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**APPROVED**  
**MAY 29 1976**

85/29/76

THE WHITE HOUSE  
WASHINGTON  
May 28, 1976


ACTION  
Last Day: June 5

Posted  
6/1/76

MEMORANDUM FOR

THE PRESIDENT

FROM:

JIM CANNON 

SUBJECT:

H.R. 12527 - 1976 Federal Trade  
Commission Authorization

Archives  
6/1/76

Attached for your consideration is H.R. 12527, sponsored by Representative Devine, which would increase the 1976 Federal Trade Commission authorization from \$46 million to \$47.091 million and would extend the deadline for filing certain reports required pursuant to the Magnuson-Moss Act. The higher authorization level is identical to the Administration's 1976 and supplemental appropriation requests for the FTC.

Additional information is provided in OMB's enrolled bill report at Tab A.

OMB, Max Friedersdorf, Counsel's Office (Lazarus) and I recommend approval of the enrolled bill.

RECOMMENDATION

That you sign H.R. 12527 at Tab B.





EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF MANAGEMENT AND BUDGET

WASHINGTON, D.C. 20503

MAY 27 1976

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill H.R. 12527 - 1976 Federal Trade  
Commission Authorization  
Sponsor - Rep. Staggers (D) West Virginia and  
Rep. Devine (R) Ohio

Last Day for Action

June 5, 1976 - Saturday

Purpose

To increase the 1976 Federal Trade Commission (FTC) authorization and to extend the deadline for filing certain reports required pursuant to the Magnuson-Moss Act.

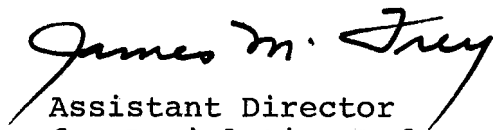
Agency Recommendations

Office of Management and Budget	Approval
Federal Trade Commission	Approval (Informally)
Administrative Conference of the United States	Approval
Department of Justice	No objection

Discussion

The enrolled bill would increase the FTC's existing 1976 appropriation authorization from \$46 million to \$47.091 million. The higher authorization level is identical to the Administration's 1976 regular and supplemental appropriation requests for the FTC. By unanimous consent a provision in H.R. 12527 raising the existing 1977 appropriation authorization from \$50 million to \$57.233 million was deleted just prior to passage of the enrolled bill, with the understanding that the 1977 authorization level would be separately acted upon at a later date.

H.R. 12527 would also extend the deadline from July 5, 1976, to July 5, 1978 for the FTC and the Administrative Conference of the United States (ACUS) to study, evaluate and submit reports to the Congress on new rulemaking procedures for FTC which were established under the Magnuson-Moss Warranty -- Federal Trade Commission Improvement Act. The two-year extension was provided because the FTC has not yet promulgated any Magnuson-Moss rules (although 2 are near completion and a total of 15 have been proposed) and because the ACUS believes that 7 to 9 completed rules are necessary in order to conduct a meaningful review. The Conference anticipates that it could complete final review and evaluation on a sufficient number of such rules by May or June 1978 and thus could report to the Congress by the new July 5, 1978 deadline.

  
Assistant Director  
for Legislative Reference

Enclosures

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

2120 L STREET, N.W., SUITE 500  
WASHINGTON, D.C. 20037  
(202) 254-7020

OFFICE OF  
THE CHAIRMAN

TESTIMONY

By

RICHARD K. BERG  
Executive Secretary  
Administrative Conference of the United States

BEFORE THE  
SUBCOMMITTEE ON CONSUMER PROTECTION AND FINANCE  
ORGANIZATIONS  
OF THE  
HOUSE COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE  
ON  
S. 642, THE FEDERAL TRADE COMMISSION AMENDMENTS OF 1975

March 30, 1976

Mr. Chairman and Members of the Subcommittee:

I am grateful for the opportunity to testify before you today. I am Executive Secretary of the Administrative Conference of the United States. My colleagues here are David B.H. Martin, Research Director of the Conference, and Barry Boyer, visiting Associate Professor at the University of Virginia Law School.

The Administrative Conference of the United States is a permanent, independent Federal agency. We have approximately 90 members, drawn from within the Federal Government and from the private Sector. The Conference acts as a deliberative body, and it makes recommendations for the improvement of the administrative procedures of all Federal departments and agencies. Our purpose is to assist the agencies and the Congress in the development of procedures that provide greater fairness and expedition for participants in the administrative process, more effective attainment of the agencies' goals, and lower costs to taxpayers. The members and staff of the Conference have special expertise on questions of administrative law and procedure.

My purpose in testifying is to request an amendment to S. 642 extending the due date for the Administrative Conference's report on Federal Trade Commission rulemaking. As you know, section 202(d) of the Magnuson-Moss Warranty-Federal Trade Commission Improvement Act, P.L. 93-637, directed the Administrative Conference to conduct a study and evaluation of the rulemaking procedures established for the Federal Trade Commission by section 202 and to submit a report of its study to Congress by July 5, 1976. While this assignment came as a surprise to us, we welcomed it because we believe there is no more important problem in administrative law today than designing appropriate procedures for agency rulemaking. By appropriate procedures I mean procedures which strike the right balance among the sometimes competing goals of expedition, fairness to the interests immediately affected, accountability to the political process and to the general public, and, above all, wisdom and accuracy in the ultimate substantive result.

The Magnuson-Moss Act is only one of a number of examples of recent legislation which provide for what has been called "hybrid rulemaking," a procedure somewhere between the rulemaking on a formal evidentiary record, which is required of a few agencies, and the informal notice-and-comment rulemaking which has been the general norm since

the enactment in 1946 of the Administrative Procedure Act, 5 U.S.C. §553. These various statutory requirements for hybrid rulemaking have elements in common, but they differ one from another in detail, to a degree which has led one court to complain, "One would almost think there had been a conscious effort never to use the same phraseology twice." Associated Industries of New York v. U.S. Department of Labor, 487 F. 2d 342, 345n (2d Cir. 1973). The Magnuson-Moss Act, in particular, contains a number of novel and interesting elements. It is our hope and intention that our study of the new Federal Trade Commission procedures will yield information and insights which will aid in evaluating procedures in other agencies as well, and perhaps contribute to the development of a model hybrid rulemaking procedure.

To perform the study the Conference has engaged Barry B. Boyer, visiting Associate Professor, University of Virginia Law School, who is here with me today. Professor Boyer will be assisted by a small full-time staff of researchers. The staff will compile empirical data--systematically, and as completely as practicable--regarding the conduct of specific rulemaking proceedings. Sources of data will include direct observation of rulemaking hearings and pre-hearing conferences, interviews with rulemaking participants and others likely to be affected by the proposed rules, and examination of documentary rulemaking records. The study will solicit viewpoints and suggestions from individuals and organizations representing a wide range of interests.

In order to perform a proper study and evaluation of the rulemaking procedures prescribed by section 202, it is essential that we observe several rules as they proceed through all stages of the new rulemaking procedures. The Federal Trade Commission promulgated Rules of Practice dealing with procedures for rulemaking under Section 18 of the Federal Trade Commission Act, in August 1975 (40 F.R. 22966). By October 1, 1976, eleven notices of proposed rulemaking had been issued. To date, one of these eleven has been terminated (the Room Air Conditioner Efficiency Rule) and five additional rules have been proposed.

Of these fifteen rulemakings, only two have reached the point at which one could predict, even roughly, the date they will reach the Commission for final action. These two rules (the Vocational Schools Rule and the Retail Prices of Prescription Drugs Rule) have completed all procedural steps required by Sections 1.11, 1.12 and 1.13(a)-(e) of the Rules of Practice, i.e., those sections pertaining to the initial and final notices, written comments, and informal hearings. The remaining steps include the preparation of the presiding officer's report and the staff recommendations (Section 1.13(f) and (g) ) and the 60-day period for public comment on these documents (Section 1.13(h) ). These steps are likely to take at least another three months, since the hearings on both rules were concluded in January. The proposed rules are unlikely to be ready for Commission action before June. The Commission then may make its final decision, it may obtain further information or it may publish a revised proposal for further proceedings (Section 1.14). There would seem to be at best only an outside chance that either rulemaking proceeding will have been completed before the July, 1976 deadline and no chance at all that a report evaluating the experience in those proceedings could be prepared.

Thus, an extension of time is necessary even if our data base were limited to these two rules. We believe, however, that an adequate study requires a larger base of experience .

In selecting a new deadline for the report we must consider how soon we can expect there to be an adequate number of proceedings completed or near enough to completion for a comprehensive study. This is a somewhat speculative question. On the basis of progress to date there seems to be a reasonable chance that the Commission will complete action on seven rules by the end of 1976, with action on two more likely in the spring of 1977. Seven to nine completed rulemakings would offer an adequate data base from which we could make meaningful generalizations and recommendations. An additional period, at least six months, must be allowed for organization of data and preparation of a draft report. Since the Conference meets in plenary session in late spring and in December, we could aim for submission of the report and any proposed recommendations



to the December, 1977 plenary session. This schedule appears a bit optimistic, however, for it allows very little time for refinement of the consultant's report through the Conference's committee review process and through outside comment. A more conservative timetable would be to aim for a draft report by the end of 1977 and Conference action on the report and its recommendations at the subsequent plenary session, in late May or early June, 1978.

Accordingly, we request a two-year extension in the statutory reporting date, that is, to July 5, 1978. Given the present pace of the Commission's proceedings, a shorter timetable appears unrealistic. Of course, Professor Boyer's report would be available somewhat earlier, but we read section 202(d) to contemplate action by the full Conference, which, in turn, presupposes a critical and deliberative process within the Conference.

Thank you for this opportunity to testify. My colleagues and I are available to answer any questions the Committee may have.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

2120 L STREET, N.W., SUITE 500  
WASHINGTON, D.C. 20037  
(202) 254-7020

OFFICE OF  
THE CHAIRMAN

May 25, 1976

Mr. James M. Frey  
Assistant Director for Legislative Reference  
Executive Office of the President  
Office of Management and Budget  
Washington, DC 20503

Dear Mr. Frey:

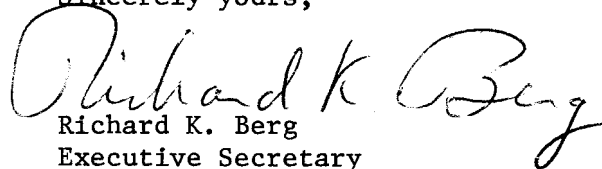
This is in response to your memorandum of May 24, requesting our comments on enrolled bill, H.R. 12527.

We have no comment on section 1 of the bill.

Section 2 of the bill would amend section 202(d) of the Magnuson-Moss Warranty-Federal Trade Commission Improvement Act to postpone for two years the deadline for submission by the Federal Trade Commission and the Administrative Conference of the reports evaluating the rulemaking procedures under section 18 of the Federal Trade Commission Act. This extension is being granted at the request of this office. I enclose a copy of my statement submitted to House Committee on Interstate and Foreign Commerce in support of our request for a two-year extension in our reporting date.

Accordingly, we favor section 2 of the bill.

Sincerely yours,

  
Richard K. Berg  
Executive Secretary

Enclosure

**Department of Justice**  
**Washington, D. C. 20530**

May 26, 1976

Honorable James T. Lynn  
Director  
Office of Management and Budget  
Washington, D. C. 20503

Dear Mr. Lynn:

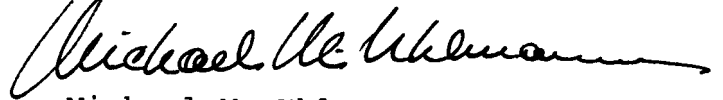
In compliance with your request, we have examined a facsimile of the enrolled bill H.R. 12527 to amend the Federal Trade Commission Act to increase the authorization of appropriations for fiscal year 1976 and for other purposes.

