Calendar No. 59

94TH CONGRESS
1st Session

SENATE

REPORT
No. 94-66

CONSUMER PROTECTION ACT OF 1975

REPORT

OF THE

COMMITTEE ON GOVERNMENT OPERATIONS
UNITED STATES SENATE

TO ACCOMPANY

S. 200

TO ESTABLISH AN INDEPENDENT CONSUMER AGENCY TO PROTECT AND SERVE THE INTEREST OF CONSUMERS AND FOR OTHER PURPOSES

TOGETHER WITH

SUPPLEMENTAL, INDIVIDUAL, AND MINORITY VIEWS

APRIL 9, 1975.—Ordered to be printed

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CONSUMER PROTECTION ACT OF 1975

APRIL 9, 1975.—Ordered to be printed

Mr. RIBICOFF, from the Committee on Government Operations, submitted the following

REPORT

together with

SUPPLEMENTAL AND MINORITY VIEWS

[To accompany S. 200]

The Committee on Government Operations, to which was referred the bill (S. 200), to establish an independent consumer agency to protect and serve the interests of consumers, and for other purposes, having considered the same, reports favorably thereon with amendments and recommends that the bill as amended do pass.

The amendments are as follows:

On page 2, line 1, after the word "Government;" insert the following: "that regulations have been adopted and statutes have been enacted by the Federal Government without first securing available information as to the estimated costs and benefits of such regulations and statutes;".

On page 2, line 11, after the word "marketplace." insert the following new sentence: "Federal programs which fail to provide benefits that are commersurate with the costs thereof may be a factor in the economic problems of the United States."

On page 4, line 4, strike out "and".

On page 4, line 6, strike the word "Consumers." and insert in lieu thereof "consumers; and"

On page 4, between line 6 and 7, insert the following new subparagraph: "(G) providing of estimates of the costs and benefits of programs and activities established by Federal Government regulations and legislation."

On page 4, between lines 9 and 10, insert the following new paragraph: "(4) It is the purpose of section 24 of this Act to establish a means for estimating in advance the costs and benefits of Federal legislation or rules that have substantial economic impact, in order to determine which Government programs entail unreasonable or excessive costs."

On page 4, line 15, redesignate paragraph "(4)" as paragraph "(5)".

On page 14, line 4, change the word "provide" to "provides".

On page 16, line 5, after the word "justice.", insert the following sentence: "When the Administrator initiates a judicial proceeding arising out of a Federal agency proceeding or activity in which he did not intervene or otherwise participate, he shall file a statement setting forth the reasons why he did not so intervene or otherwise participate in such proceeding or activity, for the court's consideration in connection with whether the initiation of such proceeding would impede the interests of justice."

On page 18, line 1, delete the word "with", and substitute the following words: "with, providing information to, or providing assistance requested by any"

On page 20, lines 23 and 24, delete the following words: "or the complaint is unsigned,".

On page 20, line 26, change the word "public." to "public;"

On page 21, line 1, insert the following new subparagraph:

"(4) no unsigned complaints shall be placed in the public document room."

On page 22, line 9, delete the word "and" and substitute the word "or".

On page 23, line 25, following the words "discovery of", insert the following words: "consumer fraud or".

On page 24, line 10, delete the words "that (A)" and substitute the word "that,".

On page 24, line 14, after the word "average", insert the word "annual".

On page 24, lines 17, 18, and 19, delete the following words: "loss), and (B) has had over the preceding two years an average number of full time employees not in excess of twenty-five." and substitute the word "loss).".

On page 28, line 14, after the words "SEC. 11. (a)", strike the remainder of the paragraph and insert the following: "Except as provided in this section, section 552 of title 5, United States Code, shall govern the release of information by any officer or employee of the Agency."

On pages 28 and 29, strike all of paragraph (1).

On page 29, line 3, strike "(2)", and insert "(b) No officer or employee of the Agency shall disclose to the public or to any State or local agency".

On page 29, line 14, strike "(b)", and insert "(c)".

On page 29, line 15, after the word "information" insert "by the Administrator".

On page 30, line 1, change "11(a)(2)" to "11(b)".

On page 31, line 1, strike "(c)" and insert "(d)".

On page 31, line 6, change "(a)(2)" to "(b)".

On page 36, lines 20, through 22, delete the following words: "to any agency action in the Federal Communications Commission with respect to the renewal of any radio or television broadcasting licensee,".

On page 39, after line 2, insert the following new subparagraph:

"(5) For the purpose of this section, the term 'small business' shall have the same meaning as provided in section 10(a) (4) of this Act."

On page 39, line 8, strike the word "Act" and insert the following: "Act, except Section 24,".

On page 44, after line 11, insert the section 24 entitled "Cost and Benefit Assessment Statements".

On page 51, line 24, redesignate section "24" as "25".

On page 51, line 24, delete the word "Act" and insert "Act, other than section 24 of this Act,".

On page 52, line 11, redesignate section "25" as "26".

PURPOSE

The purpose of this bill is to protect the interests of consumers and to promote consumer protection in the United States.

To achieve this purpose, the bill creates an independent Agency for Consumer Advocacy (ACA) to represent and advocate the interests of consumers before other Federal agencies and Federal courts. The Agency for Consumer Advocacy will also receive and transmit complaints from consumers, and develop and disseminate information concerning interests of consumers.

One of the most important reasons for the failure of Federal programs to provide full protection to consumers has been the absence of qualified and vigorous representation of the consumer interest before the agencies which conduct and plan programs affecting consumers. The ACA is designed to remedy this by guaranteeing that the interests of consumers will be represented before federal agencies and courts.

The Agency for Consumer Advocacy will function as an advocate and spokesman for consumer interests. It will have no authority to directly regulate activities affecting the interests of consumers. Nor may it dictate in any way how other Federal agencies act on matters of interest of consumers.

BACKGROUND

The concepts embodied in this bill have been developed in the course of hearings and legislative proposals for more than a decade. The bill represents a synthesis of the best and most practical ideas put forward during that period.

In 1961, Senator Estes Kefauver introduced a bill (S. 1688) to establish a Department of Consumers to represent the economic interests of consumers. In 1965, Representative Benjamin Rosenthal introduced a bill (H.R. 7179) to create a Cabinet level Department of Consumer Affairs. The House Subcommittee on Executive and Legislative Reorganization held hearings on this proposal, during which various approaches to improve consumer protection were explored. Hearings on consumer protection, during this formative stage, were also held by the House Subcommittee on Intergovernmental Relations, and the House Government Operations Committee. (See House Reports 87–141, 88–445, 88–921, 90–1851, and 91–733).

In March 1969, the Senate Subcommittee on Executive Reorganization commenced hearings on S. 860, a bill introduced by Senator Gaylord Nelson to establish a Department of Consumer Affairs. This Cabinet level department would have been both an advocate for con-

sumer interests before courts and agencies and a regulator of activities effecting the interests of consumers.

Most of the witnesses who appeared before the Subcommittee were opposed to the creation of a Department of Consumer Affairs. Dr. James Goddard, former Commissioner of the Food and Drug Administration, told the Subcommittee:

> I do not believe that the rearrangement of boxes on a table of organization will automatically rearrange the administrative, scientific, or judgmental sets * * * if the proposed Department of Consumer Affairs were established, it would absorb a number of less-than-effective programs carried out by less-than-committed employees.

Following the hearings, a number of new consumer protection bills were introduced, reflecting a refinement of the proposal which had been discussed at the hearings. Senator Joseph Montoya introduced S. 3165, a bill to create an independent Bureau of Consumer Protection in the executive branch. Senator Charles Percy introduced S. 3097, which would have established an Office of Consumer Affairs in the Executive Office of the President and authorized the director of the Office to advocate the interests of consumers before other Federal departments and agencies.

Senator Jacob Javits, on behalf of the Administration, introduced S. 3240 to establish both an Office of Consumer Affairs in the Executive Office of the President, and a Consumer Protection Division in the Department of Justice.

The Subcommittee on Executive Reorganization held hearings on these proposals in January and February 1970.

On October 12, 1970, the Committee on Government operations reported a clean bill, S. 4459, incorporating a number of ideas from previous proposals. The Committee decided that the advocacy functions on behalf of the interests of consumers should be placed in an independent agency.

S. 4459 reflected not only the ideas in the proposed legislation before the Committee, but also many concepts from other legislation. Senator Lee Metcalf's Utility Consumer bill (S. 2959) and Senator Edward Kennedy's Public Counsel Corporation bill (S. 3434) both incorporated the idea of an independent advocate for the interests of consumers. The coordination function given the Office of Consumer Affairs derived not only from the bills introduced by Senators Percy, Nelson and Javits, but also from a bill introduced by Senators Birch Bayh and Joseph Tydings (S. 2045) to establish a permanent Office of Consumer Affairs.

In addition, S. 4459, as reported by the Committee on Government Operations, created a program of grants to aid State and local consumer protection programs. This concept originated with S. 861 introduced by Senator Javits.

After the Committee on Government Operations reported the bill, it was referred to the Committee on Commerce where a number of amendments were added which strengthened the bill. The Commerce Committee reported the bill on November 25, 1970 (see Senate Report 91–1365). On December 1, 1970, the Senate passed S. 4459 by a vote of 74–4.

During the 91st Congress, a similar bill, H.R. 18214, introduced by Representative Rosenthal was reported by the House Government Operations Committee by a vote of 31–4. In the Rules Committee, however, the bill failed by a tie vote to obtain a rule to permit floor consideration.

In the 92nd Congress, Representatives Holified, Dwyer, Rosenthal, and other members of the Committee on Government Operations introduced identical bills, H.R. 14, 15, and 16 similar to the legislation reported by that Committee in the previous Congress. After hearings and executive consideration, the Subcommittee on Legislation and Military Operations reported a clean bill, H.R. 10835. The bill was reported on September 30, 1971. On October 14, 1971, the House passed it by a vote of 344–44.

Similarly, in the 92nd Congress, the Subcommittee on Executive Reorganization and Government Research held hearings on S. 1177 co-sponsored by Senators Ribicoff, Javits, and Percy. On August 17, 1972, the Committee on Government Operations ordered reported S. 3970, a clean bill. S. 3970 was reported on September 8, 1972 (see Senate Report, 92–1100), and debated during September, 1972. Three motions to invoke cloture failed and the legislation was not again considered in the 92nd Congress.

In the 93rd Congress, Senators Ribicoff, Javits, Percy, Magnuson, Moss, and Cook introduced S. 707 on February 1, 1973. Senators Allen, Bennett, Helms, Sparkman, Talmadge and Thurmond introduced S. 1160 on March 8, 1973. Joint hearings before the Subcommittee on Reorganization, Research, and International Organizations of the Committee on Government Operations, and the Subcommittee on Consumers of the Committee on Commerce, took place on March 21, 22, 27, 28, April 5 and June 28, 1973.

On March 28, 1974, the Subcommittee on Reorganization, Research, and International Organizations ordered reported to the full Committee on Government Operations, S. 707, with an amendment in the nature of a substitute. The bill so reported deleted or modified a number of the major provisions contained in S. 707 as originally introduced.

On April 2, 9 and 10, 1974, the Committee on Commerce considered S. 707 in executive session and ordered S. 707 reported with an amendment in the nature of a substitute.

The full Committee on Government Operations considered S. 707 in open session on May 16, 1974, and ordered S. 707 reported with amendments on May 16, 1974. S. 707 as reported by the full Committee was identical in most respects to the bill approved by the Reorganization Subcommittee and by the Commerce Committee.

S. 707 was reported on May 28, 1974 (See Senate Report, 93–883) and debated during July, August and September, 1974. Four motions to invoke cloture failed—fourth motion on a vote of 64 to 34—and the legislation was not again considered in the 93rd Congress.

In the 94th Congress, Senator Ribicoff introduced S. 200 on January 17, 1975, for himself and 38 co-sponsors. (Since introduction, four additional co-sponsors have been added). Hearings before the Committee on Government Operations took place on February 20 and 24 and March 6, 1975.

On March 10 and 12, 1975, the Committee on Government Operations considered S. 200 in executive session and ordered S. 200 reported with amendments.

S. 200 does differ in a number of significant respects from S. 707 as introduced on February 1, 1973. The amendments made in the bill since 1973 reflect many of the suggestions for changes that have been made in connection with this legislation. A brief summary of the differences between the present legislation and S. 707 is provided below:

MAJOR DIFFERENCES BETWEEN S. 707 AS INTRODUCED AND S. 200 AS REPORTED BY THE COMMITTEE

(1) *Consumer Council*

S. 707, provided for a Council of Consumer advisors, in the Executive Office of the President, to set priorities on consumer matters and review impact of Federal programs.

S. 200 deletes the Council entirely.

(2) *State and local proceedings*

S. 707 authorized the consumer agency to intervene or participate in State or local agency or court proceedings, on request of State officials or the State or local agency or court.

S. 200 denies ACA such authority, but specifically empowers the ACA to communicate with, provide information to, or provide assistance requested by any Federal, State or local agency or court.

(3) *Grant Program*

S. 707 authorized grants to State and local public agencies to promote consumer interests and education. It provided for $20 million in the first fiscal year and $40 million in the second fiscal year after enactment.

S. 200 contains no grant program.

(4) *Name of agency*

S. 707 designated Consumer Protection Agency (CPA) as name of the Agency.

S. 200 designates Agency for Consumer Advocacy (ACA) as name of the Agency.

(5) *Budget By-Pass*

S. 707 provided that the Administrator's proposed budget estimates, and recommendations or testimony on legislation be submitted to Congress at the same time they are submitted to Office of Managament and Budget.

S. 200 deletes this provision.

(6) *Informal proceedings*

S. 707 provided that the Administrator of the Consumer Protection Agency could "as of right participate" in informal agency proceedings which substantially affect consumers. It was understood that the participation would be equal to that of others.

S. 200 does not require agencies to allow ACA to participate in their informal proceedings simultaneously or equally with others. ACA may present "written and oral submissions", and Federal agencies must give "full consideration" to such ACA submissions.

(*7*) *Subpoenas*

S. 707 required the Federal host agency to issue subpoenas under its authority where the consumer agency was intervening or participating in an agency proceeding or activity.

S. 200 limits host agency issuance of subpoenas requested by ACA to agency proceedings.

(*8*) *Judicial review*

S. 707 allowed consumer agency, where it did not participate below, to seek judicial review unless the court determined it would be detrimental to the interests of justice. S. 707 also required the Administrator to petition the agency for reconsideration prior to seeking judicial review of an agency decision whenever the Federal agency's laws *required* such petition, and the Administrator had not participated at the agency level.

S. 200 requires the court to make a determination as to whether or not the ACA's institution of a proceeding in court would impede the interests of justice. When initiating such appeal the Administrator must state his reasons for not participating at the agency level. S. 200 also requires the Administrator to petition the agency for reconsideration before initiating an appeal whenever such a petition is *authorized* by agency laws and the Administrator had not participated in the proceeding at the agency level.

