Public Law 96-252
96th Congress

An Act

May 28, 1980
[H.R. 2313]

To amend the Federal Trade Commission Act to extend the authorization of appropriations contained in such Act, and for other purposes.

Federal Trade Commission Improvements Act of 1980.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

15 USC 58 note.

SECTION 1. This Act may be cited as the "Federal Trade Commission Improvements Act of 1980".

RECONSIDERATION OF ORDERS

SEC. 2. Section 5(b) of the Federal Trade Commission Act (15 U.S.C. 45(b)) is amended—

(1) in the last sentence thereof, by striking out ": *Provided, however,* That" and inserting in lieu thereof ", except that (1)", and by inserting before the period at the end thereof the following: "; and (2) in the case of an order, the Commission shall reopen any such order to consider whether such order (including any affirmative relief provision contained in such order) should be altered, modified, or set aside, in whole or in part, if the person, partnership, or corporation involved files a request with the Commission which makes a satisfactory showing that changed conditions of law or fact require such order to be altered, modified, or set aside, in whole or in part"; and

(2) by adding at the end thereof the following new sentence: "The Commission shall determine whether to alter, modify, or set aside any order of the Commission in response to a request made by a person, partnership, or corporation under paragraph (2) not later than 120 days after the date of the filing of such request.".

DISCLOSURE OF COMMERCIAL OR FINANCIAL INFORMATION; QUARTERLY FINANCIAL REPORTS

SEC. 3. (a) Section 6(f) of the Federal Trade Commission Act (15 U.S.C. 46(f)) is amended—

(1) by striking out ", except trade secrets and names of customers, as it shall deem expedient" and inserting in lieu thereof "as are"; and

(2) by inserting before the period at the end thereof the following: ": *Provided,* That the Commission shall not have any authority to make public any trade secret or any commercial or financial information which is obtained from any person and which is privileged or confidential, except that the Commission may disclose such information to officers and employees of appropriate Federal law enforcement agencies or to any officer

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or employee of any State law enforcement agency upon the prior certification of an officer of any such Federal or State law enforcement agency that such information will be maintained in confidence and will be used only for official law enforcement purposes".

(b) Section 6 of the Federal Trade Commission Act (15 U.S.C. 46) is amended by adding at the end thereof the following new undesignated paragraph:

"The Commission shall establish a plan designed to substantially reduce burdens imposed upon small businesses as a result of requirements established by the Commission under clause (b) relating to the filing of quarterly financial reports. Such plan shall (1) be established after consultation with small businesses and persons who use the information contained in such quarterly financial reports; (2) provide for a reduction of the number of small businesses required to file such quarterly financial reports; and (3) make revisions in the forms used for such quarterly financial reports for the purpose of reducing the complexity of such forms. The Commission, not later than December 31, 1980, shall submit such plan to the Committee on Commerce, Science, and Transportation of the Senate and to the Committee on Interstate and Foreign Commerce of the House of Representatives. Such plan shall take effect not later than October 31, 1981.".

Plan for filing of quarterly financial reports; submittal to congressional committees.

Effective date.

CONFIDENTIALITY OF LINE-OF-BUSINESS REPORTS

SEC. 4. Section 6 of the Federal Trade Commission Act (15 U.S.C. 46), as amended in section 3(b), is further amended by adding at the end thereof the following new undesignated paragraph:

"No officer or employee of the Commission or any Commissioner may publish or disclose information to the public, or to any Federal agency, whereby any line-of-business data furnished by a particular establishment or individual can be identified. No one other than designated sworn officers and employees of the Commission may examine the line-of-business reports from individual firms, and information provided in the line-of-business program administered by the Commission shall be used only for statistical purposes. Information for carrying out specific law enforcement responsibilities of the Commission shall be obtained under practices and procedures in effect on the date of the enactment of the Federal Trade Commission Improvements Act of 1980, or as changed by law.".

Ante, p. 374.

COMMISSION INVESTIGATIONS OF INSURANCE BUSINESSES

SEC. 5. (a) Section 6 of the Federal Trade Commission Act, as amended in section 3(b) and section 4, is further amended by adding at the end thereof the following new undesignated paragraph:

"Nothing in this section (other than the provisions of clause (c) and clause (d)) shall apply to the business of insurance, except that the Commission shall have authority to conduct studies and prepare reports relating to the business of insurance. The Commission may exercise such authority only upon receiving a request which is agreed to by a majority of the members of the Committee on Commerce, Science, and Transportation of the Senate or the Committee on Interstate and Foreign Commerce of the House of Representatives. The authority to conduct any such study shall expire at the end of the Congress during which the request for such study was made.".

Studies and reports.

Expiration date.

Study and evaluation. 15 USC 46 note.

(b) The amendment made in subsection (a) shall not be construed to prohibit the Federal Trade Commission from participating with the Secretary of Health and Human Services in a comprehensive study and evaluation of the comparative effectiveness of various State policies and programs relating to the regulation of health insurance policies available for purchase by individuals who are eligible for benefits under the program of health insurance benefits established in title XVIII of the Social Security Act.

42 USC 1395.

ENFORCEMENT AUTHORITY

SEC. 6. The first undesignated paragraph of section 10 of the Federal Trade Commission Act (15 U.S.C. 50) is amended—

(1) by inserting "any" after "produce"; and

(2) by inserting "an order of a district court of the United States directing compliance with" after "obedience to".

STANDARDS AND CERTIFICATION RULEMAKINGS

SEC. 7. Section 18(a)(1)(B) of the Federal Trade Commission Act (15 U.S.C. 57a(a)(1)(B)) is amended by inserting after "section 5(a)(1))" the following: ", except that the Commission shall not develop or promulgate any trade rule or regulation with regard to the regulation of the development and utilization of the standards and certification activities pursuant to this section".

ADVANCE NOTICE OF PROPOSED COMMISSION RULES

SEC. 8. (a) Section 18(b) of the Federal Trade Commission Act (15 U.S.C. 57a(b)) is amended—

(1) by inserting "(1)" after the subsection designation;

(2) by redesignating paragraph (1) through paragraph (4) as subparagraph (A) through subparagraph (D), respectively; and

(3) by adding at the end thereof the following new paragraph:

Notice; publication in Federal Register.

"(2)(A) Prior to the publication of any notice of proposed rulemaking pursuant to paragraph (1)(A), the Commission shall publish an advance notice of proposed rulemaking in the Federal Register. Such advance notice shall—

"(i) contain a brief description of the area of inquiry under consideration, the objectives which the Commission seeks to achieve, and possible regulatory alternatives under consideration by the Commission; and

"(ii) invite the response of interested parties with respect to such proposed rulemaking, including any suggestions or alternative methods for achieving such objectives.

Submittal to congressional committees.

"(B) The Commission shall submit such advance notice of proposed rulemaking to the Committee on Commerce, Science, and Transportation of the Senate and to the Committee on Interstate and Foreign Commerce of the House of Representatives. The Commission may use such additional mechanisms as the Commission considers useful to obtain suggestions regarding the content of the area of inquiry before the publication of a general notice of proposed rulemaking under paragraph (1)(A).

Notice, submittal to congressional committees.

"(C) The Commission shall, 30 days before the publication of a notice of proposed rulemaking pursuant to paragraph (1)(A), submit such notice to the Committee on Commerce, Science, and Transportation of the Senate and to the Committee on Interstate and Foreign Commerce of the House of Representatives.".