The enrolled bill would amend section 20 of the Federal Trade Commission Act (15 U.S.C. 24c) to increase the authorization of appropriations for the Commission for fiscal 1976 from \$46,000,000 to \$47,091,000 and would amend section 202(d) of the Magnuson-Moss Warranty -- Federal Trade Commission Improvement Act (15 U.S.C. 57a note) to require the Federal Trade Commission and the Administrative Conference of the United States each to study and evaluate FTC rulemaking procedures and each to submit a report of its study to the Congress not later than July 5, 1978.

The Federal Trade Commission Improvement Act set up a new rulemaking procedure for the FTC which is unlike that of any other independent agency and directed the Federal Trade Commission and the Administrative Conference of the United States each to study and evaluate the new rulemaking procedures and each to submit a report to Congress 18 months after enactment, which would be July 5, 1976. However, as of May 1976 no Magnuson-Moss rules have been promulgated and the Administrative Conference has testified that seven to nine completed rules are necessary to conduct a meaningful study. The Conference has predicted that action should be completed on that number of rules by spring of 1977 and that it would then need several months to organize the data, prepare a draft report and allow for review and comment. The Conference estimates that a final report could be ready for submission to Congress no later than July 5, 1978.

The Department of Justice has no objection to Executive approval of this bill.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael M. Uhlmann". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

Michael M. Uhlmann  
Assistant Attorney General

EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
WASHINGTON, D.C. 20503

MAY 27 1976

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill H.R. 12527 - 1976 Federal Trade  
Commission Authorization  
Sponsor - Rep. Staggers (D) West Virginia and  
Rep. Devine (R) Ohio

Last Day for Action

June 5, 1976 - Saturday

Purpose

To increase the 1976 Federal Trade Commission (FTC) authorization and to extend the deadline for filing certain reports required pursuant to the Magnuson-Moss Act.

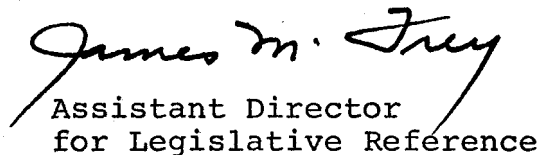
Agency Recommendations

Office of Management and Budget	Approval
Federal Trade Commission	Approval (Informally)
Administrative Conference of the United States	Approval
Department of Justice	No objection

Discussion

The enrolled bill would increase the FTC's existing 1976 appropriation authorization from \$46 million to \$47.091 million. The higher authorization level is identical to the Administration's 1976 regular and supplemental appropriation requests for the FTC. By unanimous consent a provision in H.R. 12527 raising the existing 1977 appropriation authorization from \$50 million to \$57.233 million was deleted just prior to passage of the enrolled bill, with the understanding that the 1977 authorization level would be separately acted upon at a later date.

H.R. 12527 would also extend the deadline from July 5, 1976, to July 5, 1978 for the FTC and the Administrative Conference of the United States (ACUS) to study, evaluate and submit reports to the Congress on new rulemaking procedures for FTC which were established under the Magnuson-Moss Warranty -- Federal Trade Commission Improvement Act. The two-year extension was provided because the FTC has not yet promulgated any Magnuson-Moss rules (although 2 are near completion and a total of 15 have been proposed) and because the ACUS believes that 7 to 9 completed rules are necessary in order to conduct a meaningful review. The Conference anticipates that it could complete final review and evaluation on a sufficient number of such rules by May or June 1978 and thus could report to the Congress by the new July 5, 1978 deadline.

  
Assistant Director  
for Legislative Reference

Enclosures

## THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.:

Date: May 28

Time: 900am

FOR ACTION: Paul Leach *pl*  
 Dick Parsons *dp*  
 Max Friedersdorf *mf*  
 Ken Lazarus *kl*

cc (for information): Jack Marsh  
 Jim Cavanaugh  
 Ed Schmults

FROM THE STAFF SECRETARY

DUE: Date:

May 28

Time:

500pm

SUBJECT:

H.R. 12527 - Federal Trade Commission authorization

## ACTION REQUESTED:

 For Necessary Action For Your Recommendations Prepare Agenda and Brief Draft Reply For Your Comments Draft Remarks

## REMARKS:

Please return to Judy Johnston, Ground Floor West Wing

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

K. R. COLE, JR.  
 For the President

THE WHITE HO.

ACTION MEMORANDUM

WASHINGTON

Date: May 28

Time: 900am

FOR ACTION: Paul Leach  
Dick Parsons  
Max Friedersdorf  
Ken Lazarus

cc (for information): Jack Marsh  
Jim Cavanaugh  
Ed Schmults

*Ta G.*

FROM THE STAFF SECRETARY

DUE: Date:

May 28

Time:

500pm

SUBJECT:

H.R. 12527 - Federal Trade Commission authorization

ACTION REQUESTED:

For Necessary Action

For Your Recommendations

Prepare Agenda and Brief

Draft Reply

For Your Comments

Draft Remarks

REMARKS:

Please return to Judy Johnston, Ground Floor West Wing

*Approval*

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

James M. Cannon  
For the President



THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

Date: May 28

Time: 900am

FOR ACTION: Paul Leach  
Dick Parsons  
Max Friedersdorf  
Ken Lazarus

cc (for information): Jack Marsh  
Jim Cavanaugh  
Ed Schmults

FROM THE STAFF SECRETARY

DUE: Date: May 28

Time: 500pm

SUBJECT:

H.R. 12527 - Federal Trade Commission authorization

ACTION REQUESTED:

For Necessary Action

For Your Recommendations

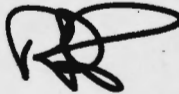
Prepare Agenda and Brief

Draft Reply

For Your Comments

Draft Remarks

REMARKS:

No objection. 

Please return to Judy Johnston, Ground Floor West Wing

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

James M. Cannon  
For the President

THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

Date: May 28

Time: 900am

FOR ACTION: Paul Leach  
Dick Parsons  
Max Friedersdorf  
Ken Lazarus

cc (for information): Jack Marsh  
Jim Cavanaugh  
Ed Schmults

FROM THE STAFF SECRETARY

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DUE: Date: May 28

Time: 500pm

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SUBJECT:

H.R. 12527 - Federal Trade Commission authorization

ACTION REQUESTED:

For Necessary Action

For Your Recommendations

Prepare Agenda and Brief

Draft Reply

For Your Comments

Draft Remarks

REMARKS:

Please return to Judy Johnston, Ground Floor West Wing

No objection -- Ken Lazarus 5/28/76

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

James M. Cannon  
For the President

94TH CONGRESS }  
2d Session }

SENATE

{ REPORT  
No. 94-701

Calendar No. 671

94TH CONGRESS }  
2d Session }

SENATE

{ REPORT  
No. 94-701

FEDERAL TRADE COMMISSION  
AUTHORIZATION ACT OF 1976

FEDERAL TRADE COMMISSION AUTHORIZATION

REPORT

OF THE

SENATE COMMITTEE ON COMMERCE

ON

S. 2935

TO AUTHORIZE APPROPRIATIONS FOR THE FEDERAL  
TRADE COMMISSION, AND FOR OTHER PURPOSES

The Committee on Commerce to which was referred the bill (S. 2935) to authorize appropriations for the Federal Trade Commission, and for other purposes, having considered the same, report favorably thereon with an amendment to the nature of a substitute and recommend that the bill as amended do pass.



The bill is designed to provide authorization for appropriation to the Federal Trade Commission (FTC) and to reform certain Federal Trade Commission Act procedures to insure that FTC actions are disposed of expeditiously, to insulate the FTC from political clearances in the legislative, budgetary, and personnel areas; to remove an impediment in the Textile Fiber Products Identification Act which precludes the FTC from issuing care labeling regulations with respect to outerwear; to amend the law to expand the range of civil sanctions which may be imposed for violation of the FTC Act; and to make certain technical amendments in the Federal Trade Commission Act, the Wool Products Labeling Act, and the Fur Product Identification Act.

MARCH 17, 1976.—Ordered to be printed

U.S. GOVERNMENT PRINTING OFFICE

94TH CONGRESS } SENATE } REPORT  
2d Session } No. 94-701

FEDERAL TRADE COMMISSION  
AUTHORIZATION ACT OF 1976

REPORT

SENATE COMMITTEE ON COMMERCE

S. 2935

TO AUTHORIZE APPROPRIATIONS FOR THE FEDERAL  
TRADE COMMISSION AND FOR OTHER PURPOSES



MARCH 17, 1976—Ordered to be printed

U.S. GOVERNMENT PRINTING OFFICE

WASHINGTON : 1976

Calendar No. 671

94TH CONGRESS } SENATE } REPORT  
2d Session } No. 94-701

FEDERAL TRADE COMMISSION AUTHORIZATION  
ACT OF 1976

MARCH 17, 1976.—Ordered to be printed

Mr. Moss, from the Committee on Commerce,  
submitted the following

REPORT

[To accompany S. 2935]

The Committee on Commerce, to which was referred the bill (S. 2935) to authorize appropriations for the Federal Trade Commission, and for other purposes, having considered the same, reports favorably thereon with an amendment in the nature of a substitute and recommends that the bill as amended do pass.

SUMMARY AND DESCRIPTION

The bill is designed to provide authorization for appropriations to the Federal Trade Commission (FTC) and to reform certain Federal Trade Commission Act procedures to insure that FTC actions are disposed of expeditiously, to insulate the FTC from political clearances in the legislative, budgetary, and personnel areas, to remove an impediment in the Textile Fiber Products Identification Act, which precludes the FTC from issuing care labeling regulations with respect to outer coverings of furniture, to expand the range of civil sanctions which the courts may impose on violations of the FTC Act, and to make certain technical corrections in the Federal Trade Commission Act, the Wool Products Labeling Act, and the Fur Products Identification Act.

The legislation represents a step toward regulatory reform of the FTC. S. 2935 would prevent "forum shopping" by limiting appeals of Commission orders to the court of appeals for the circuit within which the respondent resides or maintains its principal place of business. The bill would expand the Commission's jurisdiction authorized by the Clayton Act from "in commerce" to "in or affecting commerce" and would parallel the action taken by the Congress in enacting the Magnuson-Moss Act (Public Law 93-637), which expanded other FTC jurisdiction to matters "in or affecting commerce." The bill would require the simultaneous transmission of budgetary and legislative recommendations to the President or the Office of Management and Budget (OMB) and the Congress. The bill would make orders of the Commission effective 60 days after the issuance of such orders subject to a stay issued by the Commission or the appropriate court of appeals, or the Supreme Court when an applicable petition for certiorari is pending. S. 2935 should promote responsiveness on the part of the Commission by requiring that the Commission grant or deny petitions for issuance, amendment, or repeal of rules within 120 days after the date the petition is received by the Commission. Lastly, S. 2935 should improve the Commission's ability to obtain information by compulsory process by imposing penalties for failure to reply in a timely manner with the Commission's processes and by providing statutory amendments reflecting current decisional law on the issue of ripeness of suits to enjoin enforcement of the Commission's compulsory processes.

#### BACKGROUND

S. 2935, the "Federal Trade Commission Authorization Act of 1976," was introduced by Senator Frank E. Moss on February 5, 1976. The President's budget called for an increase in the existing authorizations for the Federal Trade Commission for fiscal years 1976 and 1977.

On March 16, 1976, the Committee on Commerce, meeting in open executive session, ordered S. 2935 reported with an amendment in the nature of a substitute. The amendment consists of the text of S. 642, passed by the Senate on December 17, 1975, and the funding levels for the Federal Trade Commission contained in S. 1136, the "Antitrust Enforcement Authorization Act of 1975," passed by the Senate on December 12, 1975.

The predecessor bills, S. 642 and S. 1136, were the subject of hearings on April 17 and 23 and June 10 and 11, 1975, respectively.

#### SECTION-BY-SECTION ANALYSIS

##### Section 1

The first section provides that the Act may be cited as the "Federal Trade Commission Authorization Act of 1976."

##### Section 2

Section 2 amends section 20 of the Federal Trade Commission Act by increasing the authorization for appropriations for the FTC act

to exceed the following amounts: Fiscal year 1976—\$54 million, of which not to exceed \$25 million shall be authorized for the purposes of maintaining competition; transition quarter—\$14.5 million, of which not to exceed \$6.25 million shall be authorized for the purposes of maintaining competition; fiscal year 1977—\$70 million, of which not to exceed \$35 million shall be authorized for the purposes of maintaining competition; and fiscal year 1978—\$85 million, of which not to exceed \$45 million shall be authorized for the purposes of maintaining competition.