(*9*) *Interrogatories—small business*

S. 707 contained no exemption from the interrogatory section for small businesses.

S. 200 exempts from the interrogatory section, except in the case of an imminent and substantial danger to health or safety, any business with assets under $7½ million, net worth under $2½ million, and average annual net income under $250,000.

(*10*) *Access to agency records*

S. 707 allowed the consumer agency full access to Federal agency records, with exceptions only for national security information, policy recommendations, and administrative and personnel records.

S. 200 imposes much more stringent limitations on ACA access. In addition to the original protections, it prohibits ACA from obtaining trade secrets which an agency could obtain only by agreeing to keep them confidential. It prohibits ACA from obtaining prosecutorial recommendations from law enforcement agencies. It prohibits ACA access to bank examination reports to the same extent other agencies are denied access to such information. And it prohibits ACA access to information which would disclose the financial condition of individuals who are customers of financial institutions.

(*11*) *Farmers*

S. 707 did not include farmers within the definition of consumers.

S. 200 redefines consumers to include farmers, and specifically directs the Administrator to promote the interests of farmers "in obtaining a full supply of goods and services at a fair and equitable price". It also contains a provision requiring the Administrator to consider the interests of both farmers and consumers before intervening in any Department of Agriculture proceeding.

(*12*) *Protection for Small Business*

S. 707 contained no special protection for small business.

S. 200 requires ACA to take the views of small business into account in setting ACA's priorities, and requires ACA to solicit advice from small business before promulgating any rules or regulations under the Act.

(*13*) *Exemptions*

S. 707 contained no explicit provision barring the consumer agency from participating in labor-management relations cases before the NLRB, although accompanying committee report stated such cases would be exempt.

S. 200 adopts the labor-management exemption contained in the bill passed by the House in 1974.

(*14*) *GAO Review*

S. 707 contained no provision for GAO review.

S. 200 requires GAO to review all of ACA's activities, and provide a full report to Congress within three years of the date of enactment, with an evaluation of ACA's effectiveness and recommendations for any modifying legislation.

(*15*) *Consumer Complaints*

S. 707 permitted the ACA to place anonymous complaints in the public document room but allowed the withholding of such complaints if the Administrator determines that the complaint is frivilous, or that publication is detrimental to the complainant or that for good cause the complaint should be withheld.

S. 200 provides that no unsigned complaint shall be placed in the public document room.

(*16*) *Limitations on Disclosures*

S. 707 prohibited the ACA from publicly disclosing any trade secret or other confidential commercial or financial information obtained from a person unless disclosure is necessary to protect health or safety.

S. 200 puts the ACA in the same position as any other government agency, in this respect, by making the provisions of the Freedom of Information Act applicable to the ACA. Under the Freedom of Information Act, the ACA *may* withhold such information from the public.

(*17*) *Cost and Benefit Assessment Statements*

S. 707 contained no provision for the preparation of cost and benefit assessment statements by Federal agencies.

S. 200 provides for the preparation of cost and benefit assessment statements by Federal agencies issuing rules or proposing legislation which have a substantial economic impact.

DESCRIPTION AND NEEDS

The Need for the Legislation

Agencies of the Federal Government makes decisions every day which have a direct impact on consumers. These decisions are reached under statutes which require the decisionmaker to act in the best interest of the public, including the over 210,000,000 Americans who are consumers. Yet in many cases, Government agencies now act without even directly hearing from consumer representatives. This legislation will help Federal agencies better meet their present statutory responsibilities by assuring that before such agencies act, they will be familiar with the views and interests of the consumer.

Despite the importance to the country's welfare that the Federal Government protect the interests of consumers, committees of Congress, the General Accounting Office and other Federal agencies, special commissions, consumer organizations, responsible business organizations, and newspapers are continually documenting the failure of Federal programs to adequately consider the interests of consumers. The Committee is convinced, on the basis of numerous hearings it has held over the last 5 years, that a chief reason for this failure is the present lack of effective representation of consumer interests before Federal agencies. The major factor responsible for the absense of effective consumer representation is the unique nature of such interests.

Consumers are usually poorly organized, underfunded, and ill-equipped to present an effective case before Federal agencies. Frequently, consumers never even learn until it is too late about decisions the Federal Government is proposing to take affecting consumers. Those who are informed and who do feel strongly about any particular consumer interest all too often feel powerless when they consider the difficulty of organizing into an effective group, like-minded citizens scattered across the whole country. Even if consumers succeed in making their views known in one case, there are thousands of other matters affecting consumers which must at the same time be ignored.

On the other hand, effective representation by business interests in matters affecting consumers is virtually assured since the same decision that may make only 2 cents or 3 cents difference to a consumer, may determine whether a business or an entire industry is able to increase its profits. Business interests can thus concentrate on the few matters affecting consumers which are of direct concern to them. In these cases they are financially able and ready to undergo great expense to assure that their views are heard.

The imbalance between consumer and business representation before Federal agencies is chiefly responsible for the failure of the Federal Government to consider adequately the interests of consumers. Federal agencies are confronted with the difficult task of balancing a number of different interests. Often, as well, they take action in areas where decisions must rest on a great deal of detailed and highly

technical information. In the absence of participation by other informed parties, the agencies thus become dependent on the industries themselves to provide and interpret the necessary information and proposals for action. Understandably, such agencies find it difficult to reach a decision in the best interests of the entire public when they thus hear from only one or two sides of a many faceted problem. No decisionmaker, no matter how honest and competent, can be expected to take full and accurate acccount of interests if their views are not presented in an effective manner.

The ACA in no way overlaps with the consumer offices or bureaus presently located in Federal agencies. The ACA will possess a unique set of authorities to protect consumer interests which these other offices lack. Furthermore, because it will be acting as an independent agency, the ACA will be in a better position to promote consumer interests than offices that are part of other Federal agencies with decisionmaking authority. In the annual report ACA will submit to Congress, the Administrator should assess the effectiveness of the other offices with responsibilities in the consumer area, and make recommendations for any further legislation that appears necessary.

Description of the Legislation

The Committee has concluded that there is only one effective way to remedy the inevitable imbalance between representation of business and consumer interests. To assure an effective voice for consumers in the regulatory process, it is necessary to create a consumer advocate authorized to speak on behalf of the consumer.

The solution proposed by this legislation avoids creating yet another large Government agency with authority to issue its own rules or regulations, or to have any other power to regulate commerce in order to directly protect the interests of consumers. The Committee believes that the solution to the problem does not lie in expanding yet further the size and budgets of existing agencies. No matter how big it becomes, or how much money it spends, no single Federal agency can be expected to act adequately as both a decisionmaker and as a critic of its own decisions.

This Act seeks to avoid creating further large bureaucracies, or expanding present ones, by assuring that there will be in the Federal Government a relatively small number of professionals who can, on a case by case basis, provide Federal agencies with information and data on behalf of the consumer which the Federal agency needs to make a fully-informed decision. This legislation thus rests on the traditional belief in this country that the way to assure as fair a decision as possible is to let advocates for the different sides make the best arguments each can. It will be up to the regulatory agency or other decisionmaker, not the ACA, to decide from among the arguments made where the best solution to the problem lies.

The Committee thus wishes to emphasize strongly that the Agency for Consumer Advocacy will have no regulatory or decisionmaking authority. The legislation neither grants to the ACA any regulatory authority taken from any existing authority, nor changes any of the substantive law which regulatory agencies now apply. The new agency will have no authority to overrule on its own the decision of any other agencies.

In order to effectively represent consumer interests, the act provides

the Administrator of the ACA with the authority to participate in both formal and informal proceedings of other Federal agencies. When the ACA intervenes as a party in formal agency proceedings, it will enjoy the same rights, and suffer the same restraints, as any other party in the proceedings.

Many agency decisions, however, are not made in formal proceedings. One expert on administrative law has in fact estimated that as much as 90 percent of the Government's work is conducted outside the boundaries of the Administrative Procedure Act. In some instances, the most important agency decisions insofar as consumers are concerned may involve decisions not to investigate or take other action. The act therefore also gives the Administrator the right to participate by submitting written or oral views, and other relevant material, to the agency considering in an informal proceeding a matter affecting consumers. Participation by ACA in informal proceedings parallels the opportunity private persons now have to consult informally with agency officials about matters affecting them.

To make ACA's role as an advocate complete, the act also gives the ACA the right, like any other person aggrieved by a final agency action, to seek judicial review of agency decisions. Similarly, it permits the ACA to intervene in suits already brought involving agency proceedings affecting consumers. When both a Federal agency and private persons present arguments before a court which do not adequately consider the rights of consumers, the ACA will be able to argue for the consumer.

Apart from its responsibility to represent the interests of consumers, the Agency for Consumer Advocacy will also act as a clearinghouse for complaints individual consumers have against business enterprises. Again, the ACA will have no authority to force business to take any action in response to such complaints. Rather, the ACA will only make sure that the appropriate Federal and State agencies with authority to take any necessary action, and the business enterprise complained about, know about the complaint.

Finally, the ACA will have authority to collect and disseminate publicly information of interest to consumers.

To assure that the ACA will have the information it needs, the Act gives the Agency access to certain data held by other agencies. If it cannot obtain the information from other agencies or public sources, the ACA may also solicit directly from private parties answers to specific questions. Detailed safeguards are established to assure that the confidentiality of any information is guarded, and that in all respects ACA is not able to act in a way that injuries the rights of businesses or other private persons. Small businesses are exempted from compulsory disclosure of information except in the case of imminent and substantial danger to consumer health or safety. The ACA will thus have a variety of means, other than actually participating in agency or court proceedings to promote the interests of consumers. It is the Committee's intent that the ACA will rely on these alternative means whenever possible.

RELATIONSHIPS OF AGENCY TO GOVERNMENT AND PRIVATE INTERESTS

The act provides that the Administrator shall be appointed for a specific term of years. The Committee include this provision because

the unique status of the ACA as an advocate for consumers before other Federal agencies requires that it be independent. Otherwise, the Agency's status as an advocate for consumers could be sacrificed by a desire on the part of the executive branch to promote policies that do not adequately consider the interests of consumers. Similarly, the entire executive branch should not have to be associated with views of the ACA with which it may not agree.

Since the Agency will have no responsibility for establishing government policies, there is no countervailing need to make the Administrator subject to the same direct supervision and control as policy-making officials.

It is evident that the Federal government makes every day a large number of decisions that substantially affect the interests of consumers. Because of its limited resources, the ACA will not be able to represent the interests of consumers in every case.

In most instances, such as in an FTC false or misleading advertising case, the consumer interest is clear and unitary. However, the Committee also recognizes that on occasion there may be more than one possible consumer interest involved in proceedings in which the ACA participates. Where these interests are not conflicting, the ACA will be able, if it wishes, to represent all such interests at the same time. If a conflict does arise, the ACA may be able to propose a solution which reconciles the differing consumer interests; or, one consumer interest may already be represented by another party, thereby permitting the ACA to concentrate on the important consumer interest that is being ignored. It may happen that an instance might arise in which none of these solutions will be available to the Agency. In such circumstances, the ACA may conclude that the best way to advance consumer interests is to assure that the decisionmaker is aware of all the important, conflicting consumer interests without advocating that any one of the interests be favored at the expense of the others.

The Committee does not believe that the large number, diversity, and occasionally conflicting nature of consumer interests present a serious problem. Rather, this fact guarantees that the ACA will set its priorities for action with extreme care so as to make best use of its limited resources.

This act is not intended in any way to replace the role now played by other consumer representatives. Because the yearly number of agency proceedings affecting interests of consumers is many times what ACA, with its limited resources, could possibly participate in, other consumer representatives both in and out of government will still have a very important role to play. One long-range purpose of this legislation is, in fact, to encourage consumers to represent their own interests before Government agencies, so that the ACA's role may be kept to a minimum.

Finally, it is important to emphasize that this act is intended as a "pro good business" as well as "pro consumer" bill. As the interests of consumers are more fully articulated, it is hoped that it will become apparent to all businesses that the interests of consumers and business need not be inimical to each other. By helping to eliminate the few examples of bad business practices wherever they occur, and by helping to educate and inform the consumer, the ACA will also help the great majority of honest businesses in any industry which sell good, dependable products and services. The Act should promote business by

giving the consumer confidence to rely on the products and services he buys and the sellers he does business with.

In many cases ACA may actively support the same position as one of the various business interests which are parties to an agency proceeding. For instance, it may join with industry representatives in opposing an ICC route change for trucks which could increase the price of consumer goods. The door of the ACA will always be open to representatives of business, as well as consumers, who wish to make their views known to the Agency. The bill specifically refers to the importance of the ACA taking the views of small businesses into account.

Conclusion

When the Federal Government acts without adequately considering the interests of consumers, the welfare of the whole country suffers, for such decisions directly affect the prosperity, the safety, and the health of the entire country. When a plane crashes because of defective equipment which a Federal agency knew about, but failed to order replaced, the entire country pays a terrible price in the number of lives lost. When the Justice Department improperly exempts two or more companies from the antitrust laws, competition is weakened, prices rise, and the whole economy suffers.

Representation of an interest so vital to the public welfare as that of the consumer is too important to be left to chance, or to Federal agencies whose chief area of responsibilities and chief contacts are not with consumers, but with business interests.

The ACA represents a positive step forward righting this imbalance at a fraction of the cost already spent by Federal agencies on the regulation or promotion of business interests. There should be no concern that the ACA could create an undue bias in Government agencies in favor of consumers, or that the agency will hamper the ability of the Federal Government to operate effectively.

The only power the Agency will have will be derived from the strength and validity of the arguments it advances on behalf of the consumer. Its actions will be governed by legal rules and precedents developed over many years to protect the interests of all parties and to assure the smooth functioning of Government.

This country has traditionally relied on the adversary system to produce governmental and judicial decisions that are as fair, and as consistent with the public interest, as possible. This act does no more than to make this adversary process more complete by including in it representatives of interests heretofore largely neglected.

SECTION-BY-SECTION ANALYSIS

Section 1. Short Title

This section provides that the Act may be cited as the "Consumer Protection Act of 1975".

Section 2. Statement of Findings and Purposes

The Congress finds that the interests of the American consumer are inadequately represented and protected within the Federal Govern-

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ment, and that such representation and protection are essential to the fair and efficient functioning of a free-market economy. As a result of this lack of effective representation before Federal agencies and courts, consumers suffer personal injury, economic harm, and other adverse consequences.

The Congress declares that an ACA could help the Federal agencies in the exercise of their statutory responsibilities in a manner consistent with the public interest by protecting and promoting the interests of American consumers. To this end, it is the purpose of the ACA to represent the interests of consumers before Federal agencies and courts, receive and transmit consumer complaints, develop and disseminate information of interest to consumers, and perform other functions to protect and promote the interests of consumers.