(b)(1) Section 18(c) of the Federal Trade Commission Act (15 U.S.C. 57a(c)) is amended by striking out "subsection (b)(3)" and inserting in lieu thereof "subsection (b)(1)(C)".

(2) Section 18(e)(5)(C) of the Federal Trade Commission Act (15 U.S.C. 57a(e)(5)(C)) is amended by striking out "subsection (b)(4)" and inserting in lieu thereof "subsection (b)(1)(D)".

PRESIDING OFFICER AT RULEMAKING PROCEEDINGS

SEC. 9. (a) Section 18(c) of the Federal Trade Commission Act (15 U.S.C. 57a(c)) is amended—

(1) by redesignating paragraph (1) through paragraph (4) as paragraph (2) through paragraph (5), respectively; and

(2) by inserting before paragraph (2), as so redesignated in paragraph (1), the following new paragraph:

"(1)(A) The Commission shall provide for the conduct of proceedings under this subsection by hearing officers who shall perform their functions in accordance with the requirements of this subsection.

"(B) The officer who presides over the rulemaking proceedings shall be responsible to a chief presiding officer who shall not be responsible to any other officer or employee of the Commission. The officer who presides over the rulemaking proceeding shall make a recommended decision based upon the findings and conclusions of such officer as to all relevant and material evidence, except that such recommended decision may be made by another officer if the officer who presided over the proceeding is no longer available to the Commission.

"(C) Except as required for the disposition of ex parte matters as authorized by law, no presiding officer shall consult any person or party with respect to any fact in issue unless such officer gives notice and opportunity for all parties to participate.".

(b) Section 18(c) of the Federal Trade Commission Act (15 U.S.C. 57a(c)), as amended in subsection (a), is further amended—

(1) in paragraph (2) thereof, as so redesignated in subsection (a)(1)—

(A) by striking out "paragraph (2)" and inserting in lieu thereof "paragraph (3)"; and

(B) by striking out "paragraph (2)(B)" and inserting in lieu thereof "paragraph (3)(B)";

(2) in paragraph (3) thereof, as so redesignated in subsection (a)(1), by striking out "paragraph (1)" and inserting in lieu thereof "paragraph (2)"; and

(3) in paragraph (4)(A) thereof, as so redesignated in subsection (a)(1), by striking out "paragraphs (1) and (2)" and inserting in lieu thereof "paragraphs (2) and (3)".

(c) Section 18(e)(1)(B) of the Federal Trade Commission Act (15 U.S.C. 57a(e)(1)(B)) is amended by striking out "subsection (c)(4)" and inserting in lieu thereof "subsection (c)(5)".

COMPENSATION FOR PARTICIPATION IN RULEMAKING PROCEEDINGS

SEC. 10. (a) Section 18(h) of the Federal Trade Commission Act (15 U.S.C. 57a(h)) is amended by redesignating paragraph (3) as paragraph (4), and by inserting after paragraph (2) the following new paragraph:

Compensation.

"(3) The amount of compensation which may be paid to any person under this subsection in connection with the participation by such person in any particular rulemaking proceeding under this section may not exceed $75,000. The aggregate amount of compensation paid under this subsection in any fiscal year to any person for all rulemaking proceedings in which such person participates during such fiscal year may not exceed $50,000.".

(b) Section 18(h)(2) of the Federal Trade Commission Act (15 U.S.C. 57a(h)(2)) is amended to read as follows:

"(2) The Commission shall reserve an amount equal to 25 percent of the amount appropriated for the payment of compensation under this subsection for any fiscal year for use in accordance with this paragraph. Such reserved amount shall be available solely for the payment of compensation to persons who either (A) would be regulated by the proposed rule involved; or (B) represent persons who would be so regulated. Any portion of such reserved amount which is not used for the payment of compensation to such persons under this paragraph shall revert to the Treasury of the United States.".

(c) Section 18(h)(4) of the Federal Trade Commission Act, as so redesignated in subsection (a), is amended by striking out "$1,000,000" and inserting in lieu thereof "$750,000".

(d) Section 18(h) of the Federal Trade Commission Act (15 U.S.C. 57a(h)), as amended in subsection (a), is further amended by adding at the end thereof the following new paragraph:

Small business outreach program, establishment.

"(5) The Commission, in connection with the administration of this subsection pursuant to rules prescribed by the Commission under paragraph (1), shall establish a small business outreach program. Such program shall—

"(A) solicit public comment from small businesses whose views otherwise would not be adequately represented, in order to ensure a fair determination in rulemaking proceedings under this section; and

"(B) encourage the participation of small businesses in the compensation program administered by the Commission under this subsection by disseminating to small businesses information which explains the procedures and requirements applicable to the receipt of compensation under such program.".

Repeal. 15 USC 57a, 57a note.

(e) The amendments made in subsection (a) and subsection (c) are repealed, effective at the end of fiscal year 1982. Effective upon such repeal, paragraph (5) of section 18(h) of the Federal Trade Commission Act, as added by subsection (d), is redesignated as paragraph (4) of section 18(h) of such Act.

COMMISSION RULEMAKINGS RELATING TO CHILDREN'S ADVERTISING; PUBLICATION OF TEXT OF PROPOSED RULES

SEC. 11. (a)(1) Section 18 of the Federal Trade Commission Act (15 U.S.C. 57a) is amended by adding at the end thereof the following new subsection:

"(i) The Commission shall not have any authority to promulgate any rule in the children's advertising proceeding pending on the date of the enactment of the Federal Trade Commission Improvements Act of 1980 or in any substantially similar proceeding on the basis of a determination by the Commission that such advertising constitutes an unfair act or practice in or affecting commerce.".

Ante, p. 374.

(2) Section 18(a)(1) of the Federal Trade Commission Act (15 U.S.C. 57a(a)(1)) is amended by striking out "The" and inserting in lieu thereof "Except as provided in subsection (i), the".

(3) Section 18(b)(1)(A) of the Federal Trade Commission Act, as so redesignated in section 8(a), is amended by inserting after "particularity" the following: "the text of the rule, including any alternatives, which the Commission proposes to promulgate, and".

(b) The Federal Trade Commission shall not have any authority to use any funds which are authorized to be appropriated to carry out the Federal Trade Commission Act (15 U.S.C. 41 et seq.) for fiscal year 1980, 1981, or 1982, under section 24 of such Act, as amended by section 17 and as so redesignated in section 13, for the purpose of initiating any new rulemaking proceeding under section 18 of such Act which is intended to result in, or which may result in, the promulgation of any rule by the Commission which prohibits or otherwise regulates any commercial advertising on the basis of a determination by the Commission that such commercial advertising constitutes an unfair act or practice in or affecting commerce.

15 USC 57a note.

Post, pp. 391, 380.

(c) The amendments made in subsection (a) shall take effect on the date of the enactment of this Act. The children's advertising proceeding pending on the date of the enactment of this Act shall not proceed further until such time as the Commission has complied with section 18(b)(1)(A) of the Federal Trade Commission Act, as amended by subsection (a)(3) and as so redesignated in section 8(a). In any such further proceeding, interested parties shall be given a reasonable opportunity to present their views in accordance with section 18(b)(1)(B) of the Federal Trade Commission Act, as so redesignated in section 8(a), section 18(b)(1)(C) of such Act, as so redesignated in section 8(a), and section 18(c) of such Act (15 U.S.C. 57a(c)).

Effective date.
15 USC 57a note.