While section 20 of the FTC Act does not currently specify a particular mission of the Federal Trade Commission which is authorized under the provisions of that authorization, the committee intends by this amendment to merge the existing authorization with that approved by the Senate in the passage of S. 1136, the Antitrust Enforcement Authorization Act of 1975. The purpose of that legislation was to earmark, in addition to funds already authorized, substantial increases to support and to invigorate effective and expeditious enforcement of the antitrust laws, to facilitate the restoration and maintenance of competition in the marketplace, and to prevent monopoly and oligopoly power in the economy. In the absence of this bill, enactment of S. 1136 would have resulted in overall FTC authorizations, both earmarked and not earmarked, of \$71 million and \$85 million for fiscal years 1976 and 1977, respectively.

##### Section 3

Section 3 is a technical amendment to the Federal Trade Commission Act which deletes the short title of the Federal Trade Commission Act from section 21 and reinserts it in the first section of the Act.

##### Section 4

Section 4 would amend section 1 of the Federal Trade Commission Act (15 U.S.C. 41), as amended by section 3 of S. 2935, by adding two new subsections which provide for simultaneous submission of budgetary information and legislative recommendations jointly to the Office of Management and Budget and the Congress.

New section 1(c) of the FTC Act would require that the Commission, whenever it submits any budget estimates, requests, or information to the President or OMB, shall concurrently transmit a copy of such budget estimates, requests, or information to the Congress. A similar provision is contained in section 27(k) of the Consumer Product Safety Act (15 U.S.C. 2076(k)). The purpose of the provision is to allow the Congress to make an informed evaluation and comparison of the Commission's budget request with the Administration's budget request. It is an informational mechanism which assists the authorizing and appropriating committees of the Congress in crystallizing the differences in the priorities expressed in the Commission's proposed budget and the administration's proposed budget.

New section 1(d) would provide that whenever the Commission submits any legislative recommendations, or testimony, or comments on legislation to the President or the OMB, it shall concurrently transmit a copy thereof to the Congress. No officer or agency of the United States shall have any authority to require the Commission to submit its legislative recommendations or testimony for comments

on legislation to any officer or agency of the United States for approval, comment, or review, prior to the submission of such recommendations, testimony, or comments to the Congress. The FTC already follows this policy and submits directly to the Congress any statement on legislation and does not seek the clearance of the Administration or the OMB in the development of legislative recommendations, testimony, or comments on legislation.

#### *Section 5*

Section 5 would amend section 2 of the FTC Act by inserting two new subsections.

New section 2(c) would authorize the Federal Trade Commission to establish and fix the compensation for not more than 25 attorney, economist, special expert, and outside counsel positions for the FTC's responsibilities with regard to maintaining competition. These individuals may be appointed without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of title 5, United States Code, relating to classification and General Schedule pay rates, at rates not less than the minimum rate for GS-16. Under no circumstances may the persons appointed to the 25 positions authorized by this subsection be paid in excess of the maximum rate for GS-18 of the General Schedule under section 5332 of title 5, United States Code.

New section 2(d) provides that appointments and removals of Commission employees in grades GS-16, GS-17, and GS-18 may be made by the Commission without regard to any provision of title 5, United States Code, other than section 3324 where applicable, governing appointments to, and removals from, positions in the competitive service, and such appointments or removals shall not be subject to approval by the Executive Office of the President or the Office of Management and Budget, or any officer thereof, or by any office or agency of the Federal Government other than the Commission.

#### *Section 6*

Section 6 amends section 5(c) of the Federal Trade Commission Act (15 U.S.C. 45(c)) to provide that any person, partnership, or corporation required by an order of the FTC to cease and desist from using any method of competition or any deceptive act or practice may obtain a review of the order in the Court of Appeals of the United States for the circuit within which such person, partnership, or corporation resides or maintains its principal place of business. This amendment to the Federal Trade Commission Act is designed to prevent forum shopping on appeals of Commission orders. Currently, appellants may seek review in "any circuit where the method of competition or the act or practice in question was used or where such person, partnership, or corporation resides or carries on business \* \* \*."

#### *Section 7*

Section 7 amends section 5(g) of the Federal Trade Commission Act (15 U.S.C. 45(g)), by providing that an order of the Commission to cease and desist shall become effective 60 days after the order is served. However, such an order may be stayed, in whole or in part, subject

to such conditions as may be appropriate, by (A) the Commission, (B) the appropriate Court of Appeals of the United States when a petition for review thereof is pending, or (C) the Supreme Court when an applicable petition for certiorari is pending. The Commission may modify or set aside such an order pursuant to section 5(b) of the Federal Trade Commission Act (15 U.S.C. 45(b)). This provision modifies section 5(g) of the FTC Act which provides for an automatic stay of Commission orders pending a condition subsequent.

#### *Section 8*

Section 8 amends section 5(m) of the FTC Act concerning civil penalties by providing that the court may assess, in addition to monetary penalties, such other equitable relief as it deems appropriate in an action or suit for injunction or other equitable relief brought by the Commission against a party for a violation of any rule issued under the FTC Act, other than an interpretive rule or a rule which the Commission has determined is not an unfair or deceptive act or practice in violation of section 5(a)(1) of the FTC Act. Similarly, the court would have discretion as to the relief, in addition to the monetary penalty, for an act or practice which is unfair or deceptive and for which the Commission has issued a cease and desist order.

#### *Section 9*

Section 9 would amend section 10 of the Federal Trade Commission Act (15 U.S.C. 50) to improve the Commission's ability to obtain information by compulsory process.

The objective of this provision is to obtain reply in a timely manner with the Commission's process by applying current decisional law on the issue of ripeness of suits to enjoin enforcement of the Commission's compulsory process.

The third paragraph of section 10 of the Federal Trade Commission Act would be amended to provide that if any person, partnership, or corporation required by the Federal Trade Commission Act to submit or file any annual or special report or to obey a subpoena or other order requiring access to documentary evidence should fail to do so within the time prescribed by the Commission for filing or obeying, and such failure shall continue for 15 days after notice of default, the person, partnership, or corporation shall be liable to the United States for a civil penalty of not less than \$1,000 nor more than \$5,000 as the court may determine for each day of such failure after the 15th day. Such civil penalty shall be payable to the Treasury of the United States, and shall be recoverable in a civil suit brought by and in the name of the Commission. The action for recovery shall be brought in the district court where the person, partnership, or corporation resides or does business.

Section 9(3) inserts two new subsections into section 10 of the Federal Trade Commission Act, which would provide that no action to stay accumulation of any of the penalties provided by section 10 may be commenced until after the service of a notice of default by the Commission as provided in subsection 10(c) of the Federal Trade Commission Act, as amended by S. 2935. The new subsections provide that no court shall issue any order staying the accumulation of such penal-

ties unless the party seeking the relief shall have first demonstrated (1) a substantial probability of prevailing on the merits, (2) that such party will be irreparably injured unless the accumulation of penalties is stayed, and (3) that the equities clearly favor such stay. The court shall not issue an order enjoining the Commission or the United States from enforcement of, or invalidating any subpoena or any order to file an annual or special report or order requiring access to documentary evidence unless the plaintiff has first demonstrated (1) that the subpoena or order to file a special or annual report or other order requiring access to documentary evidence is unduly burdensome, or (2) that the information sought by such subpoena or order to file a special or annual report or other order requiring access to documentary evidence is not reasonably relevant to the inquiry being conducted by the Commission. The Commission shall have authority to conduct investigations and to adjudicate complaints consistent with the applicable provisions of the FTC Act (i.e., sections 3, 5, 6, and 9), unless such investigation or adjudication is expressly prohibited by the FTC Act.

The amended section 10 of the FTC Act should improve the Commission's ability to obtain information by compulsory process. The Commission has experienced instances in which parties have been served with either orders to file special or annual reports pursuant to section 6(d) of the Federal Trade Commission Act or subpoenas pursuant to section 9 of the Act and have refused, without any substantial legal or factual justification, to comply with such compulsory processes. These refusals force the Commission to seek enforcement of the compulsory process in the courts, a procedure which normally takes several months. The imposition of meaningful penalties for failure to comply in a timely manner with the Commission's processes should deter individuals and corporations from ignoring the Commission's processes which cause needless delays in Commission proceedings and expenditures of government funds involved in preparing and filing enforcement suits. The time between the service of a notice of default by the Commission and commencement of accumulation of civil penalties also is shortened from the present 30 to 15 days in order to reduce the delays incident to enforcement of Commission processes.

The proposed new subsections reflect current decisional law relating to the issue of ripeness of suits to enjoin enforcement of the Commission's compulsory processes or to obtain declaratory relief from the accumulation of civil penalties for failure to comply with such process. Cases stating that recipients of compulsory process from the Commission may not sue to enjoin its enforcement or to stay the accumulation of civil penalties in connection with such enforcement prior to service of a notice of default include: *Federal Trade Commission v. Clair Furnace Company*, 274 U.S. 160 (1927); *St. Regis Paper Company v. United States*, 368 U.S. 208 (1961); *Anheuser-Busch Inc. v. Federal Trade Commission*, 359 F.2d 487 (8th Cir. 1966); *Genuine Parts Company v. Federal Trade Commission*, 445 F.2d 1382 (5th Cir. 1971).

The amendment also would require a person seeking to stay the accumulation of civil penalties to satisfy the traditional test of equity prior to the grant of such a stay (e.g., *Virginia Petroleum Jobbers Association v. Federal Power Commission*, 259 F.2d 921 (D.C. Cir.

1958)). The amendment further would reflect the decisional law concerning the showing which should be made if enforcement of Commission compulsory process is to be enjoined. The Supreme Court has set forth the tests which it believes are appropriate in enforcement proceedings for Commission compulsory processes as follows:

It is sufficient if the inquiry is within the authority of the agency, the demand is not too indefinite and the information sought is reasonably relevant. "The gist of the protection is the requirement, expressed in terms, that the disclosure sought shall not be unreasonable." *Oklahoma Press Publishing Co. v. Walling*, U.S. 186, 208 (*U.S. v. Morton Salt Co.* 338 U.S. 632, 652 (1950)).

#### Section 10

Section 10 amends section 18(b) of the Federal Trade Commission Act 15 (U.S.C. 57(b)). The amendment provides that whenever pursuant to section 553(e) of title 5 United States Code an interested person petitions the Commission for the issuance, amendment, or repeal or a rule under section 18 of the Federal Trade Commission Act, the Commission shall grant or deny the petition within 120 days after the date that the petition is received by it. Upon granting such a petition, the Commission shall commence an appropriate proceeding under section 18(a) (1) (B) as soon thereafter as practicable. Upon denying such a petition, the Commission shall set forth and publish in the Federal Register its reasons for such denial.

If the Commission denies a petition or fails to act on a petition within the 120-day period mandated by this paragraph, a petitioner may commence a civil action in an appropriate district court of the United States to seek an order directing the Commission to initiate a proceeding to take the action requested in the petition. Such an action shall be commenced within 60 days after the expiration of the 120-day period.

If a petitioner can demonstrate to the satisfaction of the court, by a preponderance of the evidence in a *de novo* proceeding before the court, that the action requested in the petition to the Commission is necessary to prevent acts or practices which are unfair or deceptive acts or practices in or affecting commerce within the meaning of section 5(a) (1) of the Federal Trade Commission Act (15 U.S.C. 45(a) (1)) and that the failure of the Commission to take such action will result in the continuation of such unlawful acts or practices, then the court shall order the Commission to initiate the action proposed in the petition.

In any civil action commenced pursuant to section 18(b) (2) of the FTC Act the court shall be limited in its authority to compelling the Commission to initiate a rulemaking proceeding.

This provision is similar to section 10 of the Consumer Product Safety Act (15 U.S.C. 2059).