The authority granted to the Agency for Consumer Advocacy is not to be construed to supersede, supplant, or replace the jurisdiction, functions, or powers of any other agency to discharge its own statutory responsibilities according to law.

Specifically, the purpose of the Act is to promote protection of consumers with respect to the safety, quality, purity, potency, healthfulness, durability, performance, reparability, effectiveness, dependability, and cost of real or personal property or tangible or intangible goods, services, or credit.

The objectives of the Act include the preservation of consumer choice in a competitive market, prevention of unfair or deceptive trade practices, maintenance of truthful and fair advertising, promotion, and sales practices by a producer, distributor, lender, retailer, or other supplier of property, goods, services and credit. The Act is also designed to promote the protection of consumers through encouraging the furnishing of full, adequate, and clear instructions, warnings, and other information by suppliers concerning their property, goods, services and credit offered or sold, and through encouraging the protection of the legal rights and remedies of consumers.

In all cases, the purpose of the Act is to be carried out through advocacy before Federal agencies and Federal courts, and through developing and providing the public with information of interest to it. In no way does the Act grant power to the Agency for Consumer Advocacy to regulate commerce.

The Congress also finds that some regulations have been adopted and some legislation has been enacted by the Federal Government without the applicable Federal agency securing, prior to adoption or enactment, available information regarding the estimated costs and benefits of such regulations or statutes. Such regulations and legislation by failing to provide benefits which are commensurate with costs, may be a factor in the economic problems of the United States. Because of this, the purpose of section 24 of this Act is to establish a means for estimating, in advance, the costs and benefits of Federal legislation or regulations which have a substantial economic impact, in order to determine which programs entail unreasonable or excessive costs. This finding and purpose relate only to section 24 of the Act and in no way affect the jurisdiction or mandate of the Agency for Consumer Advocacy.

As stated in section 2 (b) (4) of the Act, it is the intent of the Committee that Federal Agencies be required to prepare a cost and benefit assessment "in order to determine which government programs entail unreasonable or excessive costs." It is expected that the cost and benefit assessments prepared pursuant to section 24 will assist the agency in its consideration of a proposed rule or proposed legislation.

SECTION 3. ESTABLISHMENT

This section establishes the Agency for Consumer Advocacy as an independent agency of the United States within the executive branch. The term "independent" reflects the belief that the agency shall be independent of the remaining agencies in the Executive branch as must indeed be the case. ACA could not be an effective advocate if it were subject to direction by other offices in the Executive Branch.

The term "non-regulatory," which was used to describe the agency in S. 707, to distinguish the ACA from the regulatory agencies, has been deleted from S. 200. The deletion is purely technical, and does not represent any change in intent by the Committee. The act specifically states in Section 2(b) (2) that the authority granted the ACA under this act shall not "supersede, supplant, or replace the jurisdiction, functions, or powers of any other agency to discharge its own statutory responsibilities according to the law."

With respect to the name of the new agency, which was "Consumer Protection Agency" in S. 707, some concern has been expressed by certified public accounts over the possible confusion if the agency were designated by the acronym CPA. To avoid such confusion, the name of the agency in S. 200 has been changed to "Agency for Consumer Advocacy."

The agency is to be headed by an Administrator, appointed by the President, by and with the advice and consent of the Senate, for a term coterminous with the President, but not more than four years. The Administrator may be reappointed. The appointee is to be an individual who, by reason of his training, experience, and attainments, is especially qualified to represent the interests of the consumers independent of any business or consumer interest group in the private sector, and independent of other executive branch agencies.

The establishment of a term coterminous with the term of the President provides a new chief executive with the prerogative of filling the position with an individual of his own preference. If the Administrator leaves office for any reason before the expiration of his term, the President may nominate a person to be Administrator only for the unexpired portion of the previous Administrator's term. Upon completion of his term of office, an Administrator may continue to serve as Administrator until the Senate has given its advice and consent to the nomination of his successor, although it is the Committee's intent that an Administrator will serve no more than 30 to 60 days after the expiration of his term without being either replaced or reappointed, consistent with the provisions of 5 U.S.C. §§ 345–348.

A Deputy Administrator appointed by the President by and with the advice and consent of the Senate, shall perform such functions, powers

and duties as may be prescribed by the Administrator and shall act for him during his absence.

The Administrator may be removed only for inefficiency, neglect of duty, or malfeasance in office. Since the ACA is an independent agency and the Administrator is appointed for a term of years, this would likely be the case in any event. So as to leave no doubt on this point, however, the language is explicit. This provision should further help to insulate the Administrator from political influence of any kind whatsoever.

Section 3(b) prohibits any officer or employee of the Agency for Consumer Advocacy from having any conflict of interest while serving in his official position.

This subsection bars an ACA employee from engaging in "other interests, inconsistent with his official responsibilities." The definition of "interest of consumers" in section 14(11) sets the bounds of ACA's jurisdiction and authority, and the prohibition of section 3(b) should be read in conjunction with this definition. Other Federal statutes establishing conflict of interest law for Federal employees, such as 18 U.S.C. 208, shall govern the Agencys' responsibility under this section. Such provisions will permit the Administrator to publicy waive the conflict of interest laws under certain specified conditions.

It is envisioned that the Administrator will establish conflict of interest regulations which clearly delineate the limitations on an employee's outside business activities or employment. Such regulations will ensure that no individual is employed by the ACA if his background, experience, and interests are inconsistent with the public interest.

Section 3(c) provides for the appointment of a general counsel by the Administrator to serve as the chief legal officer of the Agency for Consumer Advocacy.

Section 3(d) authorizes the Administrator to appoint as many as 5 assistant administrators who shall have such responsibilities as the Administrator designates.

Section 4. Powers and Duties of the Administrator

Section 4(a) states that the Administrator is responsible for the exercise of the powers and the discharge of the duties of the Agency.

Section 4(b) states that in addition to any other authority conferred upon him by this Act, the Administrator is given the following customary administrative powers and responsibilities conferred upon Federal agency heads: appointing and supervising of personnel, including experts and consultants, in accordance with the Civil Service and administrative expense laws; appointing of members of advisory committees; promulgating rules necessary to carry out his functions; utilizing, with their consent, the services or personnel or facilities of other Federal, State, regional, local and private agencies; entering into contracts; accepting voluntary services; adopting an official seal; establishing necessary regional offices; conducting conferences and hearings; accepting unconditional gifts or donations; designating representatives to serve or assist on appropriate committees; and performing other administrative activities which are necessary for effec-

tive fulfillment of the Administrator's duties and functions under the Act.

Section 4(c) states that Federal agencies, upon request of the Administrator, are to provide the ACA services and other support to the greatest extent practicable.

Section 4(d) requires the Administrator to submit an annual report simultaneously to the Congress and the President. This report is to be submitted directly by the Administrator without prior clearance or review by any other agency. In addition to reviewing the ACA activities, the report will cover major Federal administrative and court actions affecting the interests of consumers, and the assistance given to the ACA by other Federal agencies, in carrying out its statutory mission. It will also address the performance of Federal agencies and the adequacy of their resources in enforcing consumer protection laws and in otherwise protecting the interests of consumers.

The report will also indicate the present level of funding of the ACA, the distribution of appropriated funds for the current fiscal year, an estimate of the amount needed by the Agency for the next three fiscal years, including a description of the estimated agency appropriation request for the next year, and evaluation of the extent of participation by consumers, and the effectiveness of representation of consumers before Federal agencies. The report will also include suggestions for additional alternative programs and authority.

The purpose of this annual report is to provide Congress, on a yearly basis, with a detailed document which will facilitate Congressional oversight of the Consumer Protection Act. It is expected that the report will include whatever information is necessary for the President and Congress to evaluate comprehensively, the effect of the Federal Government's policies on the interests of consumers. It will discuss not only how well existing programs are functioning, but also what resources will be necessary for them to function better.

Section 5. Functions of the Agency

Section 5(a) states that the ACA shall advise the Congress and the President on matters affecting the interests of consumers; and shall protect and promote the interests of the people of the United States as consumers of goods and services made available to them through trade and commerce. In order to carry out the mandate of the Agency, the Administrator is assigned the principle functions of the Agency.

Section 5(b) describes the principal functions of the Administrator. Paragraphs 1 thru 6 refer to the following specific functions authorized in other sections and described in detail elsewhere in this report:

(1) represent the interests of consumers before Federal agencies and Federal courts;

(2) conduct and support research, studies, and testing;

(3) submit annual recommendations to the Congress and the President on measures to improve the Federal Government protection and promotion of consumer interests;

(4) obtain information and publish and distribute materials to inform consumers of matters of interest to them;

(5) receive and transmit complaints from consumers;

(6) conduct conferences, and investigations including economic surveys, concerning the needs, interests, and problems of consumers.

Paragraph (7) directs the Administrator to cooperate with State and local governments and encourage private enterprise in the promotion and protection of the interests of consumers. While, under section 6(g), the Administrator is specifically prohibited from formally intervening in State or local agency or court proceedings, it is the intention of the Committee that the Agency assist in the promotion of the interests of consumers at the State and local levels to the extent that budgetary priorities allow. As will be discussed, section 6(h) specifically empowers the agency to provide such assistance;

Paragraph (7) also requires the Administrator to encourage private enterprise in the protection of consumers. American business can play an important role in improving consumer protection in this country, and many businesses are already doing so. This provision emphasizes that the goals of the ACA will be entirely consistent with the interests of the vast majority of business interests and that the promotion of good business is not only good for the consumer but also good for business;

Paragraph (8) specifies the role of Congress in functions of the ACA. This paragraph requires the Administrator to inform the appropriate committees of Congress fully and currently of the activities of the ACA and to testify upon request or upon his own initiative before the appropriate committees of the Congress on matters affecting the interests of consumers.

This language makes clear that the Administrator has an affirmative obligation to keep Congress informed of his activities and about all matters substantially affecting the interests of consumers. The Administrator need not await a formal invitation to testify before Congressional committees, but he may request the opportunity to appear. In view of the ACA's need for independence, the Committee would expect that testimony prepared or submitted by the ACA is not subject to prior clearance or review by any other agency. The Administrator may not withhold information from individual members of Congress.

The Committee is of the strong opinion that this provision is not a license to lobby the Congress with appropriated funds. The ACA will be subject to the same limitations on lobbying as other Federal agencies (e.g. see 18 U.S.C. 1913 and 31 U.S.C. 15).

One of the reasons for the failures of administrative agencies to perform well has been the lack of Congressional involvement in oversight after passage of the legislation establishing the agencies. Regular consultations with the appropriate Congressional committees and members will help both the ACA and the Congress to perform their jobs. Appropriate committees will include not only the committees reporting this legislation, but also the committees overseeing the performance of agencies before which the Administrator is appearing.

Paragraph (9) directs the Administrator to publish a consumer register to provide consumers with information useful to them, including impending Federal governmental actions which may affect the interests of consumers. This publication, written in language readily understandable by consumers, will better enable consumers

and consumer groups to be present and participate in hearings and discussions on matters of interest to consumers. Publication of this register and encouragement of participation by consumers in the governmental decisionmaking process, is fully consistent with the purposes of this legislation. The ACA will not be the sole advocate of the interest of consumers. The ACA will not have the resources to perform so large a job, nor would it be desirable to centralize all consumer advocacy in a government agency. In this and in many other places in this Act, the intent is to preserve and encourage private participation by consumers in governmental processes.

Paragraph (10) directs the Administrator to encourage the adoption and expansion of effective consumer education programs.

Paragraph (11) directs the Administrator to encourage the application and use of new technology, including patents and inventions, for the promotion and protection of the interests of consumers. This information can be especially useful in agency and court proceedings involving technical and scientific questions.

Paragraph (12) provides that the Administrator shall encourage the establishment and development of informal dispute settlement procedures involving consumers. A number of corporations and other groups are already experimenting with methods to improve the processing and satisfaction of consumer complaints.

Paragraph (13) requires the Administrator to encourage meaningful participation by consumers in the activities of the ACA.

Paragraph (14) requires the Administrator to promote the consumer interests of farmers in obtaining a full supply of goods and services at a fair and equitable price.

Paragraph (15) grants the Administrator authority to perform such other related activities as he deems necessary in order to fulfill his duties and functions. This provision, for example, confirms the Administrator's authority to attend meetings of advisory committees, consumer boards, task forces or groups associated with the Federal Government where interests of consumers are not adequately represented.

The Administrator is granted a broad range of actions to enable him to use his resources as judiciously as possible. In some instances consumer education efforts might be the most effective means of carrying out his responsibilities under the Act. In each case the Administrator will seek means of furthering the consumer's interests in the most efficient way possible.

Section 6. Representation of Consumers

Section 6 defines the Administrator's authority to represent the interests of consumers before Federal agencies and courts.

Section 6(a)(1) states the general requirements which the Administrator must meet in order to intervene or otherwise participate in any Federal agency proceeding or activity. The Administrator may interfere or participate whenever he determines that the result of a Federal agency proceeding or activity may substantially affect an interest of consumers.

The Administrator is further required to comply with Federal agency statutes and rules of procedure of general applicability govern-

ing the timing of intervention or participation in and the conduct of a proceeding or activity. Finally, this subsection states that the intervention or participiation of the Administrator shall not affect the Federal agencies obligation to assure procedural fairness to all participants.

Section 6(a)(2) states the Administrator's right to intervene or participate in so-called formal, or structured proceedings. In proceedings subject to 5 U.S.C. 553, 554, 556, or 557, that define the procedural requirements for structured agency proceedings subject to the provisions of the Administrative Procedure Act, the Administrator is granted authority to intervene as of right as a party or otherwise participate for the purpose of representing the interests of consumers. This will include adjudicative or rule-making hearings, licensing proceedings, and similar agency activities.

This subsection extends to the Administrator the same right to participate in any other proceeding held pursuant to the similar procedural requirements of other statutes, or pursuant to agency practice or procedure, or which for any reason are conducted on the record after an opportunity for an agency hearing or public comment. The phrase "a hearing pursuant to the administrative procedural requirements of any other statute, regulation, or practice" is designed to cover agency proceedings which involve a hearing whose procedural requirements are specified by a statute, regulation, or practice, but which are not specifically subject to the Administrative Procedure Act. Such procedures may clearly have a substantial impact on consumers, and the ACA should have the opportunity to intervene or otherwise participate. The wording of section 6(a)(2) guarantees that opportunity.