EX PARTE MEETINGS

SEC. 12. Section 18 of the Federal Trade Commission Act (15 U.S.C. 57a), as amended in section 11(a)(1), is further amended by adding at the end thereof the following new subsections:

"(j)(1) For purposes of this subsection, the term 'outside party' means any person other than (A) a Commissioner; (B) an officer or employee of the Commission; or (C) any person who has entered into a contract or any other agreement or arrangement with the Commission to provide any goods or services (including consulting services) to the Commission.

"Outside party."

"(2) Not later than 60 days after the date of the enactment of the Federal Trade Commission Improvements Act of 1980, the Commission shall publish a proposed rule, and not later than 180 days after such date of enactment the Commission shall promulgate a final rule, which shall authorize the Commission or any Commissioner to meet with any outside party concerning any rulemaking proceeding of the Commission. Such rule shall provide that—

Proposed rule, publication.
Ante, p. 374.

Final rule.

"(A) notice of any such meeting shall be included in any weekly calendar prepared by the Commission; and

"(B) a verbatim record or a summary of any such meeting, or of any communication relating to any such meeting, shall be kept, made available to the public, and included in the rulemaking record.

"(k) Not later than 60 days after the date of the enactment of the Federal Trade Commission Improvements Act of 1980, the Commission shall publish a proposed rule, and not later than 180 days after

such date of enactment the Commission shall promulgate a final rule, which shall prohibit any officer, employee, or agent of the Commission with any investigative responsibility or other responsibility relating to any rulemaking proceeding within any operating bureau of the Commission, from communicating or causing to be communicated to any Commissioner or to the personal staff of any Commissioner any fact which is relevant to the merits of such proceeding and which is not on the rulemaking record of such proceeding, unless such communication is made available to the public and is included in the rulemaking record. The provisions of this subsection shall not apply to any communication to the extent such communication is required for the disposition of ex parte matters as authorized by law.".

CIVIL INVESTIGATIVE DEMANDS

15 USC 57c, 58.

SEC. 13. The Federal Trade Commission Act (15 U.S.C. 41 et seq.) is amended by redesignating section 20 and section 21 as section 24 and section 25, respectively, and by inserting after section 19 the following new section:

Definitions.
15 USC 57b-1.

"SEC. 20. (a) For purposes of this section:

"(1) The terms 'civil investigative demand' and 'demand' mean any demand issued by the Commission under subsection (c)(1).

"(2) The term 'Commission investigation' means any inquiry conducted by a Commission investigator for the purpose of ascertaining whether any person is or has been engaged in any unfair or deceptive acts or practices in or affecting commerce (within the meaning of section 5(a)(1)).

15 USC 45.

"(3) The term 'Commission investigator' means any attorney or investigator employed by the Commission who is charged with the duty of enforcing or carrying into effect any provisions relating to unfair or deceptive acts or practices in or affecting commerce (within the meaning of section 5(a)(1)).

Post, p. 385.

"(4) The term 'custodian' means the custodian or any deputy custodian designated under section 21(b)(2)(A).

"(5) The term 'documentary material' includes the original or any copy of any book, record, report, memorandum, paper, communication, tabulation, chart, or other document.

"(6) The term 'person' means any natural person, partnership, corporation, association, or other legal entity, including any person acting under color or authority of State law.

"(7) The term 'violation' means any act or omission constituting an unfair or deceptive act or practice in or affecting commerce (within the meaning of section 5(a)(1)).

"(b) For the purpose of investigations performed pursuant to this section with respect to unfair or deceptive acts or practices in or affecting commerce (within the meaning of section 5(a)(1)), all actions of the Commission taken under section 6 and section 9 shall be conducted pursuant to subsection (c).

15 USC 46, 49.

"(c)(1) Whenever the Commission has reason to believe that any person may be in possession, custody, or control of any documentary material, or may have any information, relevant to unfair or deceptive acts or practices in or affecting commerce (within the meaning of section 5(a)(1)), the Commission may, before the institution of any proceedings under this Act, issue in writing, and cause to be served upon such person, a civil investigative demand requiring such person to produce such documentary material for inspection and copying or reproduction, to file written reports or answers to questions, to give

oral testimony concerning documentary material or other information, or to furnish any combination of such material, answers, or testimony.

"(2) Each civil investigative demand shall state the nature of the conduct constituting the alleged violation which is under investigation and the provision of law applicable to such violation.

"(3) Each civil investigative demand for the production of documentary material shall—

"(A) describe each class of documentary material to be produced under the demand with such definiteness and certainty as to permit such material to be fairly identified;

"(B) prescribe a return date or dates which will provide a reasonable period of time within which the material so demanded may be assembled and made available for inspection and copying or reproduction; and

"(C) identify the custodian to whom such material shall be made available.

"(4) Each civil investigative demand for written reports or answers to questions shall—

"(A) propound with definiteness and certainty the reports to be produced or the questions to be answered;

"(B) prescribe a date or dates at which time written reports or answers to questions shall be submitted; and

"(C) identify the custodian to whom such reports or answers shall be submitted.

"(5) Each civil investigative demand for the giving of oral testimony shall—

"(A) prescribe a date, time, and place at which oral testimony shall be commenced; and

"(B) identify a Commission investigator who shall conduct the investigation and the custodian to whom the transcript of such investigation shall be submitted.

"(6)(A) Any civil investigative demand may be served by any Commission investigator at any place within the territorial jurisdiction of any court of the United States.

"(B) Any such demand or any enforcement petition filed under this section may be served upon any person who is not found within the territorial jurisdiction of any court of the United States, in such manner as the Federal Rules of Civil Procedure prescribe for service in a foreign nation. 28 USC app.

"(C) To the extent that the courts of the United States have authority to assert jurisdiction over such person consistent with due process, the United States District Court for the District of Columbia shall have the same jurisdiction to take any action respecting compliance with this section by such person that such district court would have if such person were personally within the jurisdiction of such district court.

"(7) Service of any civil investigative demand or any enforcement petition filed under this section may be made upon a partnership, corporation, association, or other legal entity by—

"(A) delivering a duly executed copy of such demand or petition to any partner, executive officer, managing agent, or general agent of such partnership, corporation, association, or other legal entity, or to any agent of such partnership, corporation, association, or other legal entity authorized by appointment or by law to receive service of process on behalf of such partnership, corporation, association, or other legal entity;

"(B) delivering a duly executed copy of such demand or petition to the principal office or place of business of the partnership, corporation, association, or other legal entity to be served; or

"(C) depositing a duly executed copy in the United States mails, by registered or certified mail, return receipt requested, duly addressed to such partnership, corporation, association, or other legal entity at its principal office or place of business.

"(8) Service of any civil investigative demand or of any enforcement petition filed under this section may be made upon any natural person by—

"(A) delivering a duly executed copy of such demand or petition to the person to be served; or

"(B) depositing a duly executed copy in the United States mails by registered or certified mail, return receipt requested, duly addressed to such person at his residence or principal office or place of business.

"(9) A verified return by the individual serving any civil investigative demand or any enforcement petition filed under this section setting forth the manner of such service shall be proof of such service. In the case of service by registered or certified mail, such return shall be accompanied by the return post office receipt of delivery of such demand or enforcement petition.

"(10) The production of documentary material in response to a civil investigative demand shall be made under a sworn certificate, in such form as the demand designates, by the person, if a natural person, to whom the demand is directed or, if not a natural person, by any person having knowledge of the facts and circumstances relating to such production, to the effect that all of the documentary material required by the demand and in the possession, custody, or control of the person to whom the demand is directed has been produced and made available to the custodian.