#### Section 11

Section 11 creates a 3-year program of assistance and grants to States to improve their antitrust capabilities. It authorizes to be appropriated annually not to exceed \$10 million for fiscal years 1976, 1977, and 1978,

and not to exceed \$2.5 million for the transition period ending September 30, 1976.

In order to receive a grant under section 11, a State attorney general would be required to submit a plan which shall explain the manner in which State officers and employees would be trained in order to improve the antitrust enforcement capabilities of the State, shall establish fiscal control and accounting procedures necessary to assure proper disposal and accounting of the Federal funds, and shall provide for reports to the FTC.

The requirements to be set forth in the FTC's regulations prescribing basic criteria for distribution of funds is to assure an equitable distribution of such funds. The FTC is empowered to revoke grants to a State whose administration of the funds fails to comply with the requirements of the plan submitted. Additionally, the Comptroller General is granted authority to audit and examine books and records pertinent to any grant under this section.

#### Section 12

Section 12 would amend the Clayton Act, as amended by the Robinson-Patman Act, and the Robinson-Patman Act in order to expand the jurisdictional scope of these acts from "in commerce" to "in or affecting commerce." This is in conformity with the action taken by the Congress in the Magnuson-Moss Act, amending the jurisdiction of the FTC in sections 5, 6, and 12 of the Federal Trade Commission Act to "in or affecting commerce."

#### Section 13

Section 13 would amend section 5 of the Wool Products Labeling Act (15 U.S.C. 68) by striking out the word "wood" in the second paragraph and insert in lieu thereof "wool." In the engrossed copy of the Wool Products Labeling Act signed by President Roosevelt in 1939, this technical error appeared which would be corrected by this amendment.

#### Section 14

Section 14 would make a similar technical correction in section 9(b)(1) of the Fur Products Labeling Act (15 U.S.C. 69g(b)(1)) with regard to the word "violating" which appears as "volating" in that Act.

#### Section 15

Section 15 amends section 12(a)(2) of the Textile Fiber Products Identification Act (15 U.S.C. 70j(a)(2)). The amendment would continue to exempt from the Textile Fiber Products Identification Act outer coverings of furniture, mattresses, and box springs, but would permit the FTC to require care labeling with respect to outer coverings of furniture. The FTC currently has a program of care labeling which aids consumers in determining the appropriate method to refurbish various garments. While the Commission has required care labeling for garments, section 12(a)(2) of the Textile Fiber Products Identification Act precludes the Commission from requiring care labeling for outer coverings of furniture. This amendment would grant discretionary authority to the Commission to require care labeling for such upholstered products if the facts so warrant.

## AMENDMENTS TO THE FEDERAL TRADE COMMISSION ACT (15 U.S.C. 41 ET SEQ.)

### SECTION 1 OF THE FEDERAL TRADE COMMISSION ACT (15 U.S.C. 41)

SECTION 1. (a) *This Act may be cited as the "Federal Trade Commission Act".*

(b) A Commission is created and established, to be known as the Federal Trade Commission (hereinafter referred to as the Commission), which shall be composed of five Commissioners, who shall be appointed by the President, by and with the advice and consent of the Senate. Not more than three of the Commissioners shall be members of the same political party. The first Commissioners appointed shall continue in office for terms of three, four, five, six, and seven years, respectively, from the date of the taking effect of this Act the term of each to be designated by the President, but their successors shall be appointed for terms of seven years, except that any person chosen to fill a vacancy shall be appointed only for the unexpired term of the Commissioner whom he shall succeed: *Provided, however,* That upon the expiration of his term of office a Commissioner shall continue to serve until his successor shall have been appointed and shall have qualified. The President shall choose a chairman from the Commission's membership. No Commissioner shall engage in any other business, vocation, or employment. Any Commissioner may be removed by the President for inefficiency, neglect of duty, or malfeasance in office. A vacancy in the Commission shall not impair the right of the remaining Commissioners to exercise all the powers of the Commission.

The Commission shall have an official seal, which shall be judicially noted.

(c) *Whenever the Commission submits any budget estimate, request, or information to the President or the Office of Management and Budget, it shall concurrently transmit a copy of such budget estimate, request, or information to the Congress.*

(d) *Whenever the Commission submits any legislative recommendations, or testimony, or comments on legislation to the President or the Office of Management and Budget, it shall concurrently transmit a copy thereof to the Congress. No officer or agency of the United States shall have any authority to require the Commission to submit its legislative recommendations, or testimony, or comments on legislation, to any officer or agency of the United States for approval, comments, or review, prior to the submission of such recommendations, testimony, or comments to the Congress.*

### SECTION 2 OF THE FEDERAL TRADE COMMISSION ACT (15 U.S.C. 42)

SEC. 2. (a) The Commission shall appoint a secretary, who shall receive a salary, payable in the same manner as the salaries of the judges of the courts of the United States, and it shall have authority to employ and fix the compensation of such attorneys, special experts, examiners, clerks, and other employees as it may from time to time find necessary for the proper performance of its duties and as may be from time to time appropriated for by Congress.



(b) With the exception of the secretary, a clerk to each Commissioner, the attorneys, and such special experts and examiners as the Commission may from time to time find necessary for the conduct of its work, all employees of the Commission shall be a part of the classified civil service, and shall enter the service under such rules and regulations as may be prescribed by the Commission and by the Civil Service Commission.

(c) In addition to the other authority conferred by this section, the Commission is authorized, in furtherance of its responsibilities with respect to maintaining competition, to establish, assign the duties, and fix the compensation for not to exceed 25 attorney, economist, special expert, and outside counsel positions. Individuals may be appointed to such positions by the Commission without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates but at rates not in excess of the maximum rate for GS-18, but not less than the minimum rate for GS-16, of the General Schedule under section 5332 of such title.

(d) Any appointment or removal of an employee of the Commission to a position in categories GS-16, GS-17, and GS-18 may be made by the Commission without regard of any provision of title 5, United States Code, other than section 3324 thereof where applicable, governing appointments to, and removals from, positions in the competitive service, and shall not be subject to approval by the Executive Office of the President or the Office of Management and Budget, or any officer thereof, or by an office or agency of the Federal Government other than the Commission.

(e) All of the expenses of the Commission, including all necessary expenses for transportation incurred by the Commissioners or by their employees under their orders, in making any investigation, or upon official business in any other places than in the city of Washington, shall be allowed and paid on the presentation of itemized vouchers therefor approved by the Commission.

(f) Until otherwise provided by law, the Commission may rent suitable offices for its use.

(g) The General Accounting Office shall receive and examine all accounts of expenditures of the Commission.

SECTION 5 OF THE FEDERAL TRADE COMMISSION ACT (15 U.S.C. 45)

SEC. 5(a) \* \* \*

(b) \* \* \*

(c) Any person, partnership, or corporation required by an order of the Commission to cease and desist from using any method of competition or any act or practice may obtain a review of such order in the court of appeals of the United States [within any circuit where the method of competition or the act or practice in question was used or where such person, partnership, or corporation resides or carries on business, by filing in the court, within sixty days from the date of the service of such order, a written petition praying that the order of

the Commission be set aside.] for the circuit within which such person, partnership, or corporation resides or maintains its principal place of business.

(d) \* \* \*

(e) \* \* \*

(f) \* \* \*

(g) An order of the Commission to cease and desist shall become final—

(1) Upon the expiration of the time allowed for filing a petition for review, if no such petition has been duly filed within such time; but the Commission may thereafter modify or set aside its order to the extent provided in the last sentence of subsection (b); or

[(2) Upon the expiration of the time allowed for filing a petition for certiorari, if the order of the Commission has been affirmed, or the petition for review dismissed by the court of appeals, and no petition for certiorari has been duly filed; or

[(8) Upon the denial of a petition for certiorari, if the order of the Commission has been affirmed or the petition for review dismissed by the court of appeal; or

[(4) Upon the expiration of 30 days from the date of issuance of the mandate of the Supreme Court, if such Court directs that the order of the Commission be affirmed or the petition for review dismissed.]

“(2) Upon the 60th day after such order is served, if a petition for review has been duly filed, except that any such order may be stayed, in whole or in part, subject to such conditions as may be appropriate, by—

“(A) the Commission;

“(B) an appropriate court of appeals of the United States, if a petition for review of such order is pending in such court and if an application for such a stay was previously submitted to and denied by the Commission; or

“(C) the Supreme Court, if an applicable petition for certiorari is pending.”

(h) \* \* \*

(i) \* \* \*

(j) \* \* \*

(k) \* \* \*

(l) \* \* \*

(m) (1) (A) The Commission may commence a civil action or a suit for injunction or other equitable relief to recover a civil penalty in a district court of the United States against any person, partnership, or corporation which violates any rule under this act respecting unfair or deceptive acts or practices (other than an interpretive rule or a rule violation of which the Commission has provided is not an unfair or deceptive act or practice in violation of subsection (a) (1)) with actual knowledge or knowledge fairly implied on the basis of objective circumstances that such act is unfair or deceptive and is prohibited by such rule. In such action [or suit, such person, partnership, or corporation shall be liable for a civil penalty of not more than \$10,000 for

each violation [.] and such other equitable relief as the court may deem appropriate.

(B) If the Commission determines in a proceeding under subsection (b) that any act or practice is unfair or deceptive, and issues a final cease and desist order with respect to such act or practice, then the Commission may commence a civil action or a suit for injunction or other equitable relief to obtain a civil penalty in a district court of the United States against any person, partnership, or corporation which engages in such act or practice—

(1) after such cease and desist order becomes final (whether or not such person, partnership, or corporation was subject to such cease and desist order), and

(2) with actual knowledge that such act or practice is unfair or deceptive and is unlawful under subsection (a)(1) of this section.

In such action [.] or suit such person, partnership, or corporation shall be liable for a civil penalty of not more than \$10,000 for each violation [.] and such other equitable relief as the court may deem appropriate.

(C) \* \* \*

SECTION 10 OF THE FEDERAL TRADE COMMISSION ACT (15 U.S.C. 50)

SEC. 10. (a) That any person who shall neglect or refuse to attend and testify, or to answer any lawful inquiry or to produce documentary evidence, if in his power to do so, in obedience to the subpoena or lawful requirement of the Commission, shall be guilty of an offense and upon conviction thereof by a court of competent jurisdiction shall be punished by a fine of not less than \$1,000 nor more than \$5,000, or by imprisonment for not more than one year, or by both such fine and imprisonment.

(b) Any person who shall willfully make, or cause to be made, any false entry or statement of fact in any report required to be made under this Act or who shall willfully make, or cause to be made, any false entry in any account, record, or memorandum kept by any corporation subject to this Act or who shall willfully neglect or fail to make, or to cause to be made, full, true, and correct entries in such accounts, records, or memoranda of all facts and transactions appertaining to the business of such corporation, or who shall willfully remove out of the jurisdiction of the United States, or willfully mutilate, alter, or by any other means falsify any documentary evidence of such corporation, or who shall willfully refuse to submit to the Commission or to any of its authorized agents, for the purpose of inspection and taking copies, any documentary evidence of such corporation in his possession or within his control, shall be deemed guilty of an offense against the United States, and shall be subject, upon conviction in any court of the United States of competent jurisdiction, to a fine of not less than \$1,000 nor more than \$5,000, or to imprisonment for a term of not more than three years, or to both such fine and imprisonment.

[If any person, partnership, or corporation required by this Act to file any annual or special report shall fail to do so within the time fixed

by the Commission for filing the same, and such failure shall continue for thirty days after notice of such default, the corporation shall forfeit to the United States the sum of \$100 for each and every day of the continuance of such failure, which forfeiture shall be payable into the Treasury of the United States, and shall be recoverable in a civil suit in the name of the United States brought in the district where the corporation has its principal office or in any district in which it shall do business.]

