provide in the Rules on Administrative Investigations for filing of a complaint against such designation. Furthermore, it is not appropriate in all cases to designate the date and time, place, and method uniformly in writing, because the designation should be determined in accordance with the circumstances of individual cases.

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Explanation before the cease and desist order (Section 25)	• Explanation before the cease and desist order, and explanation of evidence for the facts found by the Commission, should be provided to the person who has received notice before the cease and desist order, and it should be specified in the Rules that such explanation be provided without fail (The Kansai Economic Federation and others).	• We are of the view that, from the perspective of procedural speed and efficiency, explanation before the cease and desist order, including explanation of evidence, need not be provided to all persons concerned including those who do not need to have such explanation provided to them. However, based on the opinion expressed, it will be specified in the Rules on Administrative Investigations that explanation shall be provided without fail to any person concerned upon request.
	• It should be specified in the Rules that a representative is also entitled to the provision of explanation before the cease and desist order (The Association of Japanese Corporate Legal Departments and others).	• Taking into consideration the opinion expressed, it will be specified in the Rules on Administrative Investigations that explanation before the cease and desist order shall be provided to the person who received advance notification of the cease and desist order, or to his or her representative.
Statement of opinion by representative, and others (Section 27)	• The Rules on Administrative Investigations provide that explanation of evidence shall be provided to such an extent as would be necessary to clearly provide explanation, but all the evidence should be disclosed including all those an investigator has on hand (The Japan Chamber of Commerce and Industry and others).	• As preliminary procedures, including explanation of evidence, are carried out in order to provide a person concerned with an opportunity for justification, it will be specified in the Rules on Administrative Investigations that the investigator shall explain the evidence necessary for establishing the foundation for the facts found by the Commission.
	• The Rules provide that approval is required for a person to appoint someone other than an attorney-at-law or a law firm as his or her	• In order to decide whether someone other than an attorney-at-law or a law firm is approved as a representative, it is necessary to make a judgment in each case as to whether such a person can really make a decision on behalf of

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	representative. The rules should clearly specify the criteria for approval. In the case that approval is not granted, a person should be notified to that effect (The Kansai Economic Federation and others).	the addressee, and it is therefore difficult to set up uniform criteria. ・ The Rules provide that when the Commission has decided to approve someone as a representative, it will notify that person of the approval. When approval is not granted, the Commission also intends to notify the person to that effect. Therefore, based on the opinion, it will be specified in the Rules that a person shall be notified when the Commission has decided not to grant the appointment as a representative.
＜Rules on reporting and submission of materials regarding immunity from or reduction of surcharges＞ Oral report or statement	・ Premised on the discovery (order to submit documents) of other countries, submission of reports may put an entrepreneur at a more disadvantageous position than other violating entrepreneurs in a civil law suit. An alternative way of submission by oral report or statement should be put in place (International Bar Association and others).	・ For the matters to be reported, as a general rule, an entrepreneur is required to make entries on the relevant forms. However, taking into consideration the opinion expressed, for a part of the matters on Forms No. 2 and No. 3 (names and position titles of persons who have involved in a violation at the Reporting Entrepreneur and Other Entrepreneur(s), and details of how a violation is committed, etc.), if the discovery of other countries is at issue, an entrepreneur may substitute an oral report for the entries on the report. Such oral report should be made by an entrepreneur appearing before the Senior Officer for Leniency Program by the deadline. This will be specified in the main rules of the Rules on Reporting and Submission of Materials regarding Immunity from or Reduction of Surcharges. (The same will apply to submission of materials as well as reporting.)

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Confidentiality to third parties	• Regarding the duty to maintain confidentiality to third parties, including the effects that violation of such duty would bring, should be specified not in the forms but in the main rules of the Rules (International Corporate Counsels Association and others). • a) Consultation between a parent company and a subsidiary and b) consultation with an attorney-at-law, should be permitted as a matter of course (The Kansai Economic Federation and others). • Requirements for confidentiality should be deleted in view of the possible need to reveal the fact of having made a report to the administrations of other countries (American Bar Association).	• The purport of requesting confidentiality is to avoid problems, such as destruction of evidence, that may be caused to the investigation activities if a report regarding immunity from or reduction of surcharges is known to third parties. Taking into consideration the opinion expressed, in order to make this purport clear, the Commission will specify in the main rules of the Rules on Reporting and Submission of Materials regarding Immunity from or Reduction of Surcharges that an entrepreneur may not disclose the fact of having made a report regarding immunity from or reduction of surcharges known to third parties without justifiable reason. Although this may require a case-by-case judgment, it is considered in general that there are justifiable reasons in reporting to a parent company, an attorney-at-law, or the administrative organization of other countries, and accordingly such reporting would be considered to raise no problems.