"(11) Each reporting requirement or question in a civil investigative demand shall be answered separately and fully in writing under oath, unless it is objected to, in which event the reasons for the objection shall be stated in lieu of an answer, and it shall be submitted under a sworn certificate, in such form as the demand designates, by the person, if a natural person, to whom the demand is directed or, if not a natural person, by any person responsible for answering each reporting requirement or question, to the effect that all information required by the demand and in the possession, custody, control, or knowledge of the person to whom the demand is directed has been submitted.

"(12)(A) Any Commission investigator before whom oral testimony is to be taken shall put the witness on oath or affirmation and shall personally, or by any individual acting under his direction and in his presence, record the testimony of the witness. The testimony shall be taken stenographically and transcribed. After the testimony is fully transcribed, the Commission investigator before whom the testimony is taken shall promptly transmit a copy of the transcript of the testimony to the custodian.

"(B) Any Commission investigator before whom oral testimony is to be taken shall exclude from the place where the testimony is to be taken all other persons except the person giving the testimony, his attorney, the officer before whom the testimony is to be taken, and any stenographer taking such testimony.

"(C) The oral testimony of any person taken pursuant to a civil investigative demand shall be taken in the judicial district of the

United States in which such person resides, is found, or transacts business, or in such other place as may be agreed upon by the Commission investigator before whom the oral testimony of such person is to be taken and such person.

"(D)(i) Any person compelled to appear under a civil investigative demand for oral testimony pursuant to this section may be accompanied, represented, and advised by an attorney. The attorney may advise such person, in confidence, either upon the request of such person or upon the initiative of the attorney, with respect to any question asked of such person.

"(ii) Such person or attorney may object on the record to any question, in whole or in part, and shall briefly state for the record the reason for the objection. An objection may properly be made, received, and entered upon the record when it is claimed that such person is entitled to refuse to answer the question on grounds of any constitutional or other legal right or privilege, including the privilege against self-incrimination. Such person shall not otherwise object to or refuse to answer any question, and shall not himself or through his attorney otherwise interrupt the oral examination. If such person refuses to answer any question, the Commission may petition the district court of the United States pursuant to this section for an order compelling such person to answer such question.

"(iii) If such person refuses to answer any question on grounds of the privilege against self-incrimination, the testimony of such person may be compelled in accordance with the provisions of section 6004 of title 18, United States Code.

"(E)(i) After the testimony of any witness is fully transcribed, the Commission investigator shall afford the witness (who may be accompanied by an attorney) a reasonable opportunity to examine the transcript. The transcript shall be read to or by the witness, unless such examination and reading are waived by the witness. 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 in writing waives the signing, is ill, cannot be found, or refuses to sign.

"(ii) If the transcript is not signed by the witness during the 30-day period following the date upon which the witness is first afforded a reasonable opportunity to examine it, the Commission investigator shall sign the transcript and state on the record the fact of the waiver, illness, absence of the witness, or the refusal to sign, together with any reasons given for the failure to sign.

"(F) The Commission investigator shall certify on the transcript that the witness was duly sworn by him and that the transcript is a true record of the testimony given by the witness, and the Commission investigator shall promptly deliver the transcript or send it by registered or certified mail to the custodian.

"(G) The Commission investigator shall furnish a copy of the transcript (upon payment of reasonable charges for the transcript) to the witness only, except that the Commission may for good cause limit such witness to inspection of the official transcript of his testimony.

"(H) Any witness appearing for the taking of oral testimony pursuant to a civil investigative demand shall be entitled to the same fees and mileage which are paid to witnesses in the district courts of the United States.

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Post, p. 385.

"(d) Materials received as a result of a civil investigative demand shall be subject to the procedures established in section 21.

Enforcement for noncompliance.

"(e) Whenever any person fails to comply with any civil investigative demand duly served upon him under this section, or whenever satisfactory copying or reproduction of material requested pursuant to the demand cannot be accomplished and such person refuses to surrender such material, the Commission, through such officers or attorneys as it may designate, may file, in the district court of the United States for any judicial district in which such person resides, is found, or transacts business, and serve upon such person, a petition for an order of such court for the enforcement of this section. All process of any court to which application may be made as provided in this subsection may be served in any judicial district.

Investigative demand, petition for modification.

"(f)(1) Not later than 20 days after the service of any civil investigative demand upon any person under subsection (c), or at any time before the return date specified in the demand, whichever period is shorter, or within such period exceeding 20 days after service or in excess of such return date as may be prescribed in writing, subsequent to service, by any Commission investigator named in the demand, such person may file with the Commission a petition for an order by the Commission modifying or setting aside the demand.

"(2) The time permitted for compliance with the demand in whole or in part, as deemed proper and ordered by the Commission, shall not run during the pendency of such petition at the Commission, except that such person shall comply with any portions of the demand not sought to be modified or set aside. Such petition shall specify each ground upon which the petitioner relies in seeking such relief, and may be based upon any failure of the demand to comply with the provisions of this section, or upon any constitutional or other legal right or privilege of such person.

"(g) At any time during which any custodian is in custody or control of any documentary material, reports, answers to questions, or transcripts of oral testimony given by any person in compliance with any civil investigative demand, such person may file, in the district court of the United States for the judicial district within which the office of such custodian is situated, and serve upon such custodian, a petition for an order of such court requiring the performance by such custodian of any duty imposed upon him by this section or section 21.

"(h) Whenever any petition is filed in any district court of the United States under this section, such court shall have jurisdiction to hear and determine the matter so presented, and to enter such order or orders as may be required to carry into effect the provisions of this section. Any final order so entered shall be subject to appeal pursuant to section 1291 of title 28, United States Code. Any disobedience of any final order entered under this section by any court shall be punished as a contempt of such court.

"(i) Notwithstanding any other provision of law, the Commission shall have no authority to issue a subpoena or make a demand for information, under authority of this Act or any other provision of law, unless such subpoena or demand for information is signed by a Commissioner acting pursuant to a Commission resolution. The Commission shall not delegate the power conferred by this section to sign subpoenas or demands for information to any other person.

"(j) The provisions of this section shall not—

Ante, p. 374.

"(1) apply to any proceeding under section 5(b); or

"(2) apply to or affect the jurisdiction, duties, or powers of any agency of the Federal Government, other than the Commission,

regardless of whether such jurisdiction, duties, or powers are derived in whole or in part, by reference to this Act.".

CONFIDENTIALITY

SEC. 14. The Federal Trade Commission Act (15 U.S.C. 41 et seq.), as amended in section 13, is further amended by inserting after section 20 the following new section:

Ante, p. 380.

"SEC. 21. (a) For purposes of this section:

15 USC 57b-2.

"(1) The term 'material' means documentary material, written reports or answers to questions, and transcripts of oral testimony.

"Material."

"(2) The term 'Federal agency' has the meaning given it in section 552(e) of title 5, United States Code.

"Federal agency."

"(b)(1) With respect to any document or transcript of oral testimony received by the Commission pursuant to compulsory process in an investigation, a purpose of which is to determine whether any person may have violated any provision of the laws administered by the Commission, the procedures established in paragraph (2) through paragraph (7) shall apply.

"(2)(A) The Commission shall designate a duly authorized agent to serve as custodian of documentary material, or written reports or answers to questions, and transcripts of oral testimony, and such additional duly authorized agents as the Commission shall determine from time to time to be necessary to serve as deputies to the custodian.

Custodian of documentary material, designation.