“(c) If any person, partnership, or corporation which is required by the Commission to file or submit any annual or special report, or to obey any subpoena or other order requiring access to documentary evidence, fails to comply with any such requirement within the time prescribed therefor by the Commission; and if such failure continues for 15 days after notice of such default to such person, partnership, or corporation, such person, partnership, or corporation shall be liable to the United States for a civil penalty of not less than \$1,000 nor more than \$5,000 as the court may determine, for each day that such failure continues after such 15th day. The amount of such civil penalty shall be payable into the Treasury of the United States, and shall be recoverable in a civil suit by and in the name of the Commission, brought in the district court of the United States within which such person, partnership, or corporation resides or does business.” It shall be the duty of the various United States attorneys, under the direction of the Attorney General of the United States, to prosecute for the recovery of forfeitures. The costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States.

“(d) No action to stay accumulation of any of the penalties provided by subsection (c) or to challenge the validity, or to enjoin the Commission or the United States from enforcement, of any or requirement to submit or file any annual or special report or any subpoena or other order requiring access to documentary evidence may be commenced until after the service of a notice of default by the Commission as provided in such subsection (c). No court shall issue any order staying the accumulation of such penalties unless the party seeking such relief shall have first demonstrated—

“(1) a substantial probability of prevailing on the merits;

“(2) that such party will be irreparably injured unless the accumulation of such penalties is stayed; and

“(3) that the equities clearly favor such stay.

“(e) No court shall hold invalid, or issue an order enjoining the Commission or the United States from enforcing, (1) any requirement with respect to the submission or filing of any annual or special report, or (2) any requirement of any subpoena or other order requiring the production of any documentary evidence, unless the party subject to such requirement first demonstrates that—

“(A) such requirement is, with respect to such party, unduly burdensome; or

“(B) the information sought by such requirement is not reasonably relevant to the inquiry being conducted by the Commission.

The Commission shall have authority to conduct investigations and to adjudicate complaints consistent with the applicable provisions of this Act, unless such investigation or adjudication is expressly prohibited by this Act."

(f) Any officer or employee of the Commission who shall make public any information obtained by the Commission without its authority, unless directed by a court, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine not exceeding \$5,000, or by imprisonment not exceeding one year, or by fine and imprisonment, in the discretion of the court.

SECTION 18 OF THE FEDERAL TRADE COMMISSION ACT (15 U.S.C. 57A)

SEC. 18 (a) \*\*\*

(b) (1) When prescribing a rule under subsection (a) (1) (B) of this section, the Commission shall proceed in accordance with section 553 of title 5, United States Code (without regard to any reference in such section to sections 556 and 557 of such title), and shall also (1) publish a notice of proposed rulemaking stating with particularity the reason for the proposed rule; (2) allow interested persons to submit written data, views, and arguments, and make all such submissions publicly available; (3) provide an opportunity for an informal hearing in accordance with subsection (c); and (4) promulgate, if appropriate, a final rule based on the matter in the rulemaking record (as defined in subsection (e) (1) (B)), together with a statement of basis and purpose.

"(2) (A) Whenever, pursuant to section 553(e) of title 5, United States Code, an interested person petitions the Commission for the issuance, amendment, or repeal of a rule under this section, the Commission shall grant or deny such petition within 120 days after the date that such petition is received by it. If the Commission grants such a petition, it shall commence an appropriate proceeding under subsection (a) (1) (B) of this section as soon thereafter as practicable. If the Commission denies such a petition, it shall set forth, and publish in the Federal Register, its reasons for such denial.

"(B) If the Commission denies such a petition (or if it fails to act thereon within the 120-day period mandated by subparagraph (A)), the petitioner may commence a civil action in an appropriate district court of the United States for an order directing the Commission to initiate a proceeding to take the action requested in such petition. Such an action shall be commenced within 60 days after the date of such denial or, where appropriate within 60 days after the date of expiration of such 120-day period.

"(C) If such a petitioner can demonstrate to the satisfaction of such court, by a preponderance of the evidence in a de novo proceeding before such court, that the action requested in such petition to the Commission is necessary to prevent acts or practices which are unfair or deceptive acts or practices in or affecting commerce, within the meaning of section 5 (a) (1) of this Act, and that the failure of the Commission to take such action will result in the continuation of such unlawful

acts or practices, such court shall order the Commission to initiate such action.

"(D) In any action under this paragraph, a court shall have no authority to compel the Commission to take any action other than the initiation of a rulemaking proceeding in accordance with this section."

SECTION 21 OF THE FEDERAL TRADE COMMISSION ACT

Section 21. [This Act may be cited as the "Federal Trade Commission Act."]

AMENDMENTS TO THE CLAYTON ACT

(15 U.S.C. 12 et Seq.)

SEC. 2. (a) It shall be unlawful for any person engaged in or affecting commerce, in the course of such commerce, either directly or indirectly, to discriminate in price between different purchasers of commodities of like grade and quality, where either or any of the purchases involved in such discrimination are in or affecting commerce, where such commodities are sold for use, consumption, or resale within the United States or any Territory thereof or the District of Columbia or any insular possession or other place under the jurisdiction of the United States, and where the effect of such discrimination may be substantially to lessen competition or tend to create a monopoly in any line of commerce, or to injure, destroy, or prevent competition with any person who either grants or knowingly receives the benefit of such discrimination, or with customers of either of them: *Provided*, That nothing herein contained shall prevent differentials which make only due allowance for differences in the cost of manufacture, sale, or delivery resulting from the differing methods or quantities in which such commodities are to such purchasers sold or delivered: *Provided, however*, That the Federal Trade Commission may, after due investigation and hearing to all interested parties, fix and establish quantity limits, and revise the same as it finds necessary, as to particular commodities or classes of commodities, where it finds that available purchasers in greater quantities are so few as to render differentials on account thereof unjustly discriminatory or promotive of monopoly in any line of commerce; and the foregoing shall then not be construed to permit differentials based on differences in quantities greater than those so fixed and established: *And provided further*, That nothing herein contained shall prevent persons engaged in selling goods, wares, or merchandise in or affecting commerce from selecting their own customers in bona fide transactions and not in restraint trade: *And provided further*, That nothing herein contained shall prevent price changes from time to time where in response to changing conditions affecting the market for the marketability of the goods concerned, such as but not limited to actual or imminent deterioration of perishable goods, obsolescence of seasonal goods, distress sales under court

process, or sales in good faith in discontinuance of business in the goods concerned.

(b) \* \* \*

(c) It shall be unlawful for any person engaged in *or affecting* commerce, in the course of such commerce, to pay or grant, or to receive or accept, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, except for services rendered in connection with the sale or purchase of goods, wares, or merchandise, either to the other party to such transaction or to an agent, representative, or other intermediary therein where such intermediary is acting in fact for or in behalf, or is subject to the direct or indirect control, of any party to such transaction other than the person by whom such compensation is so granted or paid.

(d) It shall be unlawful for any person engaged in *or affecting* commerce to pay or contract for the payment of anything of value to or for the benefit of a customer of such person in the course of such commerce as compensation or in consideration for any services or facilities furnished by or through such customer in connection with the processing, handling, sale, or offering for sale of any products or commodities manufactured, sold, or offered for sale by such person, unless such payment or consideration is available on proportionally equal terms to all other customers competing in the distribution of such products or commodities.

(e) \* \* \*

(f) It shall be unlawful for any person engaged in *or affecting* commerce, in the course of such commerce, knowingly to induce or receive a discrimination in price which is prohibited by this section.

SEC. 2a. It shall be unlawful for any person engaged in *or affecting* commerce, in the course of such commerce, to be a party to, or assist in, any transaction of sale, or contract to sell, which discriminates to his knowledge against competitors of the purchaser, in that, any discount, rebate, allowance, or advertising service charge is granted to the purchaser over and above any discount, rebate, allowance, or advertising service charge available at any time of such transaction to said competitors in respect of a sale of goods of like grade, quality, and quantity; to sell, or contract to sell, goods in any part of the United States at prices lower than those exacted by said person elsewhere in the United States for the purpose of destroying competition, or eliminating a competitor in such part of the United States: or, to sell, or contract to sell, goods at unreasonably low prices for the purpose of destroying competition or eliminating a competitor.

Any person violating any of the provisions of this section shall, upon conviction thereof, be fined not more than \$5,000 or imprisoned not more than one year, or both.

SEC. 3. It shall be unlawful for any person engaged in *or affecting* commerce, in the course of such commerce, to lease or make a sale or contract for sale of goods, wares, merchandise, machinery, supplies, or other commodities, whether patented or unpatented, for use, consumption, or resale within the United States or any Territory thereof or the District of Columbia or any insular possession or other place under the jurisdiction of the United States, or fix a price charged therefor,

or discount from, or rebate upon, such price, on the condition, agreement, or understanding that the lessee or purchaser thereof shall not use or deal in the goods, wares, merchandise, machinery, supplies, or other commodities of a competitor or competitors of the lessor or seller, where the effect of such lease, sale, or contract for sale or such condition, agreement, or understanding may be to substantially lessen competition or tend to create a monopoly in any line of commerce.

\* \* \* \* \*

#### AMENDMENT TO SECTION 5 OF THE WOOL PRODUCTS LABELING ACT OF 1939

(15 U.S.C. 68c)

SEC. 5. Any person manufacturing for introduction, or first introducing into commerce a wool product shall affix thereto the stamp, tag, label, or other means of identification required by this Act, and the same, or substitutes therefor containing identical information with respect to content of the wool product or any other products contained therein in an amount of 5 per centum of more by weight and other information required under section 4 of this Act, shall be and remain affixed to such wool product, whether it remains in its original state or is contained in garments or other articles made in whole or in part therefrom, until sold to the consumer: *Provided*, That the name of the wool product need not appear on the substitute stamp, tag, or label if the name of the person who affixes the substitute appears thereon.

Any person who shall cause or participate in the removal or mutilation of any stamp, tag, label, or other means of identification affixed to a [wood] wool product with intent to violate the provisions of this Act, is guilty of an unfair method of competition, and an unfair and deceptive act or practice, in commerce within the meaning of the Federal Trade Commission Act.

\* \* \* \* \*

#### AMENDMENT TO SECTION 9 OF THE FUR PRODUCTS LABELING ACT (15 U.S.C. 69g)

SEC. 9 (a) \* \* \*

(b) Whenever the Commission has reason to believe that—

(1) any person is [violating] *violating*, or is about to violate, sections 3, 6, or 10 (b) of this Act: and

\* \* \* \* \*

#### AMENDMENT TO SECTION 12 OF THE TEXTILE FIBER PRODUCTS IDENTIFICATION ACT (15 U.S.C. 70j)

SEC. 12 (a) \* \* \*

(1) \* \* \*

(2) outer coverings of furniture, mattresses, and box springs, *except that the Commission may require care labeling with respect to outer coverings of furniture;*

\* \* \* \* \*

## ESTIMATED COST

In accordance with section 252 (a) of the Legislative Reorganization Act, (2 U.S.C. 190 j), the Committee estimates that the cost of this Act for which appropriations are authorized will be as follows:

[In thousands]

	Fiscal Year—				
	1976	1976 transition quarter	1977	1978	1979
Federal Trade Commission.....	\$54, 000	\$14, 500	\$70, 000	\$85, 000	
Grants to States.....			10, 000	10, 000	\$10, 000

## TEXT OF S. 2935, AS REPORTED

**A BILL** To authorize appropriations for the Federal Trade Commission, and for other purposes

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Federal Trade Commission Authorization Act of 1976".*

SEC. 2. Section 20 of the Federal Trade Commission Act (15 U.S.C. 57c) is amended to read as follows:

"SEC. 20. There are authorized to be appropriated to carry out the functions, powers, and duties of the Commission not to exceed \$54,000,000 for the fiscal year ending June 30, 1976 (of which not to exceed \$25,000,000 shall be authorized for the purposes of maintaining competition); not to exceed \$14,500,000 for the fiscal transition period ending September 30, 1976 (of which not to exceed \$6,250,000 shall be authorized for the purposes of maintaining competition); not to exceed \$70,000,000 for the fiscal year ending September 30, 1977 (of which not to exceed \$35,000,000 shall be authorized for the purposes of maintaining competition); and not to exceed \$85,000,000 for the fiscal year ending September 30, 1978 (of which not to exceed \$45,000,000 shall be authorized for the purposes of maintaining competition)."