2. The Commission's View on Other Provided Comments

(1) Rules on Administrative Investigations by the Fair Trade Commission (Rules on Administrative Investigations)

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Record of statement (Section 13)	・ In the case where a person concerned in a case, or others, make a voluntary statement, some investigators do not keep all the statements in record. Therefore, the words "when (the staff member of the Commission) deems it necessary," relating to the preparation of record of statement, should be deleted (The Kansai Economic Federation and others). ・ At present, some investigators do not make a deposition when deponent makes a motion for any addition or deletion. Efforts should be made to make these rules fully known to investigators (The Association of Japanese Corporate Legal Departments and others).	・ Investigators prepare to make a deposition based on the details that they consider to be related to a case and as they deem necessary, taking into account various statements and evidence, and there is no need for them to record in a record of statement all the statements made by persons concerned in a case or by others. ・ In preparing a record of statement, the investigator reads it to the deponent what he or she has stated, or makes him or her peruse it, and asks that person whether the statement contains no errors. If the deponent makes a motion for any addition or deletion, the investigator enters it in the record of statement on which he makes the deponent sign and seal it. ・ If a person concerned in a case submits to the investigator a written statement giving his or her opinion, the investigator makes it a rule to accept it.
Notice of alleged facts and others (Section 20)	・ In giving notice of the alleged facts at the time of an on-the-spot inspection, the document should clearly state the alleged facts (The Kansai Economic Federation and others).	・ When making an on-the-spot inspection, the Commission intends to make as clear as possible the main point of the alleged facts. However, partly for the reasons that we conduct an inspection in the suspicion stage and we need to preserve confidentiality of information sources that lead to the inspection, there is a limitation of stating the alleged facts in detail.
	・ The applicable provisions of the Act in item (iii) should be stated as comprehensively as possible. Particularly in the case of unfair trade	・ Based on the opinion expressed, the applicable provisions of the Act will be stated as comprehensively as possible. For example, in a case of unfair trade practices, the applicable item of general designation will be stated.

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	practices, a notice should specify the applicable item of general designation (The Kansai Economic Federation and others).	Depending on alleged fact, more than one applicable provision of the Act may possibly be stated.
Notice before the cease and desist order (Section 24)	・ Full facts and evidence concerning the establishment of contraventions should be stated in the notification before the cease and desist order, to facilitate statements of opinion by an entrepreneur (The Association of Japanese corporate legal departments and others).	・ Regarding the facts found by The Commission that are to be stated in the notification given before the cease and desist order, we are considering publishing such facts by attaching the draft of the order when serving the notification. We will try to give a specific statement of such facts to the extent that it would not make an entrepreneur difficult to state opinions. ・ In respect of explanation of evidence, we will specify in the Rules on Administrative Investigations that the explanation shall be provided of the evidence necessary for establishing the foundation for the facts found by the Commission.
	・ Regarding the deadline for presenting of opinions in writing and for submitting evidence in support thereof, the Rules should provide that a minimum period of 1 month should be set to prepare such statements and evidence (The Japan Business Federation and others).	・ The deadline for presenting views writing and for submitting evidence in support thereof regarding the cease and desist order will be, in principle, approximately 2 weeks after issue of the advance notification of the cease and desist order. However, in a case where the Commission needs time to provide explanation before the order to the person who is to be the addressee, a reasonable period shall be set, taking such circumstances into consideration. As there is a necessity to make a case-by-case judgment about such deadlines, therefore we consider it inappropriate to specify a uniform deadline in the Rules on Administrative Investigations.
	・ Pertaining to the extension to 3 years of the period for serving a cease and desist order, the	・ Taking into account the purport of the revision of the Act whereby the period related to the cease and desist order has been extended from one year to three