"(B) Any person upon whom any demand for the production of documentary material has been duly served shall make such material available for inspection and copying or reproduction to the custodian designated in such demand at the principal place of business of such person (or at such other place as such custodian and such person thereafter may agree and prescribe in writing or as the court may direct pursuant to section 20(h)) on the return date specified in such demand (or on such later date as such custodian may prescribe in writing). Such person may upon written agreement between such person and the custodian substitute copies for originals of all or any part of such material.

Material, availability for inspection or reproduction.

Ante, p. 380.

"(3)(A) The custodian to whom any documentary material, written reports or answers to questions, and transcripts of oral testimony are delivered shall take physical possession of such material, reports or answers, and transcripts, and shall be responsible for the use made of such material, reports or answers, and transcripts, and for the return of material, pursuant to the requirements of this section.

Responsibility for use.

"(B) The custodian may prepare such copies of the documentary material, written reports or answers to questions, and transcripts of oral testimony as may be required for official use by any duly authorized officer or employee of the Commission under regulations which shall be promulgated by the Commission. Notwithstanding subparagraph (C), such material and transcripts may be used by any such officer or employee in connection with the taking of oral testimony under this section.

Copies.

"(C) Except as otherwise provided in this section, while in the possession of the custodian, no documentary material, reports or answers to questions, and transcripts of oral testimony shall be available for examination by any individual other than a duly authorized officer or employee of the Commission without the consent of the person who produced the material or transcripts. Nothing

Examination.

in this section is intended to prevent disclosure to either House of the Congress or to any committee or subcommittee of the Congress, except that the Commission immediately shall notify the owner or provider of any such information of a request for information designated as confidential by the owner or provider.

"(D) While in the possession of the custodian and under such reasonable terms and conditions as the Commission shall prescribe—

"(i) documentary material or written reports shall be available for examination by the person who produced the material, or by any duly authorized representative of such person; and

"(ii) answers to questions in writing and transcripts of oral testimony shall be available for examination by the person who produced the testimony or by his attorney.

"(4) Whenever the Commission has instituted a proceeding against a person, partnership, or corporation, the custodian may deliver to any officer or employee of the Commission documentary material, written reports or answers to questions, and transcripts of oral testimony for official use in connection with such proceeding. Upon the completion of the proceeding, the officer or employee shall return to the custodian any such material so delivered which has not been received into the record of the proceeding.

"(5) If any documentary material, written reports or answers to questions, and transcripts of oral testimony have been produced in the course of any investigation by any person pursuant to compulsory process and—

"(A) any proceeding arising out of the investigation has been completed; or

"(B) no proceeding in which the material may be used has been commenced within a reasonable time after completion of the examination and analysis of all such material and other information assembled in the course of the investigation;

then the custodian shall, upon written request of the person who produced the material, return to the person any such material which has not been received into the record of any such proceeding (other than copies of such material made by the custodian pursuant to paragraph (3)(B)).

"(6) The custodian of any documentary material, written reports or answers to questions, and transcripts of oral testimony may deliver to any officers or employees of appropriate Federal law enforcement agencies, in response to a written request, copies of such material for use in connection with an investigation or proceeding under the jurisdiction of any such agency. Such materials shall not be made available to any such agency until the custodian receives certification of any officer of such agency that such information will be maintained in confidence and will be used only for official law enforcement purposes. Such documentary material, written reports or answers to questions, and transcripts of oral testimony may be used by any officer or employee of such agency only in such manner and subject to such conditions as apply to the Commission under this section. The custodian may make such materials available to any State law enforcement agency upon the prior certification of any officer of such agency that such information will be maintained in confidence and will be used only for official law enforcement purposes.

"(7) In the event of the death, disability, or separation from service in the Commission of the custodian of any documentary material, written reports or answers to questions, and transcripts of oral testimony produced under any demand issued under this Act, or the

official relief of the custodian from responsibility for the custody and control of such material, the Commission promptly shall—

"(A) designate under paragraph (2)(A) another duly authorized agent to serve as custodian of such material; and

"(B) transmit in writing to the person who produced the material or testimony notice as to the identity and address of the successor so designated.

Any successor designated under paragraph (2)(A) as a result of the requirements of this paragraph shall have (with regard to the material involved) all duties and responsibilities imposed by this section upon his predecessor in office with regard to such material, except that he shall not be held responsible for any default or dereliction which occurred before his designation.

"(c)(1) All information reported to or otherwise obtained by the Commission which is not subject to the requirements of subsection (b) shall be considered confidential when so marked by the person supplying the information and shall not be disclosed, except in accordance with the procedures established in paragraph (2) and paragraph (3).

"(2) If the Commission determines that a document marked confidential by the person supplying it may be disclosed because it is not a trade secret or commercial or financial information which is obtained from any person and which is privileged or confidential, within the meaning of section 6(f), then the Commission shall notify such person in writing that the Commission intends to disclose the document at a date not less than 10 days after the date of receipt of notification.

Ante, p. 374.

"(3) Any person receiving such notification may, if he believes disclosure of the document would cause disclosure of a trade secret, or commercial or financial information which is obtained from any person and which is privileged or confidential, within the meaning of section 6(f), before the date set for release of the document, bring an action in the district court of the United States for the district within which the documents are located or in the United States District Court for the District of Columbia to restrain disclosure of the document. Any person receiving such notification may file with the appropriate district court or court of appeals of the United States, as appropriate, an application for a stay of disclosure. The documents shall not be disclosed until the court has ruled on the application for a stay.

File for stay of disclosure.

"(d)(1) The provisions of subsection (c) shall not be construed to prohibit—

"(A) the disclosure of information to either House of the Congress or to any committee or subcommittee of the Congress, except that the Commission immediately shall notify the owner or provider of any such information of a request for information designated as confidential by the owner or provider;

"(B) the disclosure of the results of any investigation or study carried out or prepared by the Commission, except that no information shall be identified nor shall information be disclosed in such a manner as to disclose a trade secret of any person supplying the trade secret, or to disclose any commercial or financial information which is obtained from any person and which is privileged or confidential;

"(C) the disclosure of relevant and material information in Commission adjudicative proceedings or in judicial proceedings to which the Commission is a party; or

"(D) the disclosure to a Federal agency of disaggregated information obtained in accordance with section 3512 of title 44, United States Code, except that the recipient agency shall use such disaggregated information for economic, statistical, or policymaking purposes only, and shall not disclose such information in an individually identifiable form.

Information disclosure in adjudicative or judicial proceedings.

"(2) Any disclosure of relevant and material information in Commission adjudicative proceedings or in judicial proceedings to which the Commission is a party shall be governed by the rules of the Commission for adjudicative proceedings or by court rules or orders, except that the rules of the Commission shall not be amended in a manner inconsistent with the purposes of this section.

"(e) Nothing in this section shall supersede any statutory provision which expressly prohibits or limits particular disclosures by the Commission, or which authorizes disclosures to any other Federal agency.

Exemption from disclosure.

"(f) Any material which is received by the Commission in any investigation, a purpose of which is to determine whether any person may have violated any provision of the laws administered by the Commission, and which is provided pursuant to any compulsory process under this Act or which is provided voluntarily in place of such compulsory process shall be exempt from disclosure under section 552 of title 5, United States Code.".

REGULATORY ANALYSES; JUDICIAL REVIEW; REGULATORY AGENDAS

SEC. 15. The Federal Trade Commission Act (15 U.S.C. 41 et seq.), as amended in section 13 and section 14, is further amended by inserting after section 21 the following new section:

15 USC 57b-3.

"SEC. 22. (a) For purposes of this section:

"Rule."
15 USC 46, 57a.