In some proceedings covered by section 6(a)(2), such as proceedings governed by 5 U.S.C. 553 (notice and comment rulemaking), there are no formal parties. In such cases, the Administrator will not, of course, be able to intervene as a party, but will participate in a manner which is appropriate to the nature of the proceeding. In other proceedings where there are formal parties, such as adjudications under 5 U.S.C. 554, and some formal rulemaking on the record, the Administrator is authorized to intervene as a party. The language which allows the Administrator to so intervene as a party means that he has the right to intervene as a full party; a host agency may not restrict the Administrator to intervention as a party for limited purposes if he seeks to intervene as a full party.

Full party status in proceedings carries with it an important collection of rights, such as those listed in 5 U.S.C. 554(b), 554(c), 554(d), 555(b), 555(e), 556(b), 556(d), 556(e), and 557(c).

The resources of the Agency for Consumer Advocacy, however, can best be employed if the Administrator uses his authority judiciously. He should involve himself in proceedings only to the extent necessary to represent the interests of consumers adequately. The Act, therefore, requires the Administrator to participate in a proceeding in some manner short of intervening as a party, unless he determines that his intervention as a party is necessary to represent adequately an interest of consumers.

This determination must be made by the Administrator on a case by case basis. No blanket provision can adequately govern every case. The language in section 6(a)(2) is intended to allow the Administrator full discretion to participate in any manner short of full party

status, including participation as an *amicus curiae* or participation as a party for limited purposes, if he believes that such limited participation is adequate to represent the interests of consumers. The choice of the manner and extent of participation is the administrators.

No matter what manner or extent of involvement the Administrator chooses, as noted above, section 6(a)(1) specifically states that the host agency retains the authority to structure its proceedings in a fair, expeditious, and orderly manner and to require the Administrator to present his views in accordance with agency rules. While the Federal agency cannot exclude the Administrator from intervening or participating, except where he does not comply with the timeliness rule, it can require that he abide by its procedural rules in doing so, including such rules applicable to additional participation pursuant to section 21(a) of this Act. If, for example, the rules require that every party submitting evidence be subject to cross-examination by other parties, the Administrator may not exercise his authority to submit evidence without becoming subject to cross-examination. If agency rules require a party to file briefs in triplicate, the Administrator must file his briefs in triplicate. If agency rules prohibit the introduction of heresay evidence, the Administrator may not introduce heresay evidence. If the Administrator seeks to intervene as a party near the end of a proceeding, he could not require the agency to recall a witness who had testified previously so that he could cross-examine him unless such a procedure were within the rules governing the proceeding.

The host agency's authority over the conduct of its proceeding is not inconsistent with the Administrator's right to intervene or participate. A host agency could not, for example, apply a flat rule against intervention by third parties or against participation of any kind of anyone other than a party to exclude intervention or participation by the Administrator. If such a rule existed, it would be inconsistent with the provisions of this Act and invalid as it applied to the Act. Nor may an agency invoke its rules governing intervention or participation in its proceedings or other activities in an arbitrary or unreasonable manner so as to thwart the ACA's rights under this subsection. An agency may not promulgate an unreasonable time limit rule aimed at arbitrarily limiting the Administrator's intervention. Nor may an agency act unreasonably by invoking a timeliness rule if it has failed to respond to a specific request by the Administrator for a notice of the applicable proceedings pursuant to section 12.

Section 6(a)(3) describes the right of the Administrator to participate, by written or oral submissions, in agency activities which are informal or unstructured. It provides for the Administrator's participation in only those agency activities or proceedings not covered by subsection 6(a)(2). This category includes agency activities which are not subject to the provisions of the Administrative Procedure Act, contained in 5 U.S.C. 553, 554, 556, or 557, or the administrative procedures of other statutes, or which are not conducted on the record after an opportunity for an agency hearing or public comment. This category includes informal agency processes or activities. Such activities are characterized by an enormous diversity and often by the absence of any structured framework comparable to the rules of a hearing on the record.

A substantial number of important administrative policy decisions are made by informal action, yet often times informal action may occur without any prior notice or participation by the general public. Important policy decisions are often made by agencies through informal processes. Among the activities which might be described as informal activities are the decisions by a Federal agency whether or not to investigate a particular party or a particular subject, action of any kind with respect to negotiation, settlement, publication, application of informal pressure, advising, contracting, dealing, disclosing, planning, recommending, and supervising; also a decision not to undertake any of the proceedings. Such a list of activities is not meant to be exhaustive, however. If a Federal agency activity does not fall within the coverage of section 6(a)(2), it is automatically covered by section 6(a)(3).

In the overwhelming number of actions taken by Federal agencies, ACA will not choose to take any part in informal activities. This provision is so worded to assure, however, that the ACA may participate ing any agency activities if the Administrator believes that it involves a matter which may substantially affect an interest of consumers, as required by section 6(a)(1).

The Administrator, under Subsection 6(a)(3), has the right to participate through submission of written or oral information at all stages of an agency activity. The fact that he has participated in the investigatory phase of an activity does not impair his right to participate in a later phase of the activity, such as the reaching of a settlement, the decision to initiate formal proceedings, or even a decision to discontinue the investigation. The fact that the Administrator may use his authority under Subsection 6(a)(3) at one stage of an activity does not preclude him from using his authority under Subsection 6(a)(2) at other stages of the same proceedings, and vice versa. Many agency processes move from informal or unstructured to formal or structured in character; some move in both directions at different times. Thus, the Administrator will have continuous authority under Subsections 6(a)(2) and 6(a)(3) to represent the interests of consumers in an agency activity.

The provision gives the Administrator considerable flexibility in determining how ACA should submit its views. There is no requirement, however, that a representative of the ACA be allowed to inject himself into normal agency discussion with third parties. To make this clear, Subsection 6(a)(3) specifically provides that a Federal agency is not required to grant a representative of the ACA the right to be present at a meeting the agency holds with another person interested in the same agency activity. The Administrator may in his discretion, and subject to applicable agency rules, determine whether the submission will be written, oral, or both.

This subsection would, under certain circumstances, permit participation to consist of a telephone call. In other cases, the Administrator may decide he should submit a detailed written statement in order to represent adequately the interests of consumers. In such event, this subsection authorizes the submission of such a document.

Subsection 6(a)(3) also specifically requires that in exercising his right to participate through written or oral submissions, the Administrator shall do so in an orderly manner and without causing undue

delay. This provision recognizes the need of a Federal agency to perform its job without unreasonable delay or disruption. A Federal agency has a legitimate interest in preserving the orderly conduct of its process. The Administrator should not, for example, be able to demand unreasonably lengthy delays while he prepares his arguments in situations where prompt agency action is required. Nor should the Administrator be able to present information in a piecemeal and disorganized manner. While the Administrator has a right to participate in a meaningful way at every stage of an agency process, this does not mean that he must continually be provided with an opportunity to comment on every statement made by every party during the course of negotiations.

In this way the agency will continue to be able to operate informally and, where necessary, expeditiously without fear that the rights provided the ACA under this subsection will unduly hamper its operations.

The provision does require, however, that the ACA have a full opportunity to submit its views to the decisionmaking authority before any decision is made either to take, or not take, certain action, where the ACA determines a substantial consumer interest is at stake. The specific requirement that the agency give full consideration to the ACA's submission is intended to insure that the rights extended by this subsection are meaningful. The Federal agency may not brush aside such submissions arbitrarily, capriciously, or in a pro forma manner. Nor is the agency's obligation to afford full consideration to ACA's submission dependent upon the extent of participation, if any, by other persons.

Representatives of various interests are in daily contact with decisionmaking officials to assure fair treatment of their interests. This contact is a legitimate and important source of information, both for private, interests and for Federal agencies. In no way is it intended that this bill would limit contact or representation of any legitimate interests.

Section 6(c) authorizes the Administrator to appear in Federal courts to secure judicial review, or to intervene as of right, or otherwise participate in civil proceedings involving the review or enforcement of any Federal agency action which may substantially affect an interest of consumers. The section is applicable only to proceedings in Federal courts. It grants the Administrator no authority to initiate, or intervene in State court proceedings.

The subsection grants standing to the Administrator, under certain specified conditions discussed below, either to initiate, or to intervene or otherwise participate in, judicial review of any Federal agency action reviewable under law which may substantially affect an interest of consumers.

The subsection also gives the Administrator the additional right to intervene or otherwise participate in any proceeding involving the enforcement of agency action where such action substantially affects an interest of consumers. The Administrator does not have the right to initiate such enforcement actions; however he may petition the agency to initiate an enforcement action.

Under Section 6(c)(1), if the ACA intervenes or otherwise participates in an agency action or activity, the Administrator may as of

right and in the manner prescribed by law, initiate a civil proceeding to review a Federal agency action if the Administrator determines that the agency action may substantially affect an interest of consumers. This provision is necessary because very often important issues involving substantial consumer interests which are raised and considered at the agency level are not definitively resolved prior to judicial review. Therefore, the power to seek judicial review of an agency action is necessary to make ACA's participation at the agency level meaningful.

The ACA is also permitted to initiate a proceeding for judicial review under certain circumstances, and to intervene or otherwise participate in judicial proceedings, without having participated at the agency level. This is analogous to 5 U.S.C. 702, which grants standing to private parties alleging a "legal wrong", whether or not they intervened in the agency activity. It is also consistent with section 6(a)(1) which requires the Administrator to refrain from intervening at the agency level unless such intervention is necessary to protect the interests of consumers. That subsection encourages the Administrator, wherever feasible, to participate in a manner short of intervention. This principle—that the ACA should only get involved when and to the extent that it is necessary to represent a substantial interest of consumers—would be undercut if the Administrator were to be given standing only where he had participated at the agency level. If such were the case, the Administrator would be encouraged to intervene or participate in every agency action in order to preserve his right to participate at the judicial level.

It is expected that the Agency will exercise with restraint its right to initiate a judicial review proceeding where he did not participate in the agency action below. There may be occasion however, when it is necessary for the Agency to initiate such proceedings. For example, the nature or extent of the consumer interest may not be apparent until the agency has issued a final agency order, at which time it would be too late for the ACA to participate at the agency level.

Before the Administrator may initiate a judicial review of an agency action in which he did not intervene or otherwise participate at the agency level, the Administrator must determine that the agency action may substantially affect an interest of consumers, and, prior to initiating the judicial review proceeding, file, subject to the rules of the agency, a timely petition for rehearing or reconsideration if such a petition is *authorzed* by law.

This provision places a greater burden on the Administrator than must be borne by any other person seeking review. Any other person must file for rehearing or reconsideration only where such a petition is specifically required by statute or agency rules. In all other cases, section 10(c) of the Administrative Procedure Act makes clear that an application for rehearing or reconsideration is not required before going to court. This additional burden was placed on ACA because the Committee believes that the host agency should have an opportunity to consider ACA's views before being called into court to defend its decision. This provision is consistent with the principles of the doctorine of exhaustion of administrative remedies. Its purpose is to relieve the courts of responsibility for questions which can be resolved in the administrative process.

If the agency requires that such petition for reconsideration must be filed within a certain number of days of final agency action, the Administrator would be required to do likewise. The Federal agency accordingly petitioned for a rehearing is required to act upon the Administrator's petition within at least 60 days of the date on which it is filed. During the dependency of a petition for rehearing or reconsideration by the Administrator, the period of time for appeal shall be tolled in order to preserve the Administrator's right of appeal.

The Administrator may initiate the judicial review proceeding prior to completion of the sixty day period, even if the agency has not acted, if he determines it is necessary to do so in order to preserve his right to obtain effective judicial review of the Federal agency action. For example, if an agency issues an order permitting a business to take an action in 30 days which the Administrator believes may cause permanent or irreversible damage to the health or safety of consumers, the Administrator must have the right to initiate the appeals process prior to the time the goods are shipped, even if the agency has not acted within that time on the Administrator's petition.

Where the Administrator conforms with the requirement's described above, it can then initiate an appeal of an agency action in which it did not participate, unless the court determines that the Administrator's initiation of such judicial proceeding would impede the interests of justice.

In making such a determination under this subsection, it is anticipated that the court will consider a number of factors, such as the extent to which the suit will burden the parties, the nature of the consumer interest being asserted, the possible consequences of the agency action to consumers, to business, or to the government, and the reasons given by the Administrator for his not participating at the agency level.

The Committee intends that the Administrator's failure to participate in the proceedings at the agency level should be one factor weighing against the Administrator where the Administrator was fully aware of the true significance of the agency proceeding to consumers and had adequate resources to participate, but specifically decided not to participate for the express purpose of obtaining a more favorable forum in which to advocate consumer interests. This would amount to a kind of "forum shopping" which the requirement of a statement of reasons by the Administrator to the court pursuant to section 6(c)(1) seeks to prevent. On the other hand, the ACA will have a very modest budget, it will not have adequate resources to monitor all federal agency activities which may have a substantial effect on consumer interest, and it clearly will not have adequate resources to get involved in all such agency activities. In addition, as noted earlier, there may be instances where the effect of the proceeding on a consumer interest will not be apparent during the course of the agency proceeding. It is expected that where an agency failed to participate at the agency level because budgetary priorities required it to concentrate on other cases which seemed, at the time, to be more important, the Administrator would still have the right to initiate a review proceeding under this subsection.

Section 6(c)(2) gives the Administrator the right to intervene or to otherwise participate in any Federal Court proceeding which involves the review or enforcement of a Federal agency action that the Administrator determines may substantially affect an interest of consumers. This right is not conditioned on whether the Administrator participated at the agency level, since it does not involve the burden of the initiation of a new proceeding. Under section 6(c)(2), the Administrator would be participating in a judicial proceeding which would continue regardless of whether the ACA intervened or participated. This provision is necessary in order to allow the ACA to follow through on its participation at the agency level and because, as noted previously, very often many issues are not resolved definitively until there has been judicial review.

The right of the ACA under section 6(c)(2) to intervene or otherwise participate in civil proceedings involving the enforcement of Federal agency actions which have a substantial affect on an interest of consumers, is an important authority in the Act. Enforcement proceedings include those judicial proceedings initiated to enforce compliance with agency regulations, standards, or orders involving enforcement of an agency action.

As is the case with judicial review of agency actions, it is essential to permit the ACA to intervene or otherwise participate in judicial proceedings to enforce agency actions, in order to insure that its participation at the agency level is meaningful. Similarly, as discussed previously, it is important that the ACA have the right to intervene or otherwise participate in such proceedings where it did not participate at the agency level. These cases, such as an injunction action to enforce compliance with an agency rule, often involve the interpretation of basic statutory authority or rules and challenges to the validity of agency action, they are an important form of administrative law-making. It is not contemplated that the Administrator would intervene in such enforcement actions where the proof and arguments he has available merely duplicate those of the Federal agency. In some cases, however, the Administrator might wish to argue for a different interpretation of a statute or agency rule which has an important effect on an interest of consumers. Thus, the Administrator should not be foreclosed from presenting his arguments to a court whose interpretation of statutes will be binding on Federal agencies.