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	Rules should make it a principle from the standpoint of securing the legal stability of an entrepreneur to take the cease and desist order prior to the lapse of one year from the date the contravening circumstance has ceased to exist, and notice should be given to the party concerned as to whether measures will be taken against it at the elapse of one year after the on-the-spot inspection (The Japan Civil Engineering Contractors' Association, Inc. and others).	years after the date the contravention has ceased to exist, it is not appropriate to lay down a uniform rule as suggested by the comments in the Rules on Administrative Investigations. However, taking into consideration the legal stability of the parties concerned, we will make it a principle to make a judgment within one year as to whether we issue the cease and desist order or not, and will make the results of that judgment known to the parties concerned.
	・ Regarding an extension of the deadline made "when recognizing that there is justifiable reason," the Commission should, from the standpoint of excluding arbitrariness, specify the cases that apply. Further, in doing so, it should be taken into consideration that an addressee requires reasonable time to prepare a statement of opinion and submission of evidence (The Japan Business Federation and others).	・ As there is necessity to make a case-by-case judgment in order to recognize "justifiable reason" for extending the deadline, it is considered inappropriate to specify uniform criteria in the Rules.
	・ There are no clear provisions regarding procedures for a substantial change in the facts, or for a potential change in the application of	・ In the event that the details of a forthcoming cease and desist order are subject to substantial change as a result of statements of opinion, etc., and when it is deemed proper to provide an additional opportunity for statements of opinion, the

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	laws thereto and ordinances in the details of the cease and desist order, that may possibly be made as a result of statement of opinion, etc. In such a case, an additional opportunity should be provided to a deponent to state his or her opinion, etc. (Attorney-at-law).	Commission may adopt such measures.
	・ Taking into account the decision of the High Court in the case of the automatic post code perception machines, the Commission should add to what it should include in a notice before a cease and desist order "circumstances in which the cease and desist order measures are particularly considered to be necessary in a case where a violation has already ceased to exist." (The Japan Road Constructors Association).	・ The notification before the cease and desist order is given for the matter stipulated in the provision of Section 49, Subsection 5 of the Revised Act. It is evident that there is necessity to meet the requirements of "when it finds it particularly necessary" when the cease and desist order is given in accordance with the provision of Section 7, Subsection 2 of the Amended Act. The related facts are shown as the "facts found" in the contents of the notification before the cease and desist order.
Explanation before the cease and desist order (Section 25)	・ It should be specified in the Rules how the explanation provided before the cease and desist order by The Commission, and statements of opinion and submission of evidence by entrepreneurs, are to be dealt with in hearing procedures (Japan Civil Engineering Contractors' Association, Inc. and others).	・ Advance procedures including explanations of evidence are in place for vindication of an entrepreneur and are distinct from those of hearings. For this reason, in a hearing, an investigator needs to assert and prove again a violation, including what he or she has explained in advance. An entrepreneur may file the record related to his or her statement of opinion as evidence in a hearing.
	・ The Rules should provide that the parties concerned in a case are permitted to peruse and	・ We do not intend to permit the copying of evidence that is shown to explain the facts found by the Commission.

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	copy evidence for which they have been provided explanations (attorney-at-law). ・ The parties concerned should be permitted to copy evidence of the facts found by the Commission, if they are documents (The Kansai Economic Federation and others).	・ We do not intend to permit the copying of deposition, etc., in the investigation stage, for the reason, among others, that such are documents prepared in the name of an investigator.
	・ The Commission should make it clear how explanation before the cease and desist order is provided (The Association of Japanese Corporate Legal Departments and others).	・ As it is necessary to make a case-by-case judgment about explanations of the details of the cease and desist order, the facts found by the Commission, and the application of laws thereto, it is not appropriate to uniformly provide for it in the Rules.
Formality of statements of opinion and others (Section 26)	・ It is, in principle, illegal under the Rules on Administrative Investigations to change and limit the formalities mentioned in Subsections 3 to 5 of Article 49 of the Revised Act, from oral statement to statement in writing (The Japan Chamber of Commerce and Industry) ・ Provisions on statements of opinion regarding the notice before the cease and desist order should be amended to allow statements to be made orally at all times, and not exclusively in cases where the Commission recognizes particular necessity (The Japan Business Federation and others).	・ The Rules on Administrative Investigations request submission of opinions in writing as a principle from the standpoint of accuracy and clarity of the contents of defenses, and are considered to be legal. On the other hand, the Rules allow verbal statements of opinion "when recognizing that there is the particular necessity" and do not prevent an entrepreneur who has submitted a document from supplementing it verbally, nor do they totally exclude statements of opinion by word of mouth.
Suspension of the	•It is doubtful under what circumstances	・ The provisions of Section 54 of the Revised Act do not presuppose suspension of

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execution of the cease and desist order and others (Section 34)	suspension of the execution of the cease and desist order is permitted. The Rules should specify the requirements for suspension of the execution of the cease and desist order as deemed necessary pursuant to Section 54 of the Revised Act (The Japan Chamber of Commerce and Industry and others).	execution without exception in cases where a hearing request is subtitled. It is necessary to make a case-by-case judgment as to whether there is a necessity for suspending the execution, comprehensively taking into account the necessity of executing the order without delay, whether suspended execution may hinder recovery of competition or not, and other factors, therefore we cannot set up uniform criteria.
Involvement of an attorney-at-law	・ In order to guarantee the attorney-client privilege to maintain the confidentiality of his or her clients, the Rules should make it mandatory for an investigator to notify the parties concerned that there is no need for an attorney-at-law to submit a written legal opinion, nor correspondence, nor the details of consultations, nor to make any statement regarding them (The Kansai Economic Federation and others).	・ Generally speaking, in our country, the attorney-client privilege to maintain the confidentiality of his or her clients is not recognized by law. Accordingly, this matter must be considered from the standpoint of our entire legal structure and it is not considered to be proper to regulate it in the Rules on Administrative Investigations.
	・ The Rules on Administrative Investigations should specify the need for the presence of an attorney-at-law at the time measures are taken in accordance with Section 47, Subsection 2 of the Revised Act and when the person concerned is interrogated by an investigator (The Japan Business Federation and others).	・ We are of the view that, due to the nature of the measures taken in accordance with Section 47, Subsection 2 of the Revised Act (an on-the-spot inspection), these measures can be taken without the presence of an attorney-at-law. However, this does not preclude the presence of an attorney-at-law at the time when these measures are taken. ・ It is not appropriate for a representative (an attorney-at-law) to be present at an investigator's interrogation which is conducted to clarify the facts known to a

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		deponent.
Warning	・Publication of a warning frequently leads to moves to suspend designation as a specified bidder, causing great damage to the business concerned. Therefore, uniform publication of warnings should be reviewed and the Commission should study what a warning ought to be (The Japan Civil Engineering Contractors' Association, Inc. and others)	・We make it a principle to publish a warning from the standpoint of securing transparency of the administration, enhancing the curbing effects and preventing similar acts of violation from occurring. In issuing a warning, we undertake sufficient diligence as to whether the business concerned is so much suspected of violation as to deserve publication of the warning.
	・Whether published or unpublished, the Commission should provide for legal procedures that allow the parties concerned to dispute the warning retrospectively (The Japan Business Federation and others).	・Warnings do not legally fall under administrative discipline and it is difficult to establish a complaint system for them that allows the business to dispute their legal effect. We also provide the parties concerned with an opportunity to state their opinions, etc., prior to the issue of a warning.
	・The Rules should specify advance explanation and statements of opinion in the case of a warning (The Japan Business Federation and others).	・We provide an opportunity the parties concerned to state their opinions, etc., prior to the issue of a warning, and this principle has already been made public.
Presentation of opinions and submission of evidence in the investigation procedures	・The Rules should specify the obligation of The Fair Trade Commission to accept statements of opinion and submission of evidence presented or made arbitrarily during administrative investigations (American Chamber of	・In the past, The Commission has accepted opinions or evidence presented or submitted during the investigation procedures, and it does not refuse to accept them. In respect of this point, the Commission will continue to deal with them in the same way in the future.

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	Commerce in Japan).	
The duty of confidentiality	・ We see a number of conspicuous cases where an on-the-spot investigation of the business is reported by the mass media on an extensive scale. Such reports made in the suspicion stage cause considerable damage and put the business concerned in an extremely disadvantageous position for the subsequent exercising of the right of defense. For this reason, there should be provisions for enforcing a duty of confidentiality on The Fair Trade Commission (The Japan Chamber of Commerce and Industry and others).	・ The Commission does not actively disclose the facts of an on-the-spot investigation. However, when it has an enquiry from the mass media on the day an on-the-spot investigation is conducted, the Commission sometimes complies with their request to confirm the facts. We will continue to ensure that information of an on-the-spot investigation be kept as confidential as possible.
Prior consultation system	・ The Commission should establish an effective no-action letter system (a system of requesting advice in advance) to help businesses to enhance predictability of the consequences their own actions (The American Chamber of Commerce in Japan).	・ The Commission has already established a "prior consultation system for activities of businesses" (October 1, 2001), whereby the Commission complies with the request of an entrepreneur for the guidance of the commission as to whether specific acts that the entrepreneurs and others propose to perform do not infringe the provisions of the laws and ordinances under the jurisdiction of The Commission, and gives a written reply to such a request. This system is established from the standpoint of enhancing the transparency of the application of the laws and of increasing the ability of entrepreneurs and others to predict how the laws will be applied to the specific act which they propose to perform.