"(1) The term 'rule' means any rule promulgated by the Commission under section 6 or section 18, except that such term does not include interpretive rules, rules involving Commission management or personnel, general statements of policy, or rules relating to Commission organization, procedure, or practice. Such term does not include any amendment to a rule unless the Commission—

"(A) estimates that such amendment will have an annual effect on the national economy of $100,000,000 or more;

"(B) estimates that such amendment will cause a substantial change in the cost or price of goods or services which are used extensively by particular industries, which are supplied extensively in particular geographic regions, or which are acquired in significant quantities by the Federal Government, or by State or local governments; or

"(C) otherwise determines that such amendment will have a significant impact upon persons subject to regulation under such amendment and upon consumers.

"Rulemaking."

"(2) The term 'rulemaking' means any Commission process for formulating or amending a rule.

Preliminary regulatory analysis, contents.

"(b)(1) In any case in which the Commission publishes notice of a proposed rulemaking, the Commission shall issue a preliminary regulatory analysis relating to the proposed rule involved. Each preliminary regulatory analysis shall contain—

"(A) a concise statement of the need for, and the objectives of, the proposed rule;

"(B) a description of any reasonable alternatives to the proposed rule which may accomplish the stated objective of the rule in a manner consistent with applicable law; and

"(C) for the proposed rule, and for each of the alternatives described in the analysis, a preliminary analysis of the projected benefits and any adverse economic effects and any other effects, and of the effectiveness of the proposed rule and each alternative in meeting the stated objectives of the proposed rule.

Final regulatory analysis, contents.

"(2) In any case in which the Commission promulgates a final rule, the Commission shall issue a final regulatory analysis relating to the final rule. Each final regulatory analysis shall contain—

"(A) a concise statement of the need for, and the objectives of, the final rule;

"(B) a description of any alternatives to the final rule which were considered by the Commission;

"(C) an analysis of the projected benefits and any adverse economic effects and any other effects of the final rule;

"(D) an explanation of the reasons for the determination of the Commission that the final rule will attain its objectives in a manner consistent with applicable law and the reasons the particular alternative was chosen; and

"(E) a summary of any significant issues raised by the comments submitted during the public comment period in response to the preliminary regulatory analysis, and a summary of the assessment by the Commission of such issues.

"(3)(A) In order to avoid duplication or waste, the Commission is authorized to—

"(i) consider a series of closely related rules as one rule for purposes of this subsection; and

"(ii) whenever appropriate, incorporate any data or analysis contained in a regulatory analysis issued under this subsection in the statement of basis and purpose to accompany any rule promulgated under section 18(a)(1)(B), and incorporate by reference in any preliminary or final regulatory analysis information contained in a notice of proposed rulemaking or a statement of basis and purpose.

Ante, p. 376.

Preliminary and final regulatory analyses, availability. Fee.

"(B) The Commission shall include, in each notice of proposed rulemaking and in each publication of a final rule, a statement of the manner in which the public may obtain copies of the preliminary and final regulatory analyses. The Commission may charge a reasonable fee for the copying and mailing of regulatory analyses. The regulatory analyses shall be furnished without charge or at a reduced charge if the Commission determines that waiver or reduction of the fee is in the public interest because furnishing the information primarily benefits the general public.

Publication in Federal Register.

"(4) The Commission is authorized to delay the completion of any of the requirements established in this subsection by publishing in the Federal Register, not later than the date of publication of the final rule involved, a finding that the final rule is being promulgated in response to an emergency which makes timely compliance with the provisions of this subsection impracticable. Such publication shall include a statement of the reasons for such finding.

"(5) The requirements of this subsection shall not be construed to alter in any manner the substantive standards applicable to any action by the Commission, or the procedural standards otherwise applicable to such action.

Judicial review.

"(c)(1) The contents and adequacy of any regulatory analysis prepared or issued by the Commission under this section, including the adequacy of any procedure involved in such preparation or issuance, shall not be subject to any judicial review in any court, except that a court, upon review of a rule pursuant to section 18(e), may set aside such rule if the Commission has failed entirely to prepare a regulatory analysis.

18 USC 57a.

"(2) Except as specified in paragraph (1), no Commission action may be invalidated, remanded, or otherwise affected by any court on account of any failure to comply with the requirements of this section.

"(3) The provisions of this subsection do not alter the substantive or procedural standards otherwise applicable to judicial review of any action by the Commission.

Regulatory agenda.

"(d)(1) The Commission shall publish at least semiannually a regulatory agenda. Each regulatory agenda shall contain a list of rules which the Commission intends to propose or promulgate during the 12-month period following the publication of the agenda. On the first Monday in October of each year, the Commission shall publish in the Federal Register a schedule showing the dates during the current fiscal year on which the semiannual regulatory agenda of the Commission will be published.

Publication dates in Federal Register.

"(2) For each rule listed in a regulatory agenda, the Commission shall—

"(A) describe the rule;

"(B) state the objectives of and the legal basis for the rule; and

"(C) specify any dates established or anticipated by the Commission for taking action, including dates for advance notice of proposed rulemaking, notices of proposed rulemaking, and final action by the Commission.

"(3) Each regulatory agenda shall state the name, office address, and office telephone number of the Commission officer or employee responsible for responding to any inquiry relating to each rule listed.

"(4) The Commission shall not propose or promulgate a rule which was not listed on a regulatory agenda unless the Commission publishes with the rule an explanation of the reasons the rule was omitted from such agenda.".

GOOD FAITH RELIANCE UPON ACTIONS OF BOARD OF GOVERNORS OF FEDERAL RESERVE SYSTEM

SEC. 16. The Federal Trade Commission Act (15 U.S.C. 41 et seq.), as amended in section 13, section 14, and section 15, is further amended by inserting after section 22 the following new section:

"Board of Governors." 15 USC 57b-4.

"SEC. 23. (a) For purposes of this section, the term 'Board of Governors' means the Board of Governors of the Federal Reserve System.

"(b) Notwithstanding any other provision of law, if—

"(1) any person, partnership, or corporation engages in any conduct or practice which allegedly constitutes a violation of any Federal law with respect to which the Board of Governors of the Federal Reserve System has rulemaking authority; and

"(2) such person, partnership, or corporation engaged in such conduct or practice in good faith reliance upon, and in conformity with, any rule, regulation, statement of interpretation, or statement of approval prescribed or issued by the Board of Governors under such Federal law;

then such good faith reliance shall constitute a defense in any administrative or judicial proceeding commenced against such person, partnership, or corporation by the Commission under this Act or in any administrative or judicial proceeding commenced against such person, partnership, or corporation by the Attorney General of the United States, upon request made by the Commission, under any provision of law.

"(c) The provisions of subsection (b) shall apply regardless of whether any rule, regulation, statement of interpretation, or statement of approval prescribed or issued by the Board of Governors is amended, rescinded, or held to be invalid by judicial authority or any other authority after a person, partnership, or corporation has engaged in any conduct or practice in good faith reliance upon, and in conformity with, such rule, regulation, statement of interpretation, or statement of approval.

"(d) If, in any case in which—

"(1) the Board of Governors has rulemaking authority with respect to any Federal law; and

"(2) the Commission is authorized to enforce the requirements of such Federal law;

any person, partnership, or corporation submits a request to the Board of Governors for the issuance of any statement of interpretation or statement of approval relating to any conduct or practice of such person, partnership, or corporation which may be subject to the requirements of such Federal law, then the Board of Governors shall dispose of such request as soon as practicable after the receipt of such request.".