SEC. 3. The Federal Trade Commission Act (15 U.S.C. 41 et seq.) is amended by (1) striking out section 21 thereof; and (2) amending section 1 thereof by striking out "That a" in the first sentence thereof and inserting in lieu thereof, with appropriate paragraph indentation, the following:

"(a) This Act may be cited as the 'Federal Trade Commission Act'.

"(b) A".

SEC. 4. (a) Section 1 of the Federal Trade Commission Act, as amended by this Act (15 U.S.C. 41), is further amended by adding at the end thereof the following two new subsections:

"(c) Whenever the Commission submits any budget estimate, request, or information to the President or the Office of Management and

Budget, it shall concurrently transmit a copy of such budget estimate, request, or information to the Congress.

"(d) Whenever the Commission submits any legislative recommendations, or testimony, or comments on legislation to the President or the Office of Management and Budget, it shall concurrently transmit a copy thereof to the Congress. No officer or agency of the United States shall have any authority to require the Commission to submit its legislative recommendations, or testimony, or comments on legislation, to any officer or agency of the United States for approval, comments, or review, prior to the submission of such recommendations, testimony, or comments to the Congress."

SEC. 5. Section 2 of the Federal Trade Commission Act, (15 U.S.C. 42) is amended by—

(1) inserting "(a)", "(b)", "(e)", "(f)", and "(g)" immediately before the first, second, third, fourth, and fifth paragraphs thereof, and

(2) inserting immediately after subsection (b) thereof, as so designated, the following two new subsections:

"(e) In addition to the other authority conferred by this section, the Commission is authorized, in furtherance of its responsibilities with respect to maintaining competition, to establish, assign the duties, and fix the compensation for not to exceed 25 attorney, economist, special expert, and outside counsel positions. Individuals may be appointed to such positions by the Commission without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates but at rates not in excess of the maximum rate for GS-18, but not less than the minimum rate for GS-16, of the General Schedule under section 5332 of such title.

"(d) Any appointment or removal of an employee of the Commission to a position in categories GS-16, GS-17, and GS-18 may be made by the Commission without regard to any provision of title 5, United States Code, other than section 3324 thereof where applicable, governing appointments to, and removals from, positions in the competitive service, and shall not be subject to approval by the Executive Office of the President or the Office of Management and Budget, or any officer thereof, or by any office or agency of the Federal Government other than the Commission."

SEC. 6. Section 5(c) of the Federal Trade Commission Act (15 U.S.C. 45(c)) is amended by striking out the first sentence thereof and inserting in lieu thereof the following: "Any person, partnership, or corporation required by an order of the Commission to cease and desist from using any method of competition or any act or practice may obtain a review of such order in the court of appeals of the United States for the circuit within which such person, partnership, or corporation resides or maintains its principal place of business."

Sec. 7. Section 5(g) of the Federal Trade Commission Act (15 U.S.C. 45(g)) is amended (1) by striking out paragraphs (2), (3), and (4) thereof in their entirety, and (2) by inserting in lieu thereof the following new paragraph:

“(2) Upon the 60th day after such order is served, if a petition for review has been duly filed, except that any such order may be stayed, in whole or in part, subject to such conditions as may be appropriate, by—

“(A) the Commission;

“(B) an appropriate court of appeals of the United States, if a petition for review of such order is pending in such court and if an application for such stay was previously submitted to and denied by the Commission; or

“(C) the Supreme Court, if an applicable petition for certiorari is pending.”

Sec. 8. Section 5(m) (A) and (B) of the Federal Trade Commission Act (15 U.S.C. 45(m)) are amended (1) by inserting “or a suit for injunction or other equitable relief”, immediately after “action” in the first sentences thereof; and (2) by amending the second sentences thereof to read “In such action or suit, such person, partnership, or corporation shall be liable for a civil penalty of not more than \$10,000 for each violation and such other equitable relief as the court may deem appropriate.”

Sec. 9. Section 10 of the Federal Trade Commission Act (15 U.S.C. 50) is amended by—

(1) inserting “(a)”, “(b)”, “(c)”, and “(f)” immediately before the first, second, third, and fourth paragraphs thereof,

(2) striking out the first sentence of subsection (c) thereof, as so designated, and inserting in lieu thereof the following: “If any person, partnership, or corporation which is required by the Commission to file or submit any annual or special report, or to obey any subpoena or other order requiring access to documentary evidence, fails to comply with any such requirement within the time prescribed therefor by the Commission, and if such failure continues for 15 days after notice of such default to such person, partnership, or corporation, such person, partnership, or corporation shall be liable to the United States for a civil penalty of not less than \$1,000 nor more than \$5,000 as the court may determine, for each day that such failure continues after such 15th day. The amount of such civil penalty shall be payable into the Treasury of the United States, and shall be recoverable in a civil suit by and in the name of the Commission, brought in the district court of the United States within which such person, partnership, or corporation resides or does business.”

(3) inserting immediately after subsection (c) thereof, as so designated, the following two new subsections:

“(d) No action to stay accumulation of any of the penalties provided by subsection (c) or to challenge the validity, or to enjoin the Commission or the United States from enforcement, of any requirement to submit or file any annual or special report or any subpoena or

other order requiring access to documentary evidence may be commenced until after the service of a notice of default by the Commission as provided in such subsection (c). No court shall issue any order staying the accumulation of such penalties unless the party seeking such relief shall have first demonstrated—

“(1) a substantial probability of prevailing on the merits;

“(2) that such party will be irreparably injured unless the accumulation of such penalties is stayed; and

“(3) that the equities clearly favor such stay.

“(e) No court shall hold invalid, or issue an order enjoining the Commission or the United States from enforcing, (1) any requirement with respect to the submission or filing of any annual or special report, or (2) any requirement of any subpoena or other order requiring the production of any documentary evidence, unless the party subject to such requirement first demonstrates that—

“(A) such requirement is, with respect to such party, unduly burdensome; or

“(B) the information sought by such requirement is not reasonably relevant to an inquiry being conducted by the Commission. The Commission shall have authority to conduct investigations and to adjudicate complaints consistent with the applicable provisions of this Act, unless such investigation or adjudication is expressly prohibited by this Act.”

Sec. 10. Section 18(b) of the Federal Trade Commission Act (15 U.S.C. 57a(b)) is amended (1) by inserting “(1)” immediately after “(b)”, and (2) by inserting at the end thereof the following new paragraph—

“(2) (A) Whenever, pursuant to section 553(e) of title 5, United States Code, an interested person petitions the Commission for the issuance, amendment, or repeal of a rule under this section, the Commission shall grant or deny such petition within 120 days after the date that such petition is received by it. If the Commission grants such a petition, it shall commence an appropriate proceeding under subsection (a) (1) (B) as soon thereafter as practicable. If the Commission denies such a petition, it shall set forth, and publish in the Federal Register, its reasons for such denial.

“(B) If the Commission denies such a petition (or if it fails to act thereon within the 120-day period mandated by subparagraph (A)), the petitioner may commence a civil action in an appropriate district court of the United States for an order directing the Commission to initiate a proceeding to take the action requested in such petition. Such an action shall be commenced within 60 days after the date of such denial or, where appropriate within 60 days after the date of expiration of such 120-day period.

“(C) If such a petitioner can demonstrate to the satisfaction of such court, by a preponderance of the evidence in a de novo proceeding before such court, that the action requested in such petition to the Commission is necessary to prevent acts or practices which are unfair or deceptive acts or practices in or affecting commerce, within the meaning of section 5(a) (1), and that the failure of the Commission to take such action will result in the continuation of such unlawful

acts or practices, such court shall order the Commission to initiate such action.

“(D) In any action under this paragraph, a court shall have no authority to compel the Commission to take any action other than the initiation of a rulemaking proceeding in accordance with this section.”.

SEC. 11. The Federal Trade Commission Act (15 U.S.C. 41 et seq.) as amended by this Act, is further amended by adding at the end thereof the following new section:

“SEC. 21. (a) The Federal Trade Commission is authorized to provide financial assistance and to make grants to eligible States to improve the antitrust enforcement capability of such State. As used in this section, an ‘eligible State’ is one that has a State plan which has been approved under subsection (c).

“(b) The attorney general of any State may submit to the Commission a plan for improving antitrust enforcement in such State. Each such plan shall be consistent with such basic criteria as the Commission may establish pursuant to subsection (d), and it shall—

“(1) authorize the State’s attorney general to implement or direct the implementation thereof;

“(2) describe in detail a program for the training of State officers and employees in antitrust enforcement and describe the means proposed for implementing, evaluating, and revising such program;

“(3) establish such fiscal controls and fund accounting procedures as may be necessary to assure proper disposal of and accounting of Federal funds paid to the State, including any such funds which are paid by the State to any political subdivision thereof; and

“(4) provide (A) for making such reports to the Commission in such form and with such information as the Commission prescribes, and (B) for keeping such records and affording such access thereto as the Commission finds necessary to assure the accuracy thereof and the verification thereof.

“(c) The Commission shall approve any State plan, and any modification of any such plan which is in accordance with the provisions of subsection (b);

“(d) The Commission shall, by regulation, as soon as practicable after the date of enactment of this section, prescribe basic criteria for the purpose of establishing an equitable distribution among the several States of the funds available under this section.

“(e) Payments under this section shall be made from the allotment to any State which administers a plan approved under this section. Payments to a State under this section may be made in installments, in advance, or by way of reimbursement, with necessary adjustments on account of underpayment or overpayment, and may be made directly to a State or to one or more public agencies designated for this purpose by the State, or to both.

“(f) The Comptroller General of the United States or any of his authorized representatives shall have access for the purpose of audit and examination to any books, documents, papers, and records that are pertinent to any grantee under this section.

“(g) If the Commission finds, after giving reasonable notice and an opportunity for hearing to a State receiving a grant under this section, that—

“(1) the program for which such grant was made has been so changed that it no longer complies with the provisions of this section; or

“(2) the program as operated or maintained fails to comply substantially with any of the provisions of this section or with the applicable plan as approved;

the Commission shall notify such State of such finding of noncompliance. No further payments may be made under this section to such State by the Commission until it is satisfied that such noncompliance has been, or will promptly be, corrected, except that the Commission may authorize additional payments for any other program carried out by such State under this Act which is not involved in such noncompliance.

“(h) As used in this section the term—

“(1) ‘State’ includes each of the several States of the United States, the District of Columbia, and the Commonwealth of Puerto Rico; and

“(2) ‘attorney general’ means (A) the attorney general of a State or (B) the principal law enforcement officer of a State, in any case in which that role is performed by an officer other than such State’s attorney general.

“(i) There are authorized to be appropriated to carry out the purposes of this section not to exceed \$10,000,000 for the fiscal year ending September 30, 1977; not to exceed \$10,000,000 for the fiscal year ending September 30, 1978; and not to exceed \$10,000,000 for the fiscal year ending September 30, 1979. For fiscal years ending after 1979, there may be appropriated to carry out the purposes of this section, only such sums as the Congress may hereafter authorize by law.”.

SEC. 12. Sections 2 and 3 of the Act entitled “An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes”, approved October 15, 1914 (15 U.S.C. 13 and 14), and section 3 of the Act entitled “An Act to amend section 2 of the Act entitled ‘An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes’, approved October 15, 1914, as amended (15 U.S.C. 13) and for other purposes”, approved June 19, 1936 (15 U.S.C. 13a), are amended by striking out “in commerce” wherever the term appears and inserting in lieu thereof “in or affecting commerce”.

SEC. 13. Section 5 of the Wool Products Labeling Act of 1939 (15 U.S.C. 68c) is amended by striking out the term “wood” in the second paragraph thereof and inserting in lieu thereof “wool”.

SEC. 14. Section 9(b)(1) of the Fur Products Labeling Act (15 U.S.C. 69g(b)(1)) is amended by striking out the term “violating” and inserting in lieu thereof “violating”.

SEC. 15. Section 12(a)(2) of the Textile Fiber Products Identification Act (15 U.S.C. 70j(a)(2)) is amended to read as follows: “(2) outer coverings of furniture, mattresses, and box springs, except that the Commission may require care labeling with respect to outer coverings of furniture.”.

