April 26, 1993

Assistant Attorney General
Antitrust Division
U.S. Department of Justice
Washington, DC 20530

Dear Assistant Attorney General:

Pursuant to the provisions of 28 C.F.R. § 50.6, The Health and Personal Care Distribution Conference, Inc. ("Conference"), on behalf of itself and its members identified in Appendix A hereto, hereby respectfully requests a review of the following described proposed business conduct and a statement of the Department's current enforcement intentions with respect thereto.

Background

Members of the Conference are engaged in the distribution of drugs, medicines, toilet preparations and related articles to wholesale and retail customers who stock such products for resale or for direct use. Among other membership services, the Conference endeavors to disseminate information regarding improved technology and techniques for the transportation and distribution of its members' goods, all for the purpose of improving the quality and minimizing the cost of distribution.

The Conference frequently pursues those goals by monitoring the rate and rules changes in public tariffs of motor common carriers, since motor carriage comprises the primary means by which Conference members' products are distributed. For example, when regulated motor common carriers publish collective rate increas-
es, the Conference reviews such increases and, when appropriate, communicates its views to the Interstate Commerce Commission.

Over the past decade, the motor carrier rates charged for health care products, as well as those for all other commodities, have moved largely away from collectively made motor common carrier rates and toward individual common carrier rate initiatives and motor contract carriage. Accordingly, there is now less uniformity in transportation performance than previously.

Likewise, as part of the movement toward total quality performance, more emphasis is being placed by the Conference's members upon improvements in stocking, warehousing, order filling and customer service. All of the foregoing, as well as other factors, highlight the need for new data bases upon which Conference members can make comparative performance assessments, or so-called "benchmarking" analyses, as part of the movement toward improving customer service.

**Proposed Business Conduct**

The Conference proposes to undertake an ongoing "benchmark" project by gathering input from its members. Benchmarking is a technique which has gained growing recognition as a means for industry members to improve efficiency and quality control by analyzing comparable products or services in order to identify areas where improvement is attainable.

Using information to be gathered from its members, the Conference proposes to develop and utilize a benchmarking project which will (1) allow participatory input by Conference members on a voluntary basis, without charge, (2) rely upon a third party as the Conference’s exclusive agent to develop and mail questionnaires to participants, to receive confidential questionnaire responses from participants, and to organize and collate the questionnaire responses in an aggregated or similar manner which will shield individual participants from identification, (3) publicize the

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1 Under the provisions of 49 U.S.C. § 10706, the Interstate Commerce Commission is authorized to confer antitrust immunity on certain collective actions taken by motor common carriers. The collective tariff actions referred to in the text result from such grants of antitrust immunity.

existence of survey results through press releases and other trade media contacts, and (4) make survey results available to participating Conference members without charge and to others, whether non-participating Conference members or non-Conference members, both with and without charge. All survey result distributions will be labelled with the words, "For Information Only" or with similar words.

More specifically, the procedure which the Conference proposes is to develop a "core" set of benchmarking questions which will be administered to participating Conference members once or twice a year, probably in January and July. For the questionnaire administered in July, a set of "Special Issue" questions may be developed each year, depending on topics of interest to the membership at that time. The responses to each questionnaire will be submitted to an independent organization, where they will be electronically encoded and any identification of a specific participant's answers will be removed.

Although the ultimate content of the benchmarking questionnaire has not yet been established, it is anticipated that the questionnaire will cover the following and/or similar topics for each survey period:

**Distribution - Customer Service Performance**

- Percent Item Fill Rate on Orders from Customers
- Percent Orders Shipped Complete
- Average Order Cycle Time (days)
- Percent Items Damaged
- Percent of Invoices Disputed
  - (a) For quantity discrepancy
  - (b) For price discrepancy
  - (c) For promotion discrepancy
- Percent Orders Delivered on Time
- Percent Pickup/Shipping Errors
Logistics Operations Performance

Inventory Turnover Rate
No. Days of Inventory Available
Outbound Freight Costs Per CWT
Units Shipped Per Employee
No. Orders Entered Per Person
Total Logistics Costs as Percent of Sales
Inventory Carrying Costs (Percent of Inventory Value)
Order Processing Cost Per Unit

Organization/Personnel Issues

Customer Inquiries Are Taken By (Check One)
  ___ Any Available Person
  ___ Person Assigned to the Contract
  ___ Person Assigned to Geographical Area

What Percentage of Customer Service Personnel Are Classified
As Supervisory Employees?

How Much Was the Training Budget for Your Personnel Per Employee?

What Percentage of Customer Inquiries Are Resolved In:
  One Call ___%
  Two Calls ___%
  Three or More Calls ___%
Customer Requirements/Expectations

Do You Formally Measure Customer Requirements or Expectations For Logistics Service:

___ Yes  ___ No

What Is Your Typical Customer Requirement/Expectation For:

Percent Item Fill Rate ___% 
Percent Orders Shipped Complete ___% 
Order Cycle Time ___% Days

What Percent of Your Customers Require Delivery to a Specific Appointment Time:

___%

What Percent of Your Customers Deduct or Charge:

For Missed Delivery Appointments ___% 
For Incomplete Orders ___% 
For Incorrect Invoices ___% 
For Other Service Problems ___%

We will be pleased to answer any questions which your office has regarding the proposed business conduct described above.

Sincerely,

Daniel J. Sweeney
Andrew P. Goldstein
McCarthy, Sweeney & Harkaway, P.C.
1750 Pennsylvania Avenue, N.W.
Washington, DC 20006
(202) 393-5710

Attorneys for
The Health and Personal Care Distribution Conference, Inc.
APPENDIX A

Alberto-Culver Company
American Cyanamid
American Home Products
Avon Products
Bristol-Myers Squibb
Beiersdorf, Inc.
Berlex Laboratories
Block Drug
Boehringer Ingleheim Ltd.
Bristol-Myers Squibb Company
Bristol-Myers Squibb Pharmaceuticals
Burroughs Wellcome Company
Carter Wallace, Inc.
CasChem, Inc.
Chattem, Inc.
Chesebrough Ponds, Inc.
Church & Dwight Co., Inc.
Clairol, Inc.
Conair Corporation
Connaught Laboratories
DEP Corporation
Dial Corporation
E. T. Browne Drug Company, Inc.
Eli Lilly Company
Fisons Pharmaceuticals
Fujisawa, USA, Inc.
Gillette Company Personal Care
Gillette Company
Glaxo Inc.
Healthdyne, Inc.
Helene Curtis Industries, Inc.
Hoechst-Roussel Pharmaceuticals
Hoffman La Roche
Huntington Laboratories
ICI Pharmaceutical Group
Johnson & Johnson Consumer Products
Johnson & Johnson Hospital Services
Johnson & Johnson Personal Products Company
Lederle Laboratories
Lemmon Company
Marion, Merrell-Dow, Inc.
McGaw, Inc.
McNeil Consumer Products
Mead Johnson Nutritional Group
Mem Company, Inc.
Mennen Company
Merck & Co., Inc.
Merle Norman Cosmetics
Merrell-Dow Pharmaceuticals
Private Formulations, Inc.
Proctor & Gamble Pharmaceutical
Oral-B Laboratories
Ortho/McNeil Pharmaceuticals
Pfizer, Inc.
Picker International
Polymer Technology Corporation
Procter & Gamble
Rhone-Poulenc Rorer
Sandoz Consumer Products
Sandoz Pharmaceuticals
Schering Corporation
Schering-Plough Corporation
SmithKline Beecham Consumer Brands
SmithKline Beecham Pharmaceuticals
Sterling Drug
Syntex Laboratories
Upjohn Company
ViJon Laboratories
Vistakon, Inc.
W. F. Young, Inc.
Warner Lambert Company
Westwood Squibb Pharmaceuticals
Whitehall-Robins Company
Wyeth Ayerst Laboratories
Zimmer, Inc.