AUTHORIZATION OF APPROPRIATIONS

SEC. 17. Section 24 of the Federal Trade Commission Act, as so redesignated in section 13, is amended— 15 USC 57c. *Ante*, p. 380.

(1) by striking out "and" after "1976;"; and

(2) by striking out "1977. For fiscal years" and all that follows through "law." and inserting in lieu thereof "1977; not to exceed $70,000,000 for the fiscal year ending September 30, 1980; not to exceed $75,000,000 for the fiscal year ending September 30, 1981; and not to exceed $80,000,000 for the fiscal year ending September 30, 1982.".

RESTRICTION OF COMMISSION AUTHORITY UNDER LANHAM TRADEMARK ACT

SEC. 18. The Federal Trade Commission shall not have any authority to use any funds which are authorized to be appropriated to carry out the Federal Trade Commission Act (15 U.S.C. 41 et seq.) for fiscal year 1980, 1981, or 1982, under section 24 of such Act, as amended by section 17 and as so redesignated in section 13, for the purpose of taking any action under section 14 of the Act entitled "An Act to provide for the registration and protection of trademarks used in commerce, to carry out the provisions of certain international conventions, and for other purposes" (15 U.S.C. 1064), commonly referred to as the Lanham Trademark Act, with respect to the cancellation of the registration of any mark on the ground that such mark has become the common descriptive name of an article or substance. 15 USC 57c note.

RESTRICTION OF COMMISSION REGULATION OF FUNERAL INDUSTRY

SEC. 19. (a) For purposes of this section: 15 USC 57a note.

"Commission."

(1) The term "Commission" means the Federal Trade Commission.

"Funeral trade regulation rule."

(2) The term "funeral trade regulation rule" means the proposed trade regulation rule which was published in the Federal Register of August 29, 1975, beginning at page 39901, and which relates to the regulation of funeral industry practices.

(b) Except as provided in subsection (c), the Federal Trade Commission shall not have any authority to use any funds which are authorized to be appropriated to carry out the Federal Trade Commission Act (15 U.S.C. 41 et seq.) for fiscal year 1980, 1981, or 1982, under section 24 of such Act, as amended by section 17 and as so redesignated in section 13, to issue—

(1) the funeral trade regulation rule in final form; or

(2) any other trade regulation rule, in proposed or final form, which sets forth rules substantially similar to the rules set forth in the funeral trade regulation rule.

Funds, use.

(c)(1) The Commission shall have authority to use the funds specified in subsection (b) to issue the funeral trade regulation rule in final form only to the extent that the funeral trade regulation rule (in its final form)—

(A) requires persons, partnerships, and corporations furnishing goods and services relating to funerals to disclose the fees or prices charged for such goods and services in a manner prescribed by the Commission; and

(B) prohibits or prevents such persons, partnerships, and corporations from—

(i) engaging in any misrepresentation;

(ii) engaging in any boycott against, or making any threat against, any other person, partnership, or corporation furnishing goods and services relating to funerals;

(iii) conditioning the furnishing of any such goods or services to a consumer upon the purchase by such consumer of other such goods or services; or

(iv) furnishing any such goods or services to a consumer for a fee without obtaining the prior approval of such consumer.

(2)(A) The Commission, before issuing the funeral trade regulation rule in final form—

Publication in Federal Register.

(i) shall publish in the Federal Register for public comment a revised version of the funeral trade regulation rule which contains the provisions specified in subparagraph (A) and subparagraph (B) of paragraph (1);

(ii) shall allow interested persons to submit written data, views, and arguments relating to such revised version of the funeral trade regulation rule, and make all such submissions publicly available; and

(iii) may permit interested persons, or, as appropriate, a single representative of each group of such persons having the same or similar interests with respect to such revised version of the funeral trade regulation rule, to present their position orally.

(B) The requirements established in subparagraph (A) are in addition to, and not in lieu of, any other requirements established in the Federal Trade Commission Act (15 U.S.C. 41 et seq.), or in any other provision of law, and applicable to the promulgation of trade regulation rules by the Commission. The requirements established in subparagraph (A) shall not be construed to vacate or otherwise affect any proceedings conducted by the Commission before the date of the

enactment of this Act with respect to the funeral trade regulation rule.

(d) If, upon application to the Commission by an appropriate State agency, the Commission determines (pursuant to rules prescribed by the Commission) that—

(1) there is in effect a State requirement which applies to any transaction to which this section applies; and

(2) such State requirement affords an overall level of protection to consumers which is as great as, or greater than, the protection afforded by this section;

then only such State requirement shall be applicable to the extent specified in such determination for so long as the State administers and enforces effectively any such State requirement.

RESTRICTION OF COMMISSION AUTHORITY RELATING TO AGRICULTURAL COOPERATIVES

SEC. 20. (a) The Federal Trade Commission shall not have any authority to use any funds which are authorized to be appropriated to carry out the Federal Trade Commission Act (15 U.S.C. 41 et seq.) for fiscal year 1980, 1981, or 1982, under section 24 of such Act, as amended by section 17 and as so redesignated in section 13, for the purpose of conducting any study, investigation, or prosecution of any agricultural cooperative for any conduct which, because of the provisions of the Act entitled "An Act to authorize association of producers of agricultural products", approved February 18, 1922 (7 U.S.C. 291 et seq.), commonly known as the Capper-Volstead Act, is not a violation of any Federal antitrust Act or the Federal Trade Commission Act (15 U.S.C. 41 et seq.). 15 USC 57c note.

(b) The Federal Trade Commission shall not have any authority to use any funds which are authorized to be appropriated to carry out the Federal Trade Commission Act (15 U.S.C. 41 et seq.) for fiscal year 1980, 1981, or 1982, under section 24 of such Act, as amended by section 17 and as so redesignated in section 13, for the purpose of conducting any study or investigation of any agricultural marketing orders. Study or investigation, prohibition.

CONGRESSIONAL REVIEW OF RULES

SEC. 21. (a)(1) The Federal Trade Commission, after promulgating a final rule, shall submit such final rule to the Congress for review in accordance with this section. Such final rule shall be delivered to each House of the Congress on the same date and to each House of the Congress while it is in session. Such final rule shall be referred to the Committee on Commerce, Science, and Transportation of the Senate and to the Committee on Interstate and Foreign Commerce of the House, respectively. 15 USC 57a-1.

(2) Any such final rule shall become effective in accordance with its terms unless, before the end of the period of 90 calendar days of continuous session after the date such final rule is submitted to the Congress, both Houses of the Congress adopt a concurrent resolution disapproving such final rule. Effective date.

(b)(1) The provisions of this subsection are enacted by the Congress—

(A) as an exercise of the rulemaking power of the Senate and the House of Representatives, respectively, and as such they are deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in

that House in the case of concurrent resolutions which are subject to this section, and such provisions supersede other rules only to the extent that they are inconsistent with such other rules; and

(B) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner and to the same extent as in the case of any other rule of that House.

(2)(A) Any concurrent resolution disapproving a final rule of the Commission shall, upon introduction or receipt from the other House of the Congress, be referred immediately by the presiding officer of such House to the Committee on Commerce, Science, and Transportation of the Senate or to the Committee on Interstate and Foreign Commerce of the House, as the case may be.