## AGENCY COMMENTS

The following agency comments were submitted by the Federal Trade Commission concerning S. 642, the substance of which is contained in S. 2935, as reported.

FEDERAL TRADE COMMISSION,  
OFFICE OF THE SECRETARY,  
Washington, D.C., October 24, 1975.

HON. WARREN G. MAGNUSON,  
Chairman, Committee on Commerce,  
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your informal request for the views of the Federal Trade Commission upon the revisions which have been made in S. 642, now cited as the "Trade Amendments of 1975."

On April 23, 1975, J. Thomas Rosch, Director of the Bureau of Consumer Protection, testified on behalf of the Commission regarding S. 642 and S. 670 before the Consumer Subcommittee of the Senate Commerce Committee. The Commission expressed reservations with respect to certain provisions of S. 642 which have since been deleted, specifically those permitting the delegation of certain Commission functions to bureau and regional directors and those authorizing state and private redress actions for violations of Commission rules and/or orders. As pointed out in its statement, the Commission supports the provisions of S. 642 which would: confine petitions for review of final Commission orders to the U.S. Court of Appeals in the circuit where the respondent resides or maintains its principal place of business; require concurrent submission of budget information and legislative recommendations to Congress as well as to the President and the Office of Management and Budget; expand the jurisdictional standard for the price discrimination and tie-in sections of the Clayton Act to cover acts and practices "affecting" as well as "in commerce," 15 U.S.C. 12; and repeal an exemption in the Textile Fiber Products Identification Act for outer coverings of furniture, mattresses and box springs, 15 U.S.C. 70(j).

Three new provisions of particular significance to the Commission have been added to S. 642, to be discussed below, which would:

- (a) change the effective date of a Commission cease-and-desist order;
- (b) require the Commission to act within 120 days upon a petition for the issuance, amendment or repeal of a rule; and
- (c) amend section 10 of the Federal Trade Commission Act, 15 U.S.C. 50, to expand the scope of the Commission's compulsory process.

Section 8 of the proposed legislation, amending Section 5(g) of the Federal Trade Commission Act, 15 U.S.C. 45(g), would make a Commission order effective 60 days after service subject to modification by the Commission or to stay by the Commission, a U.S. Court of Appeals or the Supreme Court. Currently, Commission orders only become final within 60 days if no petition for review has been filed. Otherwise, the effective date of an order must await the decision of the appropriate

U.S. Court of Appeals or the Supreme Court as the case may be. Thus, under the present law, individuals or corporations may continue to engage in conduct which the Commission has determined unlawful until the cease-and-desist order becomes final, usually a time period substantially in excess of the proposed 60 days.

The Commission believes that making a cease-and-desist order effective after 60 days, subject to stay, could eliminate petitions for review which may be filed solely as a dilatory tactic. Although Commission orders would become automatically effective after the allotted time period, the proposed amendment would permit parties to seek a stay from the Commission, the appropriate U.S. Court of Appeals or the Supreme Court as the case may be. The Commission suggests that this provision be amended slightly to require that an application for stay be made in the first instance to the Commission. Such a change would bring section 8 of the proposed legislation into accord with Rule 8 of the Federal Rules of Appellate Procedure which provides that an application for a stay must be made in the first instance in the district court before a motion for such relief may be made to the court of appeals.

The Commission also suggests that the application of this provision which amends section 5(g) of the Federal Trade Commission Act, 15 U.S.C. 45(g), be limited to Commission cease-and-desist orders. As section 5(g) of the Federal Trade Commission Act currently applies only to cease-and-desist orders, such a technical change would merely clarify the intent of this section and eliminate the possibility of confusion with Commission orders requiring annual or special reports issued pursuant to section 6 of the act, 15 U.S.C. 46.

The Commission, therefore, recommends that the following language be considered in lieu of the present language in section 8 of the proposed legislation:

Sec. 8 Section 5(g) of the Federal Trade Commission Act (15 U.S.C. 45(g)) is amended to read as follows:

"(g) An order of the Commission to cease-and-desist shall become effective against a party thereto 60 days after such order is served on such party: *Provided*, That (1) such an order may be stayed, in whole or in part, subject to such conditions as may be appropriate, by (A) the Commission, (B) the appropriate court of appeals of the United States, when a petition for review thereof is pending, provided that an application for a stay has been made in the first instance to the Commission, or (C) the Supreme Court, when an applicable petition for certiorari is pending; and (2) the Commission may modify or set aside such an order pursuant to subsection (b)."

Section 9 of the proposed legislation would amend section 18(b) of the Federal Trade Commission Act, 15 U.S.C. 57a(b), to require that the Commission grant or deny petitions for the issuance, amendment or repeal of a rule within 120 days of receipt. If a petition were granted, the Commission would then commence rulemaking proceedings. However, if a petition were denied, the Commission would pub-



ish its reasons in the Federal Register. In addition, the section would authorize a person whose petition has been denied or has not been acted upon within 120 days to seek a court order directing the Commission to take the requested action.

While the Commission believes that all petitions should be responded to promptly, it is concerned that establishing such a procedure legislatively could encourage every complainant, whether businessman or consumer, to cast his complaint in the form of a petition for a rule, thus requiring an investigation of each complaint sufficient to produce elaborate justification for each denial. To require such action upon every petition received, frivolous or otherwise, could severely distort the priorities of the Commission and necessitate the reallocation of resources away from the important Commission activity for which no statutory deadlines have been established. The Commission has pending before it two petitions to amend section 1.9 (previously section 1.15) of the Commission Procedures and Rules of Practice concerning the initiation of a trade regulation rule proceeding, 16 C.F.R. 1.9, so as to require Commission action upon a rulemaking petition within a fixed period of time.<sup>1</sup> The Commission believes that it is far better to attempt to resolve administratively rather than legislatively the issues involved in deciding whether a more formal procedure is necessary to expedite Commission action and if so, whether a fixed time limitation is appropriate considering the volume and complexity of rulemaking petitions.

Furthermore, while section 10 of the Consumer Product Safety Act, 15 U.S.C. 2059(d), establishes a procedure similar to that contemplated by section 9 of the proposed legislation, section 10, applies only to situations in which a product presents an unreasonable risk of injury to a consumer and is, thus, considerably more narrow than section 9. Only in such circumstances would a court be permitted to compel the initiation of a rulemaking proceeding. However, section 9 of the proposed legislation, which provides no such limitation, would require Commission action within 120 days upon all rulemaking petitions to prevent any allegedly unfair or deceptive act or practice. After Commission denial of a petition or failure to act within the statutory time limit, a court would be authorized to compel the initiation of a rulemaking proceeding if, in its determination, such would be necessary to prevent an unfair or deceptive act or practice. The Commission believes that the procedure envisioned by this section of the bill could, in effect, relegate to the courts the Commission's discretion to determine whether the initiation of a rulemaking proceeding would be in the public interest.

Section 10 of S. 642, as revised, would amend section 10 of the Federal Trade Commission Act, 15 U.S.C. 50, in a manner which would substantially improve the effectiveness of the Commission's compulsory process. The language of section 10 of the proposed legislation is identical to that contained in title III of the Antitrust Improvements

<sup>1</sup> Petition to amend section 1.15 of the Commission's Rules and Regulations filed by the Missouri Public Interest Research Group, Aug. 18, 1975. Petition to amend secs. 1.9 and 1.25 of the Commission's Rules and Regulations filed by the Public Interest Research Group, et al., Sept. 24, 1975.

Act of 1975 (S. 1284) for which the Commission<sup>2</sup> and the Administration<sup>3</sup> have expressed support. Specifically, these provisions would impose meaningful penalties—increased from \$100 per day to a minimum of \$1,000 and a maximum of \$5,000 per day—for failure to comply in a timely manner with any of the Commission's compulsory processes, including subpoenas as well as orders to file reports. While the Commission currently is authorized to seek penalties for failure to file annual or special reports under section 6(b) of the Federal Trade Commission Act, 15 U.S.C. 46(d), 50, no sanctions are available to the Commission for noncompliance with subpoenas issued pursuant to section 9 of the Act, 15 U.S.C. 49. The proposals also would prohibit court challenges to Commission compulsory process prior to the service of a notice of default, would shorten from 30 to 15 days the time period between the service of a notice of default and the commencement of accumulation of civil penalties, and would limit the circumstances under which court orders are issued staying the accumulation of penalties or enjoining the enforcement of Commission compulsory process thus codifying existing law.

It is our belief that these proposed amendments to section 10 of the Federal Trade Commission Act, 15 U.S.C. 50, would significantly improve the Commission's ability to obtain information through the use of compulsory process. Due to the present lack of adequate sanctions, the Commission is currently experiencing many instances in which parties simply refuse to comply with process thereby causing endless delays in proceedings and unnecessary government litigation expenditures. While it would continue to be necessary for the Commission to justify its use of compulsory process to the courts under the proposed amendments, individuals and corporations would be deterred from resisting compliance, seeking to stay the accumulation of penalties, or asking that the Commission be enjoined from enforcement without a substantial legal or factual justification.

The Commission therefore supports the provisions of S. 642 with the exception of section 9 discussed above.

Commissioner Nye fully concurs in the foregoing, with the exception of certain comments regarding section 10 of S. 642, the proposed amendment to section 10 of the Federal Trade Commission Act. He opposes that portion of the proposed amendment which would authorize issuance of an order enjoining the Commission from enforcing any of its compulsory processes upon the plaintiff's showing of undue burdensomeness or lack of reasonable relevance to the Commission's investigation. Contrary to the Commission's statement, the creation of such a right of action would not codify existing law. For example, a subpoenaed party may not, under existing law, obtain an order enjoining enforcement of a Commission subpoena, since he has

<sup>2</sup> Statement of Lewis A. Engman, Chairman, Federal Trade Commission, before the Subcommittee on Antitrust and Monopoly of the Committee on the Judiciary, U.S. Senate, May 7, 1975. See also, hearings before the Subcommittee on Antitrust and Monopoly of the Committee on the Judiciary U.S. Senate, 94th Cong., 1st sess. on S. 1284, May 7 and 8, June 3, 4, and 12, 1975 at pp. 657-664.

<sup>3</sup> Letter from Thomas E. Kauper, Assistant Attorney General, Antitrust Division, Department of Justice, to the Honorable Philip A. Hart, chairman, Subcommittee on Antitrust and Monopoly, Senate Judiciary Committee, July 22, 1975.

an adequate remedy at law if and when the Commission seeks judicial enforcement. *Anheuser-Busch, Inc. v. F.T.C.*, 359 F. 2d 487 (8th Circ. 1966). It is true that another provision of the proposed amendment would add an element—the potential accumulation of forfeitures—which was not present in the *Anheuser-Busch* case and which has troubled the courts in other cases. See, for example, *St. Regis Paper Co. v. United States*, 368 U.S. 208 (1961). However, the provision of the proposed amendment which would permit a party subject to compulsory process to obtain an order staying the accumulation of penalties in ample safeguard against the “ruinous penalties” which might result from a governmental “policy of accumulating penalties while avoiding a judicial test by refusing to bring action to recover them.” *United States v. Morton Salt Co.*, 338 U.S. 632, at 654 (1950). As a matter of policy, it is most unwise to interpose a new roadblock to the orderly enforcement of Commission processes and most unnecessary to multiply remedies when an order staying the accumulation of penalties would protect every legitimate interest of a party subject to compulsory process.

By direction of the Commission.

CHARLES A. TOBIN, *Secretary.*



## FEDERAL TRADE COMMISSION AUTHORIZATION

MAY 6, 1976.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. STAGGERS, from the Committee on Interstate and Foreign Commerce, submitted the following

### REPORT

[To accompany H.R. 12527]

The Committee on Interstate and Foreign Commerce, to whom was referred the bill (H.R. 12527) to amend the Federal Trade Commission Act to increase the authorization of appropriations for fiscal years 1976 and 1977, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendments are as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

That section 20 of the Federal Trade Commission Act (15 U.S.C. 57(c)) is amended by striking out "\$46,000,000" and inserting in lieu thereof "\$47,091,000"; and by striking out "\$50,000,000" and inserting in lieu thereof "\$57,233,000".