In seeking to obtain judicial review or to intervene pursuant to sections 6(c)(1) or 6(c)(2), the Administrator is required to do so in the manner prescribed by law. This provision means that his appeal must be lodged within the time permitted by statute for appeal, if the action is of the type so governed by such provision, and that he must fulfill all applicable procedural requirements in presenting his case.

The Administrator's right to intervene as a party in a court proceeding, as well as an agency proceeding, carries with it the right to participate as *amicus curiae*, or as a party for limited purposes, as the Administrator deems appropriate. Where this section does not permit the Administrator so to participate as a matter of right, the court may still permit it pursuant to section 21(a).

There is no authority for the Administrator to intervene in or initiate criminal proceedings. Additionally, the Administrator, upon inter-

vention in civil cases in Federal courts, would have the same rights as any person under Rule 24 of the Federal Rules of Civil Procedure.

This section governs only the Administrator's standing in judicial proceedings. As such, for example, it overrides any existing statute that may require a person seeking judicial review to have been a party to the proceedings at the agency level. Nothing in this section, however, permits the Administrator to obtain judicial review if an agency has acted pursuant to a statute which precludes judicial review in any form. Similarly, even where agency actions are reviewable, the standard which the court will apply upon review is not changed. The section should be read, however, in conjunction with section 21(b)(1), which makes certain actions of other Federal agencies subject to review by the Administrator in connection with the Administrator's right to enforce his authority under this Act.

Section 6(c)(3) explicitly states that participation by the Administrator does not alter or affect the scope of judicial review otherwise applicable to any agency action.

To the extent that appeals are taken in the courts of appeals, the standing of the ACA is to be governed by the applicable jurisdictional statutes concerning such appeals in lieu of the requirements of 28 U.S.C. 1345.

Section 6(d) permits the Administrator to request a Federal agency to initiate a proceeding or activity or to take such other action as may be within the authority of the host agency. For example, where agency rules permit a person to file a formal complaint, the Administrator may also do so. Of course, the Administrator must first determine that his request would be in the interest of consumers. This determination would be made in the same manner as that under subsections 6(a)(2) and 6(a)(3). The subject matter of the request can concern any action—whether substantive or procedural—that the Federal agency has the legal authority to undertake.

The Administrator has no more authoirty than any other person to compel an agency to take an action under this subsection. The Administrator has no power to override on his own authority any action the Federal agency does take. If a Federal agency declines to take the action requested by the Administrator, it must notify him promptly of the reasons for the refusal, and such notice must be made a matter of public record. The host agency should respond as soon as possible to the Administrator's request. In most instances, a response should take not more than 30 to 60 days. If agency rules mandate a shorter period, those rules will govern. The Administrator may appeal a final agency action denying his request or petition, pursuant to section 6(c) and the Administrative Procedures Act.

Section 6(e) provides that appearances by the ACA in Federal agency or court proceedings pursuant to this Act shall be in its own name and are to be made by qualified representatives designated by the Administrator. Such representatives may be attorneys or other qualified representatives provided that such persons are permitted by law to act as designated representatives. Such persons may be on the staff of the ACA or individuals hired specifically for the purpose of representation. It is the intent of this legislation that the ACA direct and control its own representation of the interests of consum-

ers. While many government agencies are represented by the Department of Justice in their litigation, the committee feels strongly that such an arrangement would be entirely inappropriate for the ACA. It would infringe on the ACA's independence and would be untenable in those instances where the ACA is advocating a position in opposition to that of another Federal agency represented by the Department of Justice.

Subsection 6(f) allows the Administrator to request a Federal agency to use its discovery process where he is intervening or participating in an agency proceeding pursuant to section 6(a)(2). The Federal agency is to make use of appropriate powers to obtain information or the appearance of witnesses requested by the ACA, but the extent of discovery is dependent upon the extent of the Federal agency's statutory authority, for the ACA is limited to the discovery authority of the Federal agency before which it is appearing.

The host agency is required to issue such orders for witnesses, materials and information within its statutory powers if the Administrator satisfies the agency's applicable rules of procedure with regard to the general relevance and reasonable scope of the evidence sought.

Discovery may extend to the summoning of witnesses, copying of documents and records, production of books and papers, submission of information in writing, and anything else to which an agency's discovery power extends. When an order is issued pursuant to this section, it may be enforced in Federal court by the agency issuing the order. If necessary, the Administrator may seek through mandamus to require the agency issuing the order to seek enforcement of it.

The committee's formulation does not require the Administrator to be a party before being allowed to have discovery. To require him to become a full party in order to obtain discovery rights would be contrary to the committee's belief that he should become a party only where necessary, and that he should not be given additional incentives for doing so. It is expected that ordinarily he will have already participated to a substantial degree before he requests discovery, and that he will not seek discovery where his interest in a proceeding continues to be minimal.

This subsection does not empower the ACA to utilize the discovery authority of the host agency where the ACA is making written or oral submissions in connection with informal agency activities pursuant to section 6(a)(3). The right of the ACA to utilize the host agency's discovery powers extends only to those instances where it is intervening or otherwise participating in agency proceedings pursuant to section 6(a)(2).

The Administrator is entitled to judicial review of an agency's refusal to grant a subpena and the recipient is, of course, entitled to judicial review either on a motion to quash the subpena in Federal court, or in a proceeding brought in Federal court to enforce the subpena, or other discovery, but Section 21(b)(1)(A) specifies that the Administrator may obtain judicial review to enforce such discovery rights only upon final agency action on the matter in which the Administrator participated, and only to the extent that the Federal agency's disposition of the Administrator's discovery request may have affected the agency's decision.

Section 6(g) specifically prohibits the ACA from formally intervening in proceedings or actions before State or local agencies and courts.

However, section 6(h) specifically affirms the Administrator's authority to communicate with, provide information to, or provide assistance requested by any Federal, State, or local agencies and courts at any time and in any manner consistent with law. The nature, form and extent of such communication, presentations, and submissions will be determined by the particular situation although it must be in a manner consistent with other law. It is anticipated that the Administrator will consult with Federal, State and local agencies and courts on a wide variety of matters. In addition to providing such agencies and courts with information and technical services, the ACA will be able to express its views in an appropriate manner, such as an amicus curiae, on particular matters currently under consideration by such agencies or courts.

Subsection 6(i) provides that each agency shall review its general rules of procedure in consultation with the Administrator and shall issue such additional rules as may be necessary to provide for orderly intervention or participation by the Administrator. This should include rules governing the Administrator's discovery rights in accordance with subsection 6(f). It is recognized that some Federal agencies may wish to operate under more specific rules of procedure to govern the Administrator's intervention or participation. These rules may elaborate the standards under Subsection 6(a)(2) and 6(a)(3), and they may facilitate implementation of the Administrator's rights, but they may not limit or expand these rights in a manner inconsistent with sections 6(a)(2) and 6(a)(3), or in derogation of the rights of other parties in interest.

This subsection requires each Federal agency to issue rules which define those circumstances under which the Administrator may be allowed to make simultaneous submissions under subsection (a)(3) of this section. This will insure that the ACA submissions pursuant to section 6(a)(3) are made with adequate preparation to insure maximum usefulness.

The subsection is intended to direct the Federal agencies to work out with the Administrator the most efficient means of structuring the Administrator's intervention or participation. It can also serve to adapt the ACA's involvement to the respective practices and procedures of each Federal agency. Any additional rules which Federal agencies develop in order to provide for the Administrator's orderly intervention or participation, shall be published in both proposed and final form in the Federal Register so as to provide an opportunity for comment by the public.

Section 6(j) provides that, when a written petition from a substantial number of persons is submitted to the Administrator, requesting that he represent an interest of consumers, the Administrator must notify the principal sponsors of the petition within a reasonable period of time with respect to any action he has taken on the request. If he declines to act, he must provide a written statement of his reasons.

This subsection underscores the responsibility of the Agency for Consumer Advocacy to be responsive to suggestions from all segments

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of the public in areas where the interests of consumers need to be represented. Persons or organizations initiating a request need not themselves be, nor represent, consumers. The Administrator should also be responsive to requests from the business community.

The Administrator, under this subsection, is under no obligation to act in accordance with any petition or request. Furthermore, the Committee does not in any way intend that a petition under this subsection is required in order for the ACA to represent an interest of consumers. Nevertheless, it is important that the Administrator act in a timely manner in the disposition of any such petitions. The Administrator's response must be based solely on the interests of consumers.

SECTION 7. CONSUMER COMPLAINTS

While the Administrator's primary responsibility is to serve as the advocate or representative of the interests of consumers before Federal agencies and courts, he is also expected to serve as the focal point in the Government for complaints by consumers. The responsibility for this function will promote a greater awareness by the Administrator of the actual problems of the consumer, and it will, by keeping him informed about real problems, increase the likelihood that his activities will benefit the interests of consumers. In addition, centralizing this function in the Administrator will also provide a greater capacity for monitoring the responsiveness of other agencies to consumer problems, enhance the likelihood of such complaints reaching the appropriate authority, and promote effective action by other Federal agencies.

Since the Administrator will also be responsible for forwarding the complaints received to business enterprises cited in the complaints, the ACA may also be in a position to promote practicies for the informal resolution of complaints filed by consumers. Such informal resolutions of complaints would avoid the necessity of other Federal and State agencies, or private persons, spending large sums of money to settle complaints best resolved informally by the parties themselves. While the ACA is to act as a clearinghouse for complaints, the ACA has no authority to impose any resolution of such complaints on any person or Government agency.

The Administrator has broad discretion to determine what is, and what is not, a "complaint or other information" for the purposes of this section. This phrase does not require the Administrator to transmit or make available to the public reports, documents, papers, records, studies, recommendations, and other information which he develops, obtains, or contracts for in the course of performing his other functions under this bill. This section provides only a broad outline for the procedures which the ACA will follow in processing such complaints. The Agency has the authority to issue rules, consistent with this section, to establish the specific procedures.

Section 7(a) requires the Administrator to transmit to appropriate Federal, State, or local agencies, any complaint, or other information disclosing an apparent violation of Federal or State law, rule, or order, or a judgment of a Federal or State court, relating to an interest of consumers, or a commercial, trade or other practice that appears detrimental to an interest of consumers, unless the Administrator determines that the complaint is frivolous. This provision will help to assure

that consumer complaints ultimately reach the proper agency and should serve to improve the knowledge of such agencies about the problems of consumers. The ACA is not obligated to forward complaints for which there is no agency with the power to take remedial action.

Section 7(a) further requires Federal agencies to keep the Administrator informed to the greatest practicable extent of any action they are taking on complaints which he has transmitted to them. In the absence of unusual circumstances, periodic reports should be sufficient. The same requirement is not imposed on State agencies, but it is expected that the ACA can work out with State agencies, on a voluntary basis, some procedures for keeping the ACA informed about the outcome of complaints forwarded to State agencies.

Section 7(b) requires the Administrator to notify any producer, lender, retailer, distributor, or other supplier of goods and services of all complaints which he receives concerning such supplier, unless the Administrator determines that such disclosure would prejudice or impede an action, investigation, or prosecution concerning an alleged violation of law. Copies need not be sent each day as received, but may be delivered in a timely manner at appropriate intervals. Although very often the best way for a consumer to get quick action on a complaint is to allow persons who are the subject of the complaint an opportunity to respond to the complainant, in a limited number of instances the interests of justice would not be served by such a process. For example, if a complaint alleges criminal conduct, the Administrator may decide to refer the complaint to the Justice Department without notifying the person complained against, thereby giving him an opportunity to destroy or conceal potential evidence of criminal conduct. For this reason, the Administrator is given limited discretion to withhold notification of some complaints.

Section 7(c) provides for the ACA to make written complaints and other information available for convenient public inspection and copying without charge or, at a reasonable charge, not to exceed cost, in a public document room. The Administrator may choose to make this information available through general computer printouts, rather than by separate filing of each complaint, although the full contents of the complaint shall be available, if requested.

Before making a complaint available, if the Administrator decides to forward the complaint to the person complained against he must provide a reasonable time for such person to comment. This will involve sending him a copy of the complaint and giving him a period of time to answer it. The bill requires the Administrator to make the comments of the person complained against available, together with the complaint, in order to provide a fair presentation.

This subsection also requires the Administrator to permit any agency to which a complaint was transmitted a reasonable time to comment on such complaint before the Administrator makes the complaint available to the public. If the agency transmits its comments to the Administrator within a reasonable time, its comments are to be made available together with the complaint.

Copies of the complaint should be transmitted simultaneously to the agency and to the person complained against pursuant to this section, and ordinarily the same time for comment should be allowed to each.

There is no obligation to allow time for the agency or the complainant to comment on the reply of the person complained against, and no obligation to allow the person complained against time to reply to the agencies, before the complaint is made publicly available.

The Administrator for "good cause" may determine not to make the complaint publicly available as, for instance, where he determines the complaint is frivolous, or libelous or where he determines that making the complaint available would be detrimental to the complainant, such as by subjecting him to retaliation. Unsigned complaints may not be placed in the public document room, although they otherwise may be utilized and forwarded by the ACA. Signed complaints, where the complainant has requested that his identity be protected, shall be placed in the public document room without revealing the identity of the complaintant or information which would reasonably lead to disclosure of the identity of the complainant. However, the Administrator shall place on such complaints an appropriate designation indicating that the complainant has requested that his identity be protected. Where the complainant has requested that his identity be kept confidential, the ACA may also decline to forward the complaint to the person complained about, unless it can do so in a way which preserves the complainant's anonymity. When a consumer complains to the Administrator, the consumer is acting pursuant to a Federal statute and should be encouraged to do so; consequently, defamation or other suits against consumers for filing complaints under the Act which are later placed on public record would be against public policy. In no event should the Administrator destroy any complaint received.

It is the committee's intention that the safeguards to both businesses and complainants incorporated in this subsection will protect businesses from injury to reputation resulting from scurilous attacks by competitors or others seeking to damage such businesses while encouraging individuals with knowledge of wrongdoing by businesses to come forward without fear of retaliation. The committee is particularly concerned that a complainant who is an employee of the business being complained about be encouraged to come forward without fearing loss of his job.

The provisions of section 11(c) are not intended to apply to the public disclosure of complaints and agency responses pursuant to this subsection. In making complaints available, the Administrator is performing a ministerial function and is dealing with information which is or may be placed in the public domain. This does not amount to a release of information contemplated by section 11(c). This subsection establishes adequate safeguards for the person complained against by giving him and any agency to which the complaint is transmitted a reasonable time to comment before the complaint is made available to the public.

Section 8. Consumer Information and Services

Section 8 requires the ACA to develop on its own initiative, gather from other sources—both Federal and non-Federal—and disseminate in effective form to the public, information concerning its own functions; information about consumer products and services; information

about problems encountered by consumers generally, including annual reports on interest rates and commercial and trade practices which adversely affect consumers; and notices of Federal hearings, proposed and final rules and orders, and other pertinent activities that affect consumers. This section sets forth a general responsibility to gather information and disseminate it. Other sections of the Act, as discussed below, provide the Administrator with additional powers to assist him in meeting these responsibilities.