(2) Rules on Compulsory Investigation of Criminal Cases by the Fair Trade Commission (Rules for Criminal Investigation)

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Staff members for criminal investigation	• If it is proposed that staff members of the Special Investigation Department only take charge of investigation of criminal cases and are not involved in an administrative investigation, this should be specified in the Rules (The Japan Chamber of Commerce and Industry and others)	• The Cabinet Order issued pursuant to the provision of Section 47, Subsection 2 of the Revised Act (The Cabinet Order regarding designation of "an investigator") provides that only a person designated as "an investigator" may exercise the right to conduct an administrative investigation. Further, we plan to make arrangements so that staff members in criminal investigation section may not be designated as such an "investigator."
	• The Rules should specify penalty applicable to an investigator and others who commit an act against firewall (The Association of Japanese Corporate Legal Departments and others).	• It is incumbent on any investigator and any staff member for criminal investigation to abide by the provisions of the Rules on Compulsory Investigation of Criminal Cases. If they violate the Rules, they may be punishable under the National Public Officers Act. The Commission will make efforts to make the purport of the Rules on Compulsory Investigation of Criminal Cases known to the staff members of the Investigation Bureau in order to prevent such violations from being committed.
Security of information between criminal investigation section and administrative investigation section	• The draft of the Rules cannot be said to guarantee firewall on information between the administrative investigation section and the criminal investigation section. More specific provisions would be necessary to secure real security (International Corporate Counsels Association and others).	• It is not prohibited to bring a criminal case detected during administrative investigation to the attention of criminal investigators (Decision of the Supreme Court of July 9, 1976). However, the Rules on Compulsory Investigation of Criminal Cases provide that no initial information for criminal investigation be directly transmitted from the administrative investigation section to the criminal investigation section, and the Commission makes the judgment on whether it conducts a criminal investigation or not. This provision is designed to dispel any suspicion that information for a criminal investigation is collected using administrative

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		investigation as the means.
	•The Rules lack the provision that the facts obtained during a criminal investigation shall not be made the basis of the case for an administrative investigation. Required provisions should be stipulated (Japan Management Association of Construction Contractors, Inc. and others).	• The Supreme Court finds in its decision that the facts and evidence obtained in a criminal investigation case may be used for an administrative investigation case (Decision of the Supreme Court of March 31, 1988). Necessary formalities will be complied with from the standpoint of following due procedure when evidence obtained in a criminal investigation is used in an administrative investigation case.
The right to remain silent	• It should be provided in the Rules that, prior to questioning a suspect in a criminal case, a staff member for criminal investigation should explain to such a suspect that he or she has the right to remain silent (The Kansai Economic Federation and others).	• Generally, the requirement to notify a suspect that he or she has the right to remain silent shall be provided by law. However, the Revised Act has no provision that requires a suspect be notified of the right to remain silent, and it is not appropriate that the Rules on Compulsory Investigation of Criminal Cases stipulate this provision. Other laws and ordinances also have no provisions concerning the right to remain silent. There is a judicial precedent that finds that absence of notification to a suspect in a criminal case of the right to remain silent is not in contravention of the Constitution (Decision of the Supreme Court of March 27, 1984).