(B) If a committee to which a concurrent resolution is referred does not report such concurrent resolution before the end of the period of 75 calendar days of continuous session of the Congress after the referral of such resolution to the Committee on Commerce, Science, and Transportation of the Senate or to the Committee on Interstate and Foreign Commerce of the House, as the case may be, under subsection (a)(1), it shall be in order to move to discharge any such committee from further consideration of such concurrent resolution.

(C)(i) A motion to discharge in the Senate may be made only by a Member favoring the concurrent resolution, shall be privileged (except that it may not be made after the committee has reported a concurrent resolution with respect to the same final rule of the Commission), and debate on such motion shall be limited to not more than 1 hour, to be divided equally between those favoring and those opposing the motion. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion was agreed to or disagreed to. If the motion to discharge is agreed to or disagreed to, the motion may not be renewed, nor may another motion to discharge the committee be made with respect to any other concurrent resolution with respect to the same final rule of the Commission.

(ii) A motion to discharge in the House may be made by presentation in writing to the Clerk. The motion may be called up only if the motion has been signed by one-fifth of the Members of the House. The motion is highly privileged (except that it may not be made after the committee has reported a concurrent resolution of disapproval with respect to the same rule). Debate on such motion shall be limited to not more than 1 hour, the time to be divided equally between those favoring and those opposing the motion. An amendment to the motion is not in order, and it is not in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

(3)(A) When a committee has reported, or has been discharged from further consideration of, a concurrent resolution, it shall be at any time thereafter in order (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the concurrent resolution. The motion shall be privileged in the Senate and highly privileged in the House of Representatives, and shall not be debatable. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion was agreed to or disagreed to.

(B) Debate on the concurrent resolution shall be limited to not more than 10 hours, which shall be divided equally between those favoring and those opposing such concurrent resolution. A motion further to

limit debate shall not be debatable. An amendment to, or motion to recommit, the concurrent resolution shall not be in order, and it shall not be in order to move to reconsider the vote by which such concurrent resolution was agreed to or disagreed to.

(4) Appeals from the decision of the Chair relating to the application of the rules of the Senate or the House of Representatives, as the case may be, to the procedure relating to a concurrent resolution shall be decided without debate.

(5) Notwithstanding any other provision of this subsection, if a House has approved a concurrent resolution with respect to any final rule of the Commission, then it shall not be in order to consider in such House any other concurrent resolution with respect to the same final rule.

(c)(1) If a final rule of the Commission is disapproved by the Congress under subsection (a)(2), then the Commission may promulgate a final rule which relates to the same acts or practices as the final rule disapproved by the Congress in accordance with this subsection. Such final rule—

(A) shall be based upon—

(i) the rulemaking record of the final rule disapproved by the Congress; or

(ii) such rulemaking record and the record established in supplemental rulemaking proceedings conducted by the Commission in accordance with section 553 of title 5, United States Code, in any case in which the Commission determines that it is necessary to supplement the existing rulemaking record; and

(B) may contain such changes as the Commission considers necessary or appropriate.

(2) The Commission, after promulgating a final rule under this subsection, shall submit the final rule to the Congress in accordance with subsection (a)(1).

(d) Congressional inaction on, or rejection of, a concurrent resolution of disapproval under this section shall not be construed as an expression of approval of the final rule involved, and shall not be construed to create any presumption of validity with respect to such final rule.

(e)(1) The Comptroller General shall prepare a report which examines the review of Commission rules under this section. Such report shall— Report, contents.

(A) list the final rules submitted to the Congress by the Commission during the period in which this section is in effect;

(B) list the final rules disapproved by the Congress under subsection (a)(2);

(C) specify the number of instances in which the Commission promulgates a final rule in accordance with subsection (c); and

(D) include an analysis of any impact which the provisions of this section have had upon the decisionmaking and rulemaking processes of the Commission.

(2) The Comptroller General shall submit the report required in paragraph (1) to the Congress before the end of fiscal year 1982. Report to Congress.

(f)(1) Any interested party may institute such actions in the appropriate district court of the United States, including actions for declaratory judgment, as may be appropriate to construe the constitutionality of any provision of this section. The district court immediately shall certify all questions of the constitutionality of this section Actions in a U.S. district court.

to the United States court of appeals for the circuit involved, which shall hear the matter sitting en banc.

Appeal to Supreme Court of the United States.

(2) Notwithstanding any other provision of law, any decision on a matter certified under paragraph (1) shall be reviewable by appeal directly to the Supreme Court of the United States. Such appeal shall be brought not later than 20 days after the decision of the court of appeals.

(3) It shall be the duty of the court of appeals and of the Supreme Court of the United States to advance on the docket and to expedite to the greatest possible extent the disposition of any matter certified under paragraph (1).

(g)(1) For purposes of this section—

(A) continuity of session is broken only by an adjournment sine die; and

(B) days on which either House is not in session because of an adjournment of more than 5 days to a day certain are excluded in the computation of the periods specified in subsection (a)(2) and subsection (b).

(2) If an adjournment sine die of the Congress occurs after the Commission has submitted a final rule under subsection (a)(1), but such adjournment occurs—

(A) before the end of the period specified in subsection (a)(2); and

(B) before any action necessary to disapprove the final rule is completed under subsection (a)(2);

Resubmittal to Congress.

then the Commission shall be required to resubmit the final rule involved at the beginning of the next regular session of the Congress. The period specified in subsection (a)(2) shall begin on the date of such resubmission.

(h) For purposes of this section:

Definitions.

(1) The term "Commission" means the Federal Trade Commission.

(2) The term "concurrent resolution" means a concurrent resolution the matter after the resolving clause of which is as follows: "That the Congress disapproves the final rule promulgated by the Federal Trade Commission dealing with the matter of ——, which final rule was submitted to the Congress on ——.". (The blank spaces shall be filled appropriately.)

(3) The term "rule" means any rule promulgated by the Commission pursuant to the Federal Trade Commission Act (15 U.S.C. 41 et seq.), other than any rule promulgated under section 18(a)(1)(A) of such Act (15 U.S.C. 57a(a)(1)(A)).

Effective date. 15 USC 57a-1 note.

(i) The provisions of this section shall take effect on the date of the enactment of this Act and shall cease to have any force or effect after September 30, 1982.

OVERSIGHT HEARINGS

15 USC 57a note.

SEC. 22. The Consumer Subcommittee of the Committee on Commerce, Science, and Transportation of the Senate shall conduct an oversight hearing with respect to the Federal Trade Commission at least once during the first 6 calendar months, and at least once during the last 6 calendar months, of each of the fiscal years 1980, 1981, and 1982.

EFFECTIVE DATE

SEC. 23. The provisions of this Act, and the amendments made by this Act, shall take effect on the date of the enactment of this Act. 15 USC 45 note.

Approved May 28, 1980.

LEGISLATIVE HISTORY:

HOUSE REPORTS: No. 96-181 (Comm. on Interstate and Foreign Commerce) and No. 96-917 (Comm. of Conference).
SENATE REPORTS: No. 96-184 accompanying S. 1020 and No. 96-500 accompanying S. 1991 (both from Comm. on Commerce, Science, and Transportation).
CONGRESSIONAL RECORD:
Vol. 125 (1979): Nov. 14, 27, considered and passed House.
Vol. 126 (1980): Feb. 7, H.R. 2313 considered and passed Senate, amended, in lieu of S. 1020 and S. 1991.
May 20, House agreed to conference report.
May 21, Senate agreed to conference report.
WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS:
Vol. 16, No. 22 (1980): May 28, Presidential statement.