



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON D.C. 20548

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APRIL 26, 1982

The Honorable Bob Packwood
Chairman, Committee on Commerce,
Science and Transportation
United States Senate

The Honorable Howard W. Cannon
Ranking Minority Member
Committee on Commerce, Science
and Transportation
United States Senate

The Honorable John D. Dingell
Chairman, Committee on Energy
and Commerce
House of Representatives

The Honorable James T. Broyhill
Ranking Minority Member
Committee on Energy and Commerce
House of Representatives



Subject: The Congressional Review of Federal Trade
Commission Rules--Matters for Congressional
Consideration (HRD-82-56)

Section 21 of the Federal Trade Commission Improvements Act of 1980 (15 U.S.C. 57a-1) provides for congressional review of final rules promulgated by the Federal Trade Commission (FTC). This section also requires that, before the end of fiscal year 1982, the Comptroller General submit a report to the Congress which:

1. Lists the final rules submitted to the Congress by FTC.
2. Lists the final rules disapproved by the Congress.
3. Specifies the number of instances in which FTC promulgates a final rule after the Congress has disapproved the rule as originally submitted.
4. Analyzes any impact that the congressional review requirement has had on FTC decisionmaking and rulemaking processes.

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Pursuant to this requirement, we plan to issue our report to the Congress in September 1982. However, the congressional review provision and FTC's authorization for appropriations expire on September 30, 1982, and the Congress is now considering FTC re-authorizing legislation. This interim report discusses some issues that you may wish to consider to reduce delays caused by the congressional review if this provision is retained.

This interim report is based on our examination of the rule-making proceedings and other FTC records for the two rules submitted to the Congress for review. We also obtained the views of FTC Commissioners and staff, congressional staff, and others concerning the congressional review provision. Our review did not address the constitutionality of the congressional review process. However, we recognize that this issue is in litigation and may remain unresolved during the period in which the Congress is considering reauthorizing legislation for FTC. Our work was conducted in accordance with GAO's current "Standards for Audit of Governmental Organizations, Programs, Activities, and Functions."

Section 21 of the act requires that FTC submit all final rules to each House of the Congress for review. If both Houses do not adopt a concurrent resolution disapproving a final rule within "90 calendar days of continuous session," it becomes effective on the date promulgated by FTC. Continuity of session is broken by an adjournment sine die (i.e., final adjournment of a session of the Congress). Also, the time during which either House is not in session for more than 5 days is excluded in computing the 90-day period. If the Congress adjourns sine die before the end of the 90-day period and before completing action to disapprove a rule, FTC must resubmit the rule to the next session of the Congress, and another 90-day review period begins.

FTC has submitted only two rules for congressional review--the games-of-chance rule and the used car rule. The games-of-chance rule, submitted on August 26, 1980, consisted of amendments to an existing rule. The amendments were deregulatory in nature, (1) lessening the recordkeeping and reporting burdens of participating retailers in promotional games of chance and (2) reducing the waiting period between games to 30 days or the length of the previous game, whichever is less. No resolution to disapprove these amendments was introduced before the 96th Congress adjourned on December 16, 1980. However, because 90 days of continuous session had not elapsed before adjournment, FTC resubmitted the amendments on January 27, 1981, for another 90-day review period, as required by section 21. Again, no resolutions of disapproval were introduced, and the congressional review period expired on June 1, 1981, about 9 months after the initial submittal to the Congress. The amendments became effective on August 17, 1981.

FTC submitted the used car rule for congressional review on September 9, 1981, during the first session of the 97th Congress. This rule would require car dealers to post a window sticker on each used car offered for sale disclosing to potential buyers whether any warranty was being provided and the terms of that warranty, listing any known major defects in the car's mechanical system, and disclosing certain other information. Resolutions were introduced in both Houses to disapprove the rule, and hearings were held to discuss its merits. However, a resolution of disapproval was not passed before the first session ended on December 16, 1981, after 86 days of continuous session from the date FTC submitted the rule for review.

Since the 90-day review period was not completed, FTC re-submitted the rule on January 28, 1982, during the second session of the same Congress, for another 90-day review period. New disapproval resolutions have been introduced, and further hearings have been held on the rule. If both Houses do not adopt a concurrent resolution disapproving the rule, we estimate that the 90-day review period will end on May 24, 1982, after the Congress will have considered the resolution for a total of 176 days (86 days during the first session and 90 days during the second). Thus, the congressional review will add about 9 months--from September 1981 through May 1982--to the rulemaking process.

We did not evaluate whether the 90-day review period gives the Congress sufficient time to consider FTC rules. However, FTC commissioners and staff, congressional staff, and other interested persons expressed the view that the current review period is too long.

MATTERS FOR CONSIDERATION
BY THE CONGRESS

The experience with these two rules suggests that some features of the congressional review mechanism may unnecessarily delay the effective date of FTC rules. The congressional review process delayed the implementation of the deregulatory games-of-chance initiative (the only rule to complete the congressional review process to date) by about 9 months even though the rule was not controversial and no resolutions of disapproval were introduced. To avoid unnecessarily delaying the effective date of rules to which there is no congressional opposition, the Congress may wish to consider revising section 21 to provide that the review period will terminate after a short period of time (to be specified by the Congress) if a concurrent resolution of disapproval is not introduced.

Although the used car rule has not completed the congressional review process, this rule may remain available for consideration by the same Congress for as long as 176 days. To expedite the rulemaking process, the Congress may wish to consider revising section 21 to provide that, if the first session of a Congress adjourns before disapproving a rule within the original review period, the second session of that Congress shall resume consideration of the rule within the original period. During the second session, the review would continue for the balance of the period, or for some additional specified period.

To reduce delays caused by the 90-day review period, the Congress may wish to consider other options. For example, one option is changing the review period from 90 days of continuous session to 90 calendar days. Another option is changing the period to 60 calendar days, which is used in many other congressional review provisions. Both FTC rules discussed above had to be resubmitted--adding time to the rulemaking process--because of the current 90-day review provision. Had either of the above two options been in effect, the review period would have ended for both of these rules without the need for resubmission, thus reducing rulemaking time.

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We hope that the information in this letter will aid your deliberations on the FTC reauthorizing legislation. Because the report contains matters for congressional consideration and does not make any recommendations or state any conclusions concerning FTC's activities, we did not obtain agency comments.

We are sending copies of this report to the Chairmen of the Subcommittee on Consumer of the Senate Committee on Commerce, Science and Transportation and the Subcommittee on Commerce, Transportation and Tourism of the House Committee on Energy and Commerce. Copies are also being sent to the Director, Office of Management and Budget, and the Chairman of the Federal Trade Commission.



Comptroller General
of the United States