(3) Rules on Reporting and Submission of Materials Regarding Immunity from or Reduction of Surcharges (Rules on the Leniency Program)

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Prior consultation	• Regarding the Leniency Program, the Commission announced that a entrepreneur may request prior consultation with the Commission. The Commission should make the provisions required and specify the formalities for it (The Association of Japanese Corporate Legal Departments and others).	• Prior consultation with the Commission FTC regarding Leniency Program, which does not involve legal effects, should not be prescribed by rules.
	• The Rules should explicitly provide that the section in charge of prior consultation should not start an investigation of a case using as the initiating source information that is made available to it by a request for prior consultation (The Japan Business Federation and others).	• We do not make use of information that is made available to us in a request for prior consultation regarding the Leniency Program as initiatory information. However, we may sometimes start an investigation regarding the same case based on other information.
A person who submits a report	• The Rules should specify that a person other than a representative(ex. President) of the entrepreneur, such as a branch manager or a manager, may submit Forms No. 1 to No. 3 of the Leniency Program, bearing in mind the importance of promptness and mobility (The Association of Japanese Corporate Legal Departments and others).	• The revised Act requires that the facts are reported and the related materials are submitted by "an entrepreneur." Further, for the need to ensure the veracity of the contents of an application and to prevent the system from being abused, we do not approve of preparation of a report in the name of a branch manager or others unless he or she is authorized to prepare the same by a letter of proxy signed by a representative.
Matters to be reported in each form	• Regarding Forms No. 2 and No. 3, the matters to be reported and materials to be presented in the forms are so detailed that they should be limited to what can be examined and	• We consider that the matters to be reported in each form are necessary to identify the facts of a violation, and we only require a person who has committed an act of violation to enter those facts that he or she may be able to grasp. We, therefore, expect that the matters be reported as minutely as possible.

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	collected more easily and more promptly (Attorney-at-law). ・ For a report and materials to be submitted, information as is known to the relevant entrepreneur should be considered to be sufficient (Attorney-at-law). ・ The Commission should make it clear that leniency can be applied to a partial entry on the forms (American Bar Association and others). ・ Entry in a report should be regarded as false only to the extent that the facts are intentionally concealed. (The Japan Business Federation).	・ Regarding the details to be reported for each item, we require the provision to us of such information as a person who has committed a violation would have access to, including, in general, information known to an individual involved in a violation. ・ Pursuant to the provision of the Revised Act, the provision of Leniency Program does not apply when matters to be reported in each form are not reported within the period of submission. However, subsequent correction of the forms is permitted for errors in formality of entry, or for minor omissions. ・ Even when the matters reported are found to be at variance with the results of investigation, it would not be regarded immediately as a false report resulting in non-application of Leniency Program. However, when an entrepreneur who has committed a violation was aware of the details that should have been reported, or when an entrepreneur was in a position to know the facts as an individual involved in a violation, and if the entrepreneur still makes a report that is at variance with the facts, then such a report is considered to be false.
Deadline for submission of Form No. 2	・ The Rules should specifically provide for the criteria for determining the deadline for reporting with Form No. 2, or submission of evidence, including whether such a deadline may be extended or not (The Kansai Economic Federation and others).	・ We are planning to make the deadline for reporting with Form No. 2 and submission of materials to be about 2 weeks. It will not be appropriate to fix a uniform deadline, as we will fix different deadlines according to individual cases, to the circumstances of an applicant related to the Leniency Program, etc.
Submission of	・ As the materials may be submitted together	・ Form No. 1 needs to be submitted as it is indispensable to determine the order,

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materials	with the form, Form No. 1 should carry a column for entering the materials submitted (The Kansai Economic Federation).	but the submission of materials is not a requisite.
Delay in submission of materials	• Subsequent additional submission of materials should be permitted in cases where materials cannot be submitted before the deadline, or where not all of the materials to be submitted are ready by the deadline (The Association of Japanese corporate legal departments and others).	• An applicant does not meet the requirements prescribed by the Revised Act and is, therefore, not eligible for application of the Leniency Program, if he does not submit the materials prior to the deadline. Regarding the submission of materials, we consider that all the materials required should be submitted prior to the deadline. However, if, for example, a part of the materials cannot be prepared in time, it may be submitted subsequently as an additional material.
Submission of the translation of materials	• The Rules should provide for extension of the deadline for submission of a Japanese translation of the materials, that subsequent completion of submission be permitted, and that submission of an abridged translation of the more important parts of the materials be considered to be sufficient for the purpose. (OECD and others)	• Regarding translation of materials, submission of the abridged translation of a part of the original related to a violation can be accepted as submission of the materials. In this case, the entire translation is, if necessary, to be submitted according to any subsequent request for submission of additional materials.
Publication of an on-the-spot investigation	• The facts related to an on-the-spot investigation should be published when Form No. 3 is submitted subsequent to the on-the-spot investigation (The Kansai Economic Federation and others).	• The facts related to an on-the-spot investigation will not be published as in the past, for concern that it may hinder investigation activities and for other reasons. When we have a consultation in connection with the submission of a report on Form No. 1 after the commencement of an investigation, we make it a rule to reply by requesting submission of Form No. 3.
Notice after the starting date of an investigation	• Further, in connection with submission of reports and materials after the starting date of	• If a report is submitted after the starting date of an investigation, we communicate to the party concerned the order in which such a report has been

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	an investigation, The Commission should give notice to the party concerned after a report is submitted and before the materials are submitted, advising it of whether it is in the third place or less (Attorney-at-law). ・ The provision of Subsection 9 of Section 7-2 has no concept of order. Literally construed, if more than one person makes a report of the facts and submits the materials after an on-the-spot investigation, and "the number summed up" prescribed in the parenthesis exceeds 3, none of them is eligible for reduction of surcharges. I agree that protection should be afforded to those who consider they are in the third place or less when all the submissions are counted and who submit their materials. However, this decision should be grounded on the practice of paying attention to reports made subsequent to an on-the-spot investigation, and protecting their confidentiality (an academic).	received, and other information current at the time of its receipt. ・ Even if reports of the facts are made, and materials are submitted, by 4 entrepreneurs or more, it is clear from the purport of the Revised Act, as well as from the parliamentary statement, that the measures of reduction of surcharges are applied up to the third entrepreneurs that have made a report of the facts and submitted materials after an on-the-spot inspection.
Request for additional cooperation	・ The Commission should make it clear how far it is obligatory for an entrepreneur to comply with the FTC's request to submit additional reports or materials, as there is concern that submission of materials such as information	・ The Commission may ask the entrepreneur to submit an additional report or materials pursuant to the provision of Subsection 11 of Section 7-2 of the Revised Act, if related to a violation. In effect, additional cooperation is requested to the extent deemed necessary for the purpose of scrutinizing a violation.

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	related to trade secrets, intellectual property, and privacy, may bring disadvantage to the entrepreneur (Attorney-at-law).	
Change in order due to a false report, etc.	・ If an application within the first three places is found to contain a false statement, etc., that specific application becomes invalid and the applicant becomes ineligible for application of the Leniency Program. In this case, the order of the applicants that come after such applicant is considered to be moved up. Therefore, the Commission should lay down the provision that those whose place in the order has been moved up be notified to that effect (The Japan Business Federation and others). ・ Businesses should be required to first submit Forms No. 1 and No. 2 as a single sheet in order to exclude those who try to submit an application before the others as a temporary measure (The Japan Road Constructors Association). ・ Due to the possibility of a report being based	・ In a case where an applicant makes a submission of the facts and materials, and notification has been made pursuant to the provision of Section 7-2, Subsection 10 of the Revised Act, it is found that the report contains a false statement, and there is as change of position relevant to the order in which such facts were reported and materials were submitted (fact of in what order the report was made and the materials were submitted) and those that followed the applicable entrepreneur in the order are not moved up. On the other hand, in a case where, for example, prior to issuance of notification pursuant to the provision of Section 7-2, Subsection 10 of the Revised Act, a person who precedes the other in the temporary order fails, for example, to make a necessary report and submit necessary materials, a person who comes after such a person in the temporary order becomes eligible to take precedence in the order and is notified of such precedence. ・ The Rules require that Form No. 1 be submitted first in order to make available the necessary information related to a violation, and also taking into consideration the needs of entrepreneurs who want to submit the materials after they have a prospect of being able to secure their place in the order. ・ Those who submit Form No. 1 are not eligible for application of the Leniency Program if they fail to submit Form No. 2 and materials prior to the deadline.