All Federal agencies which possess information which would be useful to consumers are authorized and directed to cooperate with the ACA in making such information available to the public.

Section 9. Studies

Section 9 authorizes the Administrator to conduct, support, and assist research, studies, investigations, conferences, and surveys concerning the interests of consumers. Research, for example, includes such diverse activities as the compilation of published or unpublished materials, interviews, laboratory testing, demonstrations, and analyses of materials. The Administrator may either conduct these activities himself or support them by contracts.

With activities involving substantial outlays of money for operations and equipment, or particular expertise in a narrow or technical subject, it will probably be preferable for the Administrator to contract for these activities.

The Administrator could not, through contracts, underwrite all of the administrative expenses of a government or non-government organization whose exclusive purpose is representation of consumer interests. Rather, it is envisioned that the Administrator might contract with a government or non-government organization to conduct specific research projects, studies, conferences, and/or innovative or experimental programs aimed at demonstrating ways of protecting the interests of consumers.

Section 10. Information Gathering

This section grants the Administrator authority to gather information for specified purposes. Together with Sections 6(f), 9 and 12, it allows the Administrator to collect the information necessary to carry out his functions effectively. Because the interests of consumers are affected by so many different factors, the Administrator will require a wide range of information to use his resources wisely and effectively. Accordingly, the Administrator is given considerable latitude by Section 10 to gather information, subject to stringent safeguards to protect legitimate interests.

Section 10(a) gives the Administrator authority, in a limited set of circumstances, to gather information by requesting from persons reports or answers to specific questions, such as are contained in interrogatories. This section does not provide for the issuance of subpoenas or the inspection or copying of books, records, or papers, or the compulsory appearance of any person, or require the disclosure of information that would violate any relationship privileged under law,

such as a lawyer-client or husband-wife privilege, or the privilege against self-incrimination.

The Administrator is authorized to gather information to the extent necessary to help protect the health or safety of consumers or to discover consumer fraud or substantial economic injury to consumers. Consumer fraud, in this circumstance, is not restricted to technical violations of law but is intended to refer to all deceptive, unfair, or fraudulent practices. Thus, for example, the ACA could gather information on the amount of auto repair work improperly or needlessly done, or economic loss to consumers from ineffective or impotent drugs.

Where information is sought in the form of identical questionnaires to 10 or more persons, it is to be gathered in compliance with the applicable provisions of the Federal Reports Act governing independent Federal regulatory agencies. For the purposes of the Federal Reports Act the ACA is to be considered in the same category as an independent Federal regulatory agency. This section is not intended to make the Federal Reports Act applicable in any instance, such as the issuance of interrogatories, which would not otherwise be governed by the Federal Reports Act.

Before using the authority granted by this subsection, the Administrator must first set forth with particularity the consumer interest to which the information sought pertains, and the purpose for which the information is sought. The Committee intends these statements to be reasonably extensive and not mere perfunctory recitations of broad, general concepts.

Having defined the parameters of his inquiry, the Administrator may then address requests for information consistent with those parameters to any person engaged in industry, trade, or business which substantially affects interstate commerce and whose activity the Administrator determines may substantially affect an interest of consumers.

The Administrator may ask only for information concerning activities and other related information which he determines may substantially affect an interest of consumers. Such information may include data relating to production processes, commercial and financial information, ownership records, or other information concerning trade practices, commercial and financial data, and comparable information. This act gives a person no right to decline to provide information sought by the ACA on the grounds that such information pertains to trade secrets or is otherwise confidential.

The Administrator is not to employ his authority under this subsection at the request of any private organization, other than an organization contracting to perform scientific or technical services under this act.

Section 10(a)(2) provides that the Administrator shall not exercise the authority granted herein if the information sought is already a matter of public record or can be obtained from another Federal agency pursuant to section 10(b) (see below). Section 10(a) also provides that the Administrator shall not exercise the authority to obtain the information if the information sought is specifically to be used in connection with the Administrator's intervention as a party in any agency proceeding, then pending, brought against the person to

whom the request for information is addressed. This exemption is included because in such instances, the Administrator will have an opportunity to use the full range of discovery rights extended parties in such proceedings. The Administrator's additional use of the authority under this subsection would be unnecessary and duplicative.

The Administrator may require that reports or answers to questions be submitted under oath and be filed with him within such reasonable time as he may prescribe. The time prescribed for answering will, of course, vary with the nature of the information sought. Pursuant to subsection 10(a)(3), the Administrator may enforce these requests for information by petitioning a district court of the United States within the jurisdiction in which the respondent is personally served with process or in which the respondent has his principal place of business. A respondent may bring an action to quash an order issued by the Administrator pursuant to this section in any such district court or in the District Court for the District of Columbia.

In order to enforce his order in court, or to resist the motion to quash, the Administrator must carry the burden of proving in court that the order (1) is for information that substantially affects the health or safety of consumers or is necessary in the discovery of consumer fraud or substantial economic injury to consumers and (2) is relevant to the purposes for which the information is sought.

Even if the Administrator makes the necessary showing, the person need not provide the requested information, if he shows that the request is unnecessarily or excessively burdensome.

If a court finds that the Administrator's order is valid, it shall order the respondent to obey the order, on such conditions as it deems just. The court may, for example, extend the time for an answer, require that certain questions be restated, or even in an extraordinarly case, apportion court cost as it deems just.

Section 10(a)(4) exempts small businesses from the requirement to produce or disclose data or other information under this section. "Small business" is defined as a business that together with it affiliates, including those businesses in a franchise relationship, does not have assets exceeding $7,500,000, net worth in excess of $2,500,000, or average annual net income for the preceding two years in excess of $250,000.

This subsection is not intended to prevent small businesses from disclosing information requested by the Administrator. However, the disclosure of such information may not normally be compelled from small business under this section. The Administrator is empowered to compel disclosure of information from a small business if such disclosure is necessary to prevent imminent and substantial danger to the health or safety of consumers and the Administrator has no other effective means of action.

The intent of the subsection is to exempt from the compulsory information gathering authority of the ACA, those persons which are businesses which would be unduly burdened by having to comply with such requests for information because of their small size and lack of personnel. In considering whether any person is a small business under the definition, it is necessary to look at the totality of the business entity.

In order to insure that this exemption does not interfere with the ability of the ACA to carry out its responsibilities under the Act, the Administrator is required to submit to Congress, not later than eighteen months after the effective date of the Act, a report on the effect of this exemption on the ACA. On the basis of this report, the Congress will consider the possible necessity of narrowing the scope or application of the exemption.

The committee believes that the authority of the Administrator under this subsection is necessary in order for him to discharge his responsibilities effectively. To be a competent representative of the interests of consumers, he must have full access to information concerning those interests. The committee has provided him with that access, but placed appropriate limitations on his authority. The authority granted by this section does not extend to the production of documents or appearance of individuals. It is not subpena authority, which is granted to most other Federal agencies. It is the authority, under clear restrictions, to obtain information shown to be necessary from persons who will not be unduly burdened by such requests. The restrictions in this subsection will preclude unwarranted reliance by the Administrator on this authority. The Committee is satisfied that this authority will adequately serve his needs without overburdening other persons.

Section 10(b) provides for the Administrator's access to information possessed by other Federal Agencies. This access is extremely important in insuring that the Administrator will have adequate information to carry out his responsibilities.

Federal agencies are required to allow the ACA access to information and furnish copies of requested documents, papers, and records, at cost. It is expected that agencies will transmit copies of specific, identifiable documents and other information upon reasonable requests by the Administrator, but the Administrator may also, at his discretion, decide to take responsibility for copying the documents himself. In such case the host agency is expected to fully cooperate with the Administrator's wishes.

It is believed that much valuable information can be obtained from Federal agencies. In order for the Administrator to be fully informed about matters affecting the interests of consumers, the Administrator should have the power to draw upon this vast reservoir of information. There are, however, several necessary exceptions to the Administrator's access authority. These limitations are contained in paragraphs (1)-(7).

Paragraph (1) exempts documents classified in the interest of national defense or national security pursuant to applicable Executive Orders and statutes and restricted data, the dissemination of which is controlled pursuant to the Atomic Energy Act (42 U.S.C. 2011 et seq.).

Paragraph (2) exempts policy and prosecutorial recommendations made by agency personnel and intended for internal use only. Disclosure of the full and frank presentation of opinions by agency personnel in the development of any agency position could inhibit this kind of discussion. Many documents consist partly of such policy recommendations and partly of other material. In such cases, the exemp-

tion applies only to the policy recommendations, not to the entire document. It should be possible for an agency to remove the policy recommendations from documents before making the documents available to the Administrator. This is a narrow exception: A listing of policy options is not a policy recommendation. The recitation of facts, test results, or expert technical or scientific opinion on which a recommendation is based is not a policy recommendation.

Paragraph (3) exempts information concerning routine executive and administrative functions which are not otherwise a matter of public record. These are matters of internal management of Federal agencies and concern, for example, such activities as the routing of papers, and the assignment of duties.

Paragraph (4) parallels a similar exception in the Freedom of Information Act. It exempts from disclosure personnel or medical files and similar files, the public disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Paragraph (5) exempts information which the Federal agency is prohibited by statute or judicial decision from disclosing to any other Federal agency, including but not limited to bank examinations and similar financial reports prepared by or for Federal banking agencies relating to the examination, operation or condition of individual financial institutions. This paragraph is not intended to change present law on this subject.

Paragraph (6) exempts information which would disclose the financial condition of individuals who are customers of financial institutions.

Paragraph (7) exempts trade secrets and commercial and financial information described in 5 U.S.C. 552(b)(4). Under applicable judicial interpretations of 5 U.S.C. 552(b)(5) this exemption applies to trade secrets and information obtained from a person which are privileged or confidential. With respect to such information obtained prior to the effective date of this Act, a Federal agency need not disclose it to the ACA if such Federal agency had agreed to treat, and has treated, such information as privileged or confidential and states in writing to the Administrator that, taking into account the nature of the assurances previously given, the character of the information requested, and the stated purpose for which access is sought, to permit such access would constitute a breach of faith by the agency. In effect, this is a "grandfather clause" which extends an exemption to certain trade secrets and other information described in 5 U.S.C. 552 and submitted to an agency prior to enactment.

Paragraph (7) further provides that with respect to information obtained by a Federal agency subsequent to the effective date of the Consumer Protection Act, trade secrets or commercial and financial information described in 5 U.S.C. 552(b)(4) shall not be disclosed if the Federal agency had agreed in writing, as a condition of receipt of such information, to treat the information as privileged or confidential. Such a prospective caveat providing for confidentiality must be set forth in writing by the Federal agency. It may only be used to bar access to such information by the ACA if the Federal agency reasonably found, and so set forth in the agreement, that such information was not obtainable from the supplier of the information or any other

source without such a pledge of confidentiality and that failure to obtain such information would seriously impair the carrying out of the agency's function. If the Federal agency did not make these two specific findings before obtaining the information or did not act reasonably in doing so, it may not deny the Administrator access to the information.

Additionally, the agency is required to notify the person who provided trade secrets and commercial or financial information described in 5 U.S.C. 552(b)(4) of its intention to provide access to the Administrator and the reasons therefor, and shall, notwithstanding section 21(b), provide the person who provided such information a reasonable opportunity, not to exceed 10 days, to comment or to seek injunctive relief.

On those occasions when access to information is denied to the Administrator by a Federal agency pursuant to Section 10(b), the head of the Federal agency should work with the Administrator to find a way to provide as much information as possible in such other form as will meet the agency's objections.

An agency may, in its discretion, waive the restriction contained in Section 10(b) and disclose information protected by this subsection to the ACA, except when other laws specifically prohibits disclosure of such informaiton to another agency.

Section 10(c) restates the provisions of 26 U.S.C. 7213 prohibiting the disclosure by any Federal agency of any information concerning the amount or source of income, profits, losses, expenditures, or any particular thereof which is disclosed solely in an income tax return except as otherwise provided by statute or regulation. The Administrator is also precluded from obtaining a copy of, or any book containing any abstracts or particulars of, a Federal income tax return filed pursuant to the provisions of title 26. The provisions of this subsection concern not only the obtaining, but also the examining or viewing of such privileged information by the Administrator.

Section 11. Limitations on Disclosure

This section sets forth rules governing disclosure of information to the public by the ACA. Because the Administrator will have broad access to information derived from other Federal agencies, and because the release of information by the Administrator could have a substantial effect upon a Federal agency or a business, certain specific limitations have been imposed on his authority to release information. These limitations strike a balance which will allow the Administrator to disclose information essential to the most important interests of consumers, with appropriate safeguards to protect other interests immediately concerned.

Subsection 11(a) states that except as otherwise provided in this section, the Freedom of Information Act shall govern the release of information by the ACA to members of the public. Under the Freedom of Information Act, Federal agencies are required to disclose any information in their possession to members of the public who request it, except for information which falls within one of nine exemptions listed in Section 552, Title 5, U.S.C. If requested information does fall within an exempted category, the agency may withhold it.

Thus, under this subsection, the Administrator is required to disclose all information required to be disclosed by the Freedom of Information Act, but he may, in his discretion, withhold information governed by the exceptions to the Freedom of Information Act, subject to the same restrictions applicable to other Federal agencies.

Section 11(b) deals with the disclosure of information which the Administrator has obtained from another agency.

Pursuant to section 10(b), the Administrator has a right of access to all information in the possession of a Federal agency which the Administrator deems necessary for the performance of his functions, except information within the seven excepted categories. The Administrator, however, is prohibited from disclosing to the public or to a State or local agency, information which is reecived solely from a Federal agency when such agency has notified the Administrator that the information is within the exceptions stated in section 552(b) of Title 5, U.S.C., and the Federal agency has determined that the information should not be made available to the public. While the Administrator should have access to this information, the decision whether or not to release it to the public should remain with the source agency. If the Administrator gathers information solely from another agency and the agency specifies that such information is exempted from disclosure under 5 U.S.C. 552(b) and the source agency has determined the information should not be discolsed and the agency informs the Administrator of such determination in writing, the Administrator is bound by that determination and may not disclose the information. The obligation to make these determinations and to communicate them to the Adiministrator remains with the Federal agency from which the information is gathered.

This subsection also states that, if the information is exempted from required disclosure under 5 U.S.C. 552(b), but the agency has decided that it may be disclosed in a particular form or manner, the Administrator may disclose such information in compliance with the form and manner so prescribed.

Section 11(c) seeks to assure that the Administrator will act fairly in releasing information to the public. It provides general rules which shall govern the release of information pursuant to any authority conferred by the Act, except for information released through the presentation of evidence in a Federal agency or court proceeding pursuant to section 6.