SEC. 2. Section 202(d) of the Magnuson-Moss Warranty—Federal Trade Commission Improvement Act is amended by striking out "18 months after the date of enactment of this Act" and inserting in lieu thereof "July 5, 1978".

Amend the title so as to read:

A bill to amend the Federal Trade Commission Act to increase the authorization of appropriations for fiscal years 1976 and 1977, and for other purposes.

#### PURPOSE AND SUMMARY

This legislation amends section 20 of the Federal Trade Commission Act (15 U.S.C. 57c) to increase the authorization of appropriations for the Commission for fiscal 1976 from \$46,000,000 to \$47,091,000 and for fiscal 1977 from \$50,000,000 to \$57,233,000. The bill also amends section 202(d) of the Magnuson-Moss Warranty—Federal Trade Commission Improvement Act (15 U.S.C. 57a note) to require the Federal Trade Commission and the Administrative Conference of the United States each to study and evaluate FTC rulemaking procedures and each to submit a report of its study to the Congress not later than July 5, 1978.

## BASIS FOR THIS LEGISLATION

The Magnuson-Moss Warranty—Federal Trade Commission Improvement Act, approved January 4, 1975, (Public Law 93-637), set authorization for appropriation levels for the Federal Trade Commission of \$46 million for fiscal 1976 and \$50 million for fiscal 1977. The President has requested a supplemental appropriation for fiscal 1976 which, if approved, would bring the total FTC appropriation for fiscal 1976 to \$47,091,000, which is higher than the authorized level. Further, the President's budget request for fiscal 1977 is \$52,833,000, once again a figure which is higher than the authorized level.

H.R. 12527, accordingly, increases the authorization for appropriations for fiscal 1976 to \$47,091,000, the budget request. For fiscal 1977, the bill raises the authorization to \$57,233,000, which will allow some leeway for both expected and unexpected contingencies. For example, a five percent civil service pay raise in October would necessitate an additional \$1,800,000 for salaries. Further, in recent years, the Congress has required action from the Federal Trade Commission without providing specific increases in authorizations. Such was the case in the Emergency Petroleum Allocation Act of 1974, the Equal Credit Opportunity and the Fair Credit Billing Act. The additional authorization covers possible contingencies for fiscal 1977.

The Magnuson-Moss Warranty—Federal Trade Commission Improvement Act also set up a new rulemaking procedure for the FTC, which is unlike that of any other independent agency. Section 202(d) of the Act directs the Federal Trade Commission and the Administrative Conference of the United States each to study and evaluate the new rulemaking procedures and each to submit a report to Congress 18 months after the date of enactment. This means a return date of July 5, 1978.

Unfortunately, the Federal Trade Commission has not promulgated any Magnuson-Moss rules as yet, although two are very near completion, and a total of 15 have been proposed since the date of enactment.

The Administrative Conference testified at the March 30, 1976 hearing of the Subcommittee on Consumer Protection and Finance that it believed that seven to nine completed rules were necessary in order to conduct a meaningful study. The Conference predicted that action should be completed on that many rules by spring of 1977. They will then need six months to organize the data and prepare a draft report. Refinement of the consultant's report through the Administrative Conference committee review process and through outside comment will take several more months. The report would then be ready to submit to the plenary session of the Administrative Conference that will take place in late May or early June 1978. The report will be submitted thereafter to Congress no later than July 5, 1978.

## COMMITTEE CONSIDERATION

The Subcommittee on Consumer Protection and Finance held hearings on H.R. 12527, introduced at the request of the Administration on March 30, 1976.

Calvin J. Collier, Chairman of the Federal Trade Commission, testified in support of the increased authorization levels and agreed with Subcommittee Chairman that some increase over the President's budget request for fiscal 1977 would be useful to cover contingencies. Richard K. Berg, Executive Secretary of the Administrative Conference of the United States, attested to the need to extend the deadline for the report on FTC rulemaking until July 5, 1978.

The Subcommittee, in executive session, amended H.R. 12527 to increase the authorization for appropriation for fiscal 1977 from \$52,833,000 to \$57,233,000 and to extend the reporting deadline from July 5, 1976 until July 5, 1978, and then unanimously reported the bill, as amended, to the full Committee on April 8, 1976. The full Committee unanimously ordered the bill reported to the House with no further amendments, a quorum being present, on April 29, 1976.

## OVERSIGHT FINDINGS AND RECOMMENDATIONS

Pursuant to clause 2(1)(3)(A) of Rule XI of the House of Representatives, the Committee issues the following oversight findings:

In the 94th Congress, the Subcommittee on Consumer Protection and Finance held one day of oversight hearings with Lewis A. Engman, former Chairman of the Federal Trade Commission, on February 5, 1976. The Subcommittee on Oversight and Investigations held oversight hearings with the Commissioners of the Federal Trade Commission on March 29 and April 14, 1976. Both sets of hearings examined the performance of the Commission in recent times. While some problems exist, the Commission is operating more effectively than it did in the late 1960's.

The Committee has not received oversight reports from its own Subcommittee on Oversight and Investigations.

## OVERSIGHT FINDINGS AND RECOMMENDATIONS COMMITTEE ON GOVERNMENT OPERATIONS

No findings or recommendations on oversight activity pursuant to clause 2(b)(2), rule x, and clause 2(1)(3)(D), rule xi, of the Rules of the House of Representatives have been submitted by the Committee on Government Operations for inclusion in this report.

## INFLATIONARY IMPACT STATEMENT

Pursuant to Rule XI, clause 2(1)(4) of the rules of the House of Representatives, the Committee makes the following statement regarding the inflationary impact of the reported bill:

The Committee is unaware of any inflationary impact on the economy that would result from the passage of H.R. 12527. To the contrary, the basic mission of the Federal Trade Commission is to increase competition in the economy. To the extent that the slight additional funds authorized in this bill would enable the Commission to carry out its mission more effectively, the increased competition that would result would dampen inflationary pressures.

COST ESTIMATE

In accordance with clause 7(a) of Rule XIII of the Rules of the House of Representatives, the Committee estimates that the following costs will be incurred in carrying out the functions under H.R. 12527:

Fiscal year:	Millions
1976	\$47.091
1977	57.233

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has prepared the following cost estimate for H.R. 12527, a bill to amend the Federal Trade Commission Act:

1. Bill Number: H.R. 12527.
2. Bill Title: A bill to amend the Federal Trade Commission Act, and for other purposes.
3. Purpose of Bill: This bill increases the authorization of appropriations for the Federal Trade Commission for the fiscal years 1976 and 1977. The President has requested a supplemental appropriation for fiscal 1976 which, if approved, would raise the total FTC appropriation for that year to \$47,091,000, which is higher than the authorized level of \$46,000,000. This bill increases the authorization for FY 1976 to the level requested by the President. The bill also increases the FY 1977 authorization for appropriations from \$50,000,000 to \$57,233,000. (The President's budget request for FY 1977 is \$52,833,000.)
- In addition, the bill extends a reporting deadline set in the Magnuson-Moss Warranty—Federal Trade Commission Improvement Act. This is an authorization bill, and therefore requires subsequent appropriation action.
4. Cost Estimate: The budget impact of this bill is estimated as follows:

	BUDGET EFFECTS				
	[Thousands of dollars]				
	Fiscal year 1976	Transition quarter	Fiscal year 1977	Fiscal year 1978	Fiscal year 1979
Additional authorization amount.....	1,091		7,233		
Estimated additional cost.....	1,011		6,796		

5. Basis for Estimate: The appropriations authorized in this bill are for salaries and expenses of the Federal Trade Commission, most of which are spent in the fiscal year in which they are authorized. Based on FTC estimates, the following spend-out rates were assumed.

Year of authorization	Percent of authorized amount				
	Fiscal year 1976	Transition quarter	Fiscal year 1977	Fiscal year 1978	Fiscal year 1979
Fiscal year 1976	92.7	4.8	3.0		
Fiscal year 1977			93.5	5.9	0.6

6. Estimate Comparison: None.
7. Previous CBO Estimate: None.
8. Estimate Prepared By: Robert Sunshine (225-5275).
9. Estimate Approved By: James L. Blum, Assistant Director for Budget Analysis.

SECTION-BY-SECTION ANALYSIS

The first section of the bill amends section 20 of the Federal Trade Commission Act (15 U.S.C. 57(e)) to increase authorization for appropriations for fiscal 1976 from \$46,000,000 to \$47,091,000 and for fiscal 1977 from \$50,000,000 to \$57,233,000. The 1976 increase is needed to meet the additional salary requirements necessitated by the five percent increase in civil service salaries which went into effect in October, 1975. The 1977 increase would provide adequate funds for both civil service salary increases and any new responsibilities that the Congress may require the Federal Trade Commission to carry out during the year.

AGENCY REPORTS

At the time that the committee's report was filed, no agency report had been received on the bill, H.R. 12527.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of Rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

SECTION 20 OF THE FEDERAL TRADE COMMISSION ACT

SEC. 20. There are authorized the be appropriated to carry out the functions, powers, and duties of the Federal Trade Commission not to exceed \$42,000,000 for the fiscal year ending June 30, 1975; not to exceed ~~[\$46,000,000]~~ \$47,091,000 for the fiscal year ending June 30, 1976; and not to exceed ~~[\$50,000,000]~~ \$57,233,000 for the fiscal year ending in 1977. For fiscal years ending after 1977, there may be appropriated to carry out such functions, powers, and duties, only such sums as the Congress may hereafter authorize by law.

MAGNUSON-MOSS WARRANTY—FEDERAL TRADE COMMISSION IMPROVEMENT ACT

\* \* \* \* \*

TITLE II—FEDERAL TRADE COMMISSION IMPROVEMENTS

\* \* \* \* \*

SEC. 202. (a) \* \* \*

RULEMAKING

(d) The Federal Trade Commission and the Administrative Conference of the United States shall each conduct a study and evaluation of the rulemaking procedures under section 18 of the Federal Trade Commission Act and each shall submit a report of its study (including any legislative recommendations) to the Congress not later than [18 months after the date of enactment of this Act.] July 5, 1978.

As the Congress may hereafter authorize by law... functions, powers, and duties of the Federal Trade Commission not to exceed \$12,000,000 for the fiscal year ending June 30, 1975; not to exceed \$16,000,000 for the fiscal year ending June 30, 1976; and not to exceed \$20,000,000 for the fiscal year ending June 30, 1977. For fiscal years ending after 1977, there may be appropriated to carry out such functions, powers, and duties, only such sums as the Congress may hereafter authorize by law.

SECTION 20 OF THE FEDERAL TRADE COMMISSION ACT

Table with columns for Fiscal Year, Appropriation, and other financial data. Includes H.R. 1104 reference.

# Ninety-fourth Congress of the United States of America

AT THE SECOND SESSION

*Begun and held at the City of Washington on Monday, the nineteenth day of January,  
one thousand nine hundred and seventy-six*

## An Act

To amend the Federal Trade Commission Act to increase the authorization of appropriations for fiscal year 1976, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 20 of the Federal Trade Commission Act (15 U.S.C. 57(c)) is amended by striking out "\$46,000,000" and inserting in lieu thereof "\$47,091,000".*

SEC. 2. Section 202(d) of the Magnuson-Moss Warranty—Federal Trade Commission Improvement Act is amended by striking out "18 months after the date of enactment of this Act" and inserting in lieu thereof "July 5, 1978".

*Speaker of the House of Representatives.*

*Vice President of the United States and  
President of the Senate.*

May 25, 1976

Dear Mr. Director:

The following bills were received at the White House on May 25th:

S. 2679 ✓  
H.R. 12132 ✓  
H.R. 12527 ✓

Please let the President have reports and recommendations as to the approval of these bills as soon as possible.

Sincerely,

Robert D. Linder  
Chief Executive Clerk

The Honorable James T. Lynn  
Director  
Office of Management and Budget  
Washington, D. C.