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	on misidentification or being a willful act with the intent to attack other companies, the Commission should lay down punitive provisions against a false report, in addition to non-application of the Leniency Program (The Japan Road Constructors Association).	Further, the Revised Act provides that those who have submitted a false statement are excluded from applicant of the Leniency Program. We consider that these measures fully assist us in preventing the Leniency Program from being abused.
The entrepreneur who is not the one that committed the said violation	・ The Rules should make it clear how to construe the entrepreneur who is not the one that committed the said violation requirements for being eligible to the application of the Leniency Program (The Japan Chamber of Commerce and Industry and others).	・ The Rules on the Leniency Program prescribe the way to make a report of the facts and submit materials, and do not indicate how the requirements for Leniency Program are to be construed. For example, if, in making itself eligible for application of the Leniency Program, a company makes a decision through its Board of Directors that it shall not commit a contravening act and thereupon makes an application to the Fair Trade Commission, we may consider that such a company meets the requirements of the entreoreneur who is not the one that committed the said violation.
Transitional measures	・ The Rules should lay down the provision of a transitional measure that all the reports that have arrived before the date of enforcement are considered to be the first report in order to eliminate confusion that concentration of reports immediately after enforcement of the Rules would cause, and also to encourage earlier reports (attorney-at-law).	・ A supplementary provision of the Revised Act specifies that the Leniency Program comes into operation on the date of enforcement of the Revised Act. We consider that the Act prohibited to lay down in the Rules the provision that application made prior to the date of enforcement will be considered effective.
Non-disclosure of matters for	•The Rules should specify that the contents of a report to be submitted to The Fair Trade	・ Disclosure of the contents of a report made in relation to the Leniency Program, made with the aim of complying with the discovery of other countries, will lead

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application	Commission for an application in relation to the Leniency Program should not be subject to disclosure to third parties, including courts (American Bar Association and others).	businesses to refrain from making an application for the Leniency Program for fear of the risk such disclosure might bring, such as the potential filing of a civil suit for a violation. The Commission will make it a rule not to disclose to a court or others the contents of a report made in relation to the Leniency Program, in order that the Program may be positively utilized. If no application for the Leniency Program is filed by an entrepreneur, it would tremendously hinder the investigation activities of the Commission in cases of violation, and otherwise impede the performance of the public service of the Commission. For this reason, the Commission considers that the contents of a report made in relation to the Program will be confidential information (Article 220, etc., of The Code of Civil Procedure).
Handling of internal processing	•In view of the importance of the right of order, the Senior Officer for Leniency Program should ensure accuracy of procedures within The Fair Trade Commission by specifying provisions concerning a registration book to be kept for reports of the facts and submissions of materials related to the Leniency Program (attorney-at-law).	• The Rules on Reporting and Submission of Materials regarding Immunity from and Reduction of Surcharges provide for the reporting procedures of the entrepreneur and, therefore, preparation of a registration book as suggested is not considered to be something that should be prescribed by the Rules. However, we are fully aware of the necessity of controlling documents related to reporting of the facts and submission of materials, and we will improve the proper system internally.
Exemption from a cease and desist order	• The revised Act should specify the criteria for issuing a cease and desist order to an entrepreneur to which the Leniency Program has been applied (attorney-at-law).	• The Revised Act provides for immunity from and reduction of surcharges, and does not authorize exemption from the cease and desist order. For this reason, exemption from the cease and desist order cannot be provided by the Rules. For example, there may be a case in which an order to take necessary measures must be issued to an entrepreneur that repeatedly commits a violation if the provision "when it finds it particularly necessary" applies, as provided for in Section 7, Subsection 2 of the Revised Act. There is no guarantee against the

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		possibility of such an entrepreneur repeating a violation after it is granted immunity from or reduction of surcharges.
System of filing a complaint	・ The Leniency Program has a relationship with a criminal charge, and it is possible for the Commission to bring criminal charges prior to issuing an order for payment of surcharges. Therefore, the Rules should specify a system for filing a complaint in the procedures related to the Leniency Program, since it is meaningless to file a complaint at the stage at which an order for payment of surcharges has been issued (The Japan Civil Engineering Contractors' Association, Inc. and others).	・ The Rules provide that, in issuing an order for payment of surcharges, an opportunity be provided in advance to a person who is to be an addressee to state his or her opinions. A person who is to be an addressee may on that occasion state his or her opinions about the facts related to immunity from or reduction of surcharges, and about other matters.
Guidelines	・ The Leniency Program is a totally new system. "Guidelines on the system of immunity from or reduction of surcharges" should be prepared instead of the simple guidance on "Instructions for Completing This Form" as provided at the back of the form (attorney-at-law).	・ We have no plan to prepare guidelines on the Leniency Program, but we will prepare and distribute publicity materials and actively pursue other methods of making it well known to the public with the aim of facilitating the use of the Leniency Program.

Note: Tentative translation: only Japanese text is authentic.