Paragraph (1) states that in releasing information concerning consumer products and services, the Administrator shall determine that such information is accurate, to the extent practicable, and that no part of such information is prohibited from disclosure by law. In addition, this paragraph restates the requirement of section 11(b) that the Administrator shall comply with any notice by a Federal agency that particular information should not be made available to the public or should be disclosed only in a particular form or manner, if such notice is within such agency's authority under the Freedom of Information Act. ACA disclosure of information should be made responsibly and in good faith.

Paragraph (2) provides that when the ACA on its own initiative is disseminating test results or other similar information resulting

from research for which the ACA is responsible and which directly or indirectly discloses product names, the ACA shall do so in a fully accurate context. This limitation on disclosure would not apply to requests for the test results themselves under the Freedom of Information Act.

Specifically, if all products in a similar category to the named product have not been compared, the Administrator shall make such an indication. Furthermore, he shall indicate that there is no intent to rate products tested over those not tested or to imply that products tested are superior or preferable in quality over those not tested. This provision should not be read as prohibiting the Administrator from making any statement comparing the relative characteristics of any product or service. He may make objective comparisons of performance or of certain qualities of a product or service. Frank, factual, and meaningful discussion of various products and services by the Administrator are not precluded by this subsection.

Paragraph (3) requires that changes or additional information which would affect the fairness of information previously disseminated will be promptly disseminated in a similar manner. The intention of this provision is that whenever a serious misstatement has been made, that adversely affects a person to a substantial degree, the Administrator should promptly issue a retraction or such additional information as may be necessary to correct the error. Furthermore, in order to insure that the correction receives the same attention as the original dissemination, this paragraph requires that such correction be disseminated in the same manner as the original erroneous information.

Paragraph (4) requires that where the Administrator is about to release information likely to cause substantial injury to the reputation or goodwill of any person, such as a company, or its products or services, he is required to give notice of the information he is about to release, so as to afford the person an opportunity, not to exceed ten days, to comment or seek injunctive relief, unless immediate release of the information is necessary to protect the health or safety of the public. This does not require the ACA to provide the full ten days. The circumstances of each case will determine the length of time afforded. The objective of this provision is to enable the person to move promptly for a temporary restraining order or a preliminary injunction. It applies only where the injury to reputation or goodwill is both substantial and likely to occur. In order for the injury to be considered substantial there must be substantial likelihood of significant economic harm. Typically, the information involved in such a situation will identify a brand or company name specifically rather than speaking of a generic type of product. The Administrator's responsibility to release information which will protect the health or safety of the public, however, takes precedence over the restrictions in this situation.

Subsection 11(d) deals with suits by persons under the Freedom of Information Act. This subsection provides that when the Administrator is sued to disclose information that he has obtained from another agency, and that agency has specified that such information is not to be released, then that agency will be substituted for the Ad-

ministrator as the defendant in the case. This provision is a corollary to the principle that allows the Federal agency providing information to the ACA to retain authority under the Freedom of Information Act to withhold certain exempted information from public disclosure.

SECTION 12. NOTICE

Section 12 deals with the notice that Federal agencies must give to the Administrator of the Agency for Consumer Advocacy in order to facilitate his intervention and participation. This section is intended to provide a workable system under which the Administrator will be informed of agency proceedings and activities which may affect the interests of consumers, without overburdening the operations of those agencies.

Section 12(a) provides that every Federal agency considering any action which may substantially affect the interests of consumers shall, upon request of the Administrator, notify him of any proceeding or activity at such time as public notice is given.

The term "public notice" includes not only publication of notice in the Federal Register, but also any generalized notification such as a press release, a public statement by a responsible agency official, or other notification either to the general public or to substantial groups of persons.

The Administrator's request under this subsection may be generic. He may ask the FDA, for example, for notice when public notice is given, of proceedings and activities involving over-the-counter drugs, without specifying a particular drug. This subsection should not be read to require the Administrator to reference his request to proceedings or activities about which he has no knowledge. However, the Administrator is expected to use all published sources of information available—for example, subscribing to the Federal Register, to trade publications, and being on the general mailing list of all Federal agencies—to minimize the need for specific notification to him.

The Administrator also is expected to keep his requirements for notice within reasonable limits in order to minimize the burden imposed upon Federal agencies.

Section 12(b) sets forth the responsibility of Federal agencies to provide other notice to the Administrator in cases where public notice is not given. Because many important decisions are made in forums that are not publicly announced, the Administrator will generally learn of these activities only if notified by Federal agencies that such activities are under way. The Federal agency's responsibilities under this subsection are activated by a "specific" request by the Administrator for information concerning a particular agency activity or a more precise category of activities than required in subparagraph (a). In response the Federal agency will give a "status report" and other relevant information. The Administrator is expected to exercise his authority under this subsection with due regard to the resources and responsibilities of other Federal agencies. When notifying the Administrator of an agency action which may substantially affect an interest of consumers, the Federal agency should include a decision not to act which is included in the definition of "agency action" in section 14(3).

Paragraph (1) requires that the Federal agency promptly provide the Administrator a brief status report. The report is to contain a full statement of the subject at issue and a summary of any previous or proposed procedures and actions concerning it. This report may be written or oral, and may be as simple as a single telephone conversation, depending on the complexity of the subject matter and the degree of the Administrator's interest. Federal agencies are expected to be as responsive as possible in complying with this paragraph.

Paragraph (2) allows the Administrator to request such other relevant notice and information, the provision of which would not be unreasonably burdensome to the agency. Such information could include sending the Administrator requested documentary material from agency files, summaries of meetings, notice of outside contracts, and other data. This additional notice and information may be requested when the Administrator deems it necessary in order to facilitate his participation under section 6.

Under both section 12(a) and (b), in determining when to notify the Administrator, agencies will inevitably be involved in deciding whether an action may substantially affect an interest of consumers. The Committee expects agencies to construe this language broadly and to resolve doubtful cases in favor of notifying the Administrator.

The requirements of the notice provisions in section 12 shall not be construed as affecting the authority or obligations of the Administrator of the Agency for Consumer Advocacy or any Federal agency under Section 10(b) and Section 11 of this Act.

Section 13. Savings Provisions

Section 13(a) provides that nothing in this Act affects the duty of the Administrator of General Services to represent the interests of the Federal Government pursuant to Section 201(a)(4) of the Federal Property and Administrative Act of 1949 (40 U.S.C. 481(a)(4)). Under that Act, the Administrator of the General Services Administration represents the Federal Government in the Government's role as a consumer of goods and services. This bill is not intended to affect the performance of this function.

Section 13(b) restates a central concept of the bill: responsibility for the interests of consumers is not confined to the Agency for Consumer Advocacy. The creation of the ACA does not relieve any existing agency of its responsibility to consumers.

Section 13(c) preserves the right of any consumer or group or class of consumers to intervene and participate in Federal agency or court proceedings. The ACA will be an agency with serious limitations on its staff, resources, and time.

Thus, this provision is intended to prevent ACA's actions from foreclosing any other person or group representing consumer interests.

Section 14. Definitions

This section contains definitions of terms used in the bill.

Section 14(1) provides that the definition of "Administrator" means the Administrator of the Agency for Consumer Advocacy created by this Act.

Paragraph (2) defines the term "Agency" to mean the Agency for Consumer Advocacy. This term should be read in conjunction with paragraph (8) in which the term "Federal agency" or "agency" is defined by the Administrative Procedure Act (5 U.S.C. 551). The definition in paragraph (8) is worded so as to specifically include the U.S. Postal Service, the Postal Rate Commission, and any other authority of the United States which is a corporation and which receives any appropriated funds.

"Federal agency" includes every entity which is covered by the definition of "agency" in the Administrative Procedure Act. Federal entities which are specifically excluded by the Administrative Procedure Act definition—such as the Congress, the courts of the United States, the governments of the territories and possessions, the government of the District of Columbia, agencies composed of representatives of the parties to the disputes determined by them, courts martial and military commissions, military authority exercised in the field in time of war or in occupied territory—are thereby excluded from the definition of "Federal agency" in this bill. The definition of "Federal agency" or "agency" does not include the ACA.

Certain Federal entities have been granted a specific exemption in their statutes from some or all of the provisions of the Administrative Procedure Act. Such an exemption from the Administrative Procedure Act, however, is not an exemption from the definition of "Federal agency" in this bill.

As defined in the Administrative Procedure Act (5 U.S.C. 551), the definition of "agency action" in Paragraph (3) includes the whole or part of an agency rule, order, license, sanction, relief, or the equivalent or denial thereof, or failure to act.

The definition of "agency activity" in paragraph (4) compromises all agency processes, or phase thereof, including undertakings of Federal agencies which are not subject to the provisions of 5 U.S.C. 553, 554, 556, or 557, or which do not involve a hearing pursuant to the administrative procedural requirements of a statutory regulation, or practice, or which are not conducted on the record after an opportunity for an agency hearing. This category includes any agency activity or process, or phase thereof, even if it does not result in an "agency action" or involve an "agency proceeding" as defined in paragraph (3) or (5) of this section.

The term "agency proceeding" in paragraph (5) is taken from the Administrative Procedure Act (5 U.S.C. 551) which includes rulemaking, adjudication and licensing activities. As used in this bill, any "agency proceeding" is also an "agency activity," but an "agency activity" is not always an "agency proceeding." While the definition of "agency proceeding" is derived from the Administrative Procedure Act, the Act authorizes the Administrator to intervene or participate in agency proceedings whether or not they are actually subject to the Administrative Procedure Act.

The term "commerce" in paragraph (6) is defined to mean commerce among, between, or within the several States, and commerce with foreign nations. The inclusion of foreign nations in the definition of the term "commerce" reflects the intention that the Agency for Con-

sumer Advocacy be permitted to fulfill its responsibilities in activities which may involve foreign trade.

The term "consumer" in paragraph (7) is defined as any individual who uses, purchases, acquires, attempts to purchase or acquire, or is offered or furnished any real or personal property, tangible or intangible goods, services, or credit for personal, family, agricultural, or household purposes. This definition is deliberately broad. It is intended to cover the individual in all his relations to the goods and services he obtains or uses. It excludes, however, the transactions in which a corporation or other similar entity is acting as a consumer. It also excludes the price any individual, such as a farmer, may get for the goods or services he produces or sells commercially.

The term "Federal agency" or "agency" in paragraph (8) has been discussed supra in conjunction with the term "Agency" in paragraph (9).

The term "Federal court" means any court of the United States including, but not limited to, the Supreme Court of the United States, any United States court of appeals, any United States district court established under Chapter 5 of title 28, United States Code, the District Court of Guam, the District Court of the United States Customs Court, the United States Court of Customs and Patent Appeals, the United States Tax Court and the United States Court of Claims.

The term "individual" in paragraph (10) means any human being.

The term "interest of consumers" in paragraph (11) is defined to include any health, safety, or economic matter which might be important to individuals in their role as consumers. In order to be an "interest of consumers", a concern must be related in some way to a business, trade, commercial, or marketplace offer or transaction. The words "business, trade, commercial, or marketplace transaction" include any portion of the entire process—whether for consideration or not—by which tangible or intangible goods change hands, real or personal property is offered, furnished, purchased or acquired, services are rendered or denied, or credit is extended or refused. The concern need not be tied to a transaction, but must have a reasonable relation to it. There must be a rational link in the chain of causation between the concern and the transaction. The definition provides that the offer or transaction in question need not involve the payment or promise of a consideration so as to make clear that an offer of a free gift made by a businessman in connection with a promotional scheme is included with the meaning of a consumer's interest. A rate or route decision of the CAB, a deceptive advertising case before the FTC, commercial product standards established by the National Bureau of Standards, the rise in the regulated price of oil, and FCC cable television rulemaking proceedings would be a few examples of cases clearly within the scope of the ACA's activities.

The term "participation" means any form of submission and would include oral, written, telephonic, or any other form of submission. In conjunction with this definition, the term "submission" defined in paragraph (15) means participation through the presentation or communication of relevant evidence, documents, arguments, or other information.

The term "person" includes any individual, corporation, partnership, firm, association, institution, or public or private organization other than a Federal agency.

The term "State" means each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Canal Zone, Guam, American Samoa, and the Trust Territory of the Pacific Islands.

Paragraph (15) defines the term "submission" as stated above.

SECTION 15. CONFORMING AMENDMENT

Section 15 establishes Executive Schedule pay levels for the Administrator, Deputy Administrator, General Counsel, and Assistant Administrators. The Administrator will hold an Executive III position, the Deputy Administrator an Executive IV position, and the General Counsel and Assistant Administrators Executive Level V positions.

SECTION 16. EXEMPTIONS

Section 16 provides that the Act shall not apply to all the activities of certain Federal agencies and to some of the activities of other Federal agencies. While there are specific reasons for each agency or activity exempted, generally, it is believed that it would be inappropriate for the ACA to be involved in such agency's activities. Were these exemptions not included in the Act, it would nevertheless be highly unlikely that the ACA would seek to involve itself in such agency's activities, since the jurisdiction of the ACA extends only to those agency functions which may have a substantial effect on an interest of consumers as defined in section 14(11). Because of the nature of the activities of these particular agencies, it was felt that it would be best to explicitly include the specific exemptions in the Act.

The Act shall not apply to the Central Intelligence Agency, the Federal Bureau of Investigation, the National Security Agency, or the national security or intelligence functions, including procurement related to such national security or intelligence functions of the Departments of Defense and State (including the Departments of the Army, Navy and Air Force) and the Military Weapons Program of the Energy Research and Development Administration. It should be noted that many of the purchasing decisions of the Department of Defense may concern consumer goods and do affect the interests of consumers. Such activities are not exempted from the Act. Similarly, activities of the Departments of State which do not relate to national security or intelligence functions are not exempted from the Act. Likewise, the activities of the Energy Research and Development Administration which do not relate to the Military Weapons Program are not exempted from the Act.

The functions and agencies which are exempted obviously do not involve interests of consumers as defined in the Act; and because of the specialized and sensitive nature of their responsibilities, the Committee believes that such exemptions are warranted.

The Act does not apply to labor disputes within the meaning of 29 U.S.C. 113 or 29 U.S.C. 152, or to a labor agreement within the meaning of 29 U.S.C. 171. The purpose of this exemption is to provide that the ACA is not to intervene in proceedings concerning labor-management matters before such agencies as the National Labor Relations Board or the National Mediation Board, in similar labor-management proceedings such as those under the Railway Labor Act, or in proceed-

ings pursuant to the Fair Labor Standards Act. This is consistent with the underlying philosophy of the Act, which is that the ACA should be participating or intervening in proceedings which affect a "interest of consumers" as that term is defined in section 14(11) of the Act—that is, matters which touch on a concern of consumers arising out of a marketplace transaction. These exempted matters have no appreciable relationship to any marketplace transaction.

This provision preserves a principle, a reflected in continuing Congressional intent over the past 40 years, that Federal agencies not get involved in the substance of private labor-management contract negotiations. In the words of a leading Supreme Court opinion, the Federal agencies which oversee labor-management relations and contracts should not "sit in judgment upon the substantive terms of collective-bargaining agreements" (*Porter Company* v. *N.L.R.B.*, 397 U.S. 99, 106). The National Labor Relations Act itself specifically provides that nothing in the Act "shall be construed to authorize the Board to appoint individuals for the purpose of . . . economic analysis" (N.L.R.A., section 4). The provision recognizes the distinction between the labor market, and the product and service market. The ACA's principal concern is with the product and service market, and where unions intervene in the product and service market, they are as much subject to S. 200 as anyone else. But where a matter is concerned exclusively with labor-management disputes or contracts, and falls under the exclusive jurisdiction of a Federal agency overseeing labor-management relations, that matter is beyond any authority expressly granted by this Act to the ACA.

The Committee voted to remove from the Act a provision which would have prohibited the ACA from intervening or otherwise participating in license renewal proceedings of the Federal Communications Commission. It was the Committee's judgment that a broad, across the board exemption should not be explicitly provided for in the Act. The Committee's decision not to include the provision should not be interpreted, however, as expressing an intent that the Act's definition of consumer interest be interpreted in such a way to include license renewal proceedings. In license renewal proceedings generally, the issues contested involve questions of free speech, fairness in broadcasting, equal time provisions, racial discrimination, and other aspects of the broadcasters obligation to serve the public adequately. Such issues do not relate to market place transactions, and since there is no commercial transaction involved between a licensee and a consumer, there is not direct consumer interest involved in the license renewal proceeding. FCC rulemaking proceedings may have a substantial effect on an interest of consumers and in such instances the ACA may seek to become involved.

Pursuant to section 16(b), the Administrator is required to consider the consumer's interest in an adequate supply of food and the interest of farmers in maintaining an adequate level of income and production prior to intervening in any United States Department of Agriculture proceeding. This subsection is not intended to exempt the United States Department of Agriculture from the Act. It is not intended to affect the definition of "interest of consumers" in section 14(11). It in no way limits the authority of the ACA, nor does it require any statement by the ACA. It is included in order to reflect

growing Congressional concern over the price and adequacy of our nation's supply of food.

Section 17. Sex Discrimination

Section 17 states that no individual shall be discriminated against on the ground of sex in any way in any program or activity carried on under the Act. The provision is to be enforced through agency provisions and rules similar to those already established with respect to racial and other discrimination, under title VI of the Civil Rights Act of 1964. However, this remedy is not to be considered exclusive and will not prejudice or cut off any other legal remedies available to a person alleging discrimination.

Section 18. Fairness for Small Business

Section 18 encourages all Federal agencies to take the varied needs of small businesses into account when implementing the provisions of this Act. The Small Business Administration is directed to provide small businesses with information concerning this Act and its implementation, and to provide Congress with a summary of the effect of the Act on small businesses. To the extent feasible, the Administrator of the ACA is required to consult with the representatives of small businesses before establishing the agency's general priorities or policies, and before implementing general procedural rules or regulations which may affect small businesses. The provision also provides that the Administrator of the ACA should give due consideration to the unique problems of small businesses when acting under this Act, and to respond in an expeditious manner to the views, requests, and all other filings made by small business enterprises.

In the past, some have felt that Federal regulatory agencies have devoted a disproportionately large portion of their resources to challenging actions taken by small businesses; or that such agencies have imposed unduly burdensome reporting requirements on small businesses. The limited financial resources of small businesses have made them especially vulnerable to such possible abuses. This section is intended to impress upon the ACA the importance of avoiding any action which makes it appear that it is unfairly burdening small businesses, while avoiding actions involving larger companies.

Of course, this provision is not intended in any way to prevent the ACA from intervening or participating in agency proceedings or court actions substantially affecting the interests of consumers just because such actions affect small businesses. The ACA in the final analysis must be guided by its good faith determination of what actions must be taken to protect the interests of consumers.

For the purposes of Section 18, the term "small business" shall have the same meaning as provided in Section 10(a)(4) of the Act.

Section 19. Authorization of Appropriations

This section provides that there are authorized to be appropriated not to exceed $15 million for the fiscal year ending June 30, 1976, not to exceed $20 million for the fiscal year ending June 30, 1977, and not

to exceed $25 million for the fiscal year ending June 30, 1978. The Act specifies that subsequent legislation for the authorization of appropriations shall be referred in the Senate to both the Government Operations Committee and the Commerce Committee. At that time, these Committees can review the economy, efficiency, and effectiveness of the ACA, and make whatever legislative recommendations they deem appropriate.

Section 20. Evaluation by the Comptroller General

To assist Congress in evaluating the efficiency and effectiveness with which the ACA has performed and in determining what legislative or other changes, if any, should be made in the activities of the Agency, the General Accounting Office is required by Section 20 to submit to the Congress a report on the ACA.

The report of the GAO is to be a detailed, comprehensive documentation of the manner in which the provisions of this Act have been carried out by the ACA. It should include, where appropriate, recommendations such as, (1) possible additional or substitute means of achieving effective representation of the interests of consumers in Federal agency proceedings, or (2) expanding, ending, or restricting any of its authorities.

Section 21. Miscellaneous Provisions

Section 21(a) states that nothing in this Act shall be construed to limit the discretion of any Federal agency or court within its authority, including a court's authority under Rule 24 of the Federal Rules of Civil Procedure, to permit the Administrator to participate in any proceeding or activity to a greater extent than he is entitled to under section 6 or to provide him more notice or information than is required by section 12 or 10(6). This subsection will assure that a Federal agency or court will remain free, for example, to allow the Administrator to participate in a particular meeting at which Section 6(a)(3) does not give the Administrator the right to be present or to allow the ACA to intervene or participate in a de novo court proceeding if such participation is not otherwise authorized by this Act. An agency or court may exercise its discretion to allow further participation as liberally as possible, consistent with proper, fair, and orderly conduct of its proceedings and activities in such proceedings as de novo actions where a Federal agency seeks an immediate injunction without any prior agency action.

Section 21(b)(1) establishes that actions of the Administrator and other agencies under sections 6 (a), (d), (f), (i), and (j) and sections 7, 10, 11, and 12 of this Act shall not be subject to judicial review to the extent specifically provided in paragraphs (A), (B) and (C) of section 21(b).

The actions taken by the ACA or any other person involving other sections of the Act will be subject to review to the extent provided by the Administrative Procedure Act, other provisions of this Act, or other applicable statutes. Subsection 21(b) does not refer to, and in no way affects, the Administrator's rights under Section 6(c) to ini-

tiate, intervene, or otherwise participate in judicial proceedings in-involving agency actions substantially affecting the interests of consumers.

Subparagraph (A) provides that the Administrator may obtain judicial review to enforce his authority under sections 6 (a), (d), (f), (i) and (j) and sections 10, and 12 of the Act. This includes, for example, the Administrator's right to intervene as a party in certain agency proceedings, under section 6(a) (2) and the right under section 10(b) to obtain certain information from other Federal agencies. However, the Administrator may obtain judicial review of a Federal agency determination under section 6(f) of this Act, only after final agency action and only to the extent that such determination affected the validity of such action.

Subparagraph (B) concerns review by other parties of the Administrator's intervention or participation in an agency proceeding or activity. It makes judicial review of the Administrator's actions available only on the grounds that the Administrator's intervention or participation results in prejudicial error to another party or participant. It requires that such review await the outcome of the proceeding or activity and that it be considered by the court in reviewing the entire proceeding or activity. Judicial review is available only where the proceeding or activity is of the type reviewable by law.

This subsection, of course, does not affect judicial review based on grounds unrelated to the Administrator's intervention or participation. For example, if an agency decision in a proceeding in which the Administrator intervened is not supported by substantial evidence on the record considered as a whole, and the decision is reviewable under the substantial evidence standard, a court may still take whatever action it would have taken regardless of the Administrator's intervention.

Subparagraph (C) grants a right of review to any person substantially and adversely affected by the Administrator's action under Sections 6(f) (discovery by the Administrator); 10(a) (information-gathering) and 11 (public disclosure of information), unless the court determines that judicial review would be detrimental to the interests of justice. This condition is designed to relieve the Administrator from the burden of devoting limited resources to unnecessary and time-consuming litigation.

Section 21(b) (2) states that the Administrator's initial determination pursuant to section 6, that the effect of an agency proceeding or activity substantially affects an interest of consumers, is deemed not to be a final agency action and thus not subject to judicial review, except where the Administrator's intervention or participation is considered as part of the review of final agency action permitted by subsection 21(b) (1) (B).

This subsection is intended to apply an orderly framework for judicial review arising from the Administrator's intervention and participation in agency proceedings and activities.

Section 22. Transfer of Consumer Product Information Coordinating Center

This section transfers the officers, employees, assets, liabilities, contracts, property, and records used in connection with the functions of

the Consumer Product Information Coordinating Center (CPICC) within the General Services Administration. The Office of Management and Budget will have responsibility for determining what should be transferred under this section.

Section 22(b)(2) provides that employees transferred shall serve in positions within the ACA without reduction in classification or compensation, except for cause, for at least 1 year.

Section 23. Public Participation

Section 23(a) provides that each Federal agency shall issue appropriate regulations and rules of procedure concerning the procedural rights of individuals who may be affected by agency action. All Federal agencies are required by this provision to conduct a complete review of their applicable rules, interpretations, guidelines, standards or the like in order to determine whether they can, by changing or adding to such material, increase participation in agency activities by private representatives of consumers and other interests. This section requires each agency in the Federal Government to have rules that describe the right persons have to—

(1) petition the agency for action;
(2) receive notice of the agency proceedings;
(3) file official complaints with the agency;
(4) obtain information from the agency; and
(5) participate in agency proceedings.

Federal agencies are not required by this section to issue any rules which an agency lacks the authority to issue under other laws.

In order to provide the public with an opportunity to comment on the agency's proposed rules, the provision requires that all changes or additions an agency propose to make in its standards, procedural rules, interpretations, guidelines or the like in order to increase public participation shall be published in the Federal Register.

Section 23(b) requires each Federal agency to take all reasonable measures to reduce or wave procedural requirements for individuals for whom such requirements would be financially burdensome, or which would impede or prevent effective participation in agency proceedings. For example, such agency rules should, where appropriate, waive or reduce the cost of transcripts; eliminate the requirement in some agency statutes that participants must serve papers on all parties to any formal proceedings; and require the agency's technical staff to help participants obtain any information contained in agency documents and records that is needed for use in agency proceedings.

Section 23(c) requires that rules of procedure of the nature described by this section be published and disseminated in a manner best designed to inform and be understood by the general public. This should include such rules adopted by Federal agencies prior to enactment of this Act.

Section 24. Cost and Benefit Assessment Statements

Section 24(a) requires that each Federal agency which is authorized to promulgate rules (as defined in section 551(4) of title 5, United States Code) prepare a cost and benefit assessment statement with

respect to any rule governed by section 553(b) of title 5, United States Code, which is likely to have a substantial economic impact. No agency shall be required to comply in any way with section 24 with respect to rules which, in that agency's sole discretion, are judged not likely to have a substantial economic impact. It is within each agency's discretion to determine the applicability of the word "substantial" as used in this subsection to its rules. Each cost and benefit assessment statement shall be short and concise and shall be accompanied by such supporting documentation as the agency, in its discretion, determines to be necessary or appropriate. Each statement shall consist of three elements: (1) a brief description of the estimated costs that are foreseeable as a result of the effective implemenation of such rule; (2) a description of the estimated benefits that are foreseeable as a result of the effective implementation of such rule; and (3) a statement of the apparent relationship, if any, between such foreseeable benefits and such foreseeable costs.

To the extent deemed practicable by the agency responsible for its preparation, each cost and benefit assessment statement shall indicate in an appendix, the assumptions, if any, which were made by the agency regarding the means, or alternative means, and attendant costs of compliance with the proposed rule, including any manufacturers' costs and consumer costs reflected in the price of any product affected by such rule. This requirement is included, because in order for an agency to estimate the economic costs of the implementation of a proposed rule, that agency will, of necessity, be making certain assumptions with regard to the various means of compliance with the rule. The agency is free to make whatever assumptions it believes appropriate with respect to the means by which the rule will be complied with—including, if possible the most cost effective means of compliance—but in assessing costs of compliance, the agency should disclose both the origin and nature of its assumptions with regard to such costs. For example, in assessing the cost to a manufacturer of a production modification, the estimate of the cost of such modification to the manufacturer would be an assumption which the agency should describe. (Adequate authority is provided in subsection (d) to enable the agency to obtain such information.) If the agency seeks to estimate the direct economic cost of such modification to the consumer, the percentage of the markup from the cost of production to the manufacturer would be another assumption which the agency should describe. If estimating a particular markup is unfeasible or would have any undesirable effect such as stifling competitive market forces with regard to the consumer price of such modification, the agency should refrain from expressing an estimated consumer cost. In such instances, the agency may still express the cost of the modification in terms of estimated production costs even where it is unfeasible to include the cost to the consumer. In all cases, however, the agency should critically evaluate production cost data submitted by any person.

The Committee does not intend that the requirements of this section shall place any unreasonable burden on any Federal agency or interfere in any way with any agency's ability to fulfill its responsibilities under the law. The inclusion of this section in this Act reflects the Committee's belief that Federal agencies, when promulgating rules which have a substantial economic impact, should attempt to

estimate the foreseeable economic and noneconomic costs and benefits of the implementation of such rules. At the same time, the Committee feels very strongly that the requirements of this section should not in any way modify or affect the substantive laws governing the agency's rule-making authority. Subsection (k), discussed below, is intended to make this clear.

Subsection (b) requires a Federal agency to include in a Federal Register notice of proposed rule-making regarding a rule for which the agency intends to issue a cost and benefit assessment statement, a request to interested persons to submit to the agency, in writing, comments, materials, data, information, and other presentations relevant to the preparation of the cost and benefit assessment statement.

Subsection (c) states that within the time prescribed for consideration of the proposed rule for which the agency is preparing a cost and benefit assessment statement, such agency shall seek to obtain from other Federal agencies and persons, whatever information or materials it deems relevant to the costs and benefits likely to ensue from the effective implementation of such proposed rule. In addition, this subsection makes clear the intent of the Committee that no requirement under this section contribute to any delay in any agency consideration of any regulation. To this end, no extensions of time for comment shall be granted by any agency solely for the purpose of receiving any information or materials to be utilized in the preparation of a cost and benefit assessment statement.

Subsection (d) requires any person who contends that a proposed rule, if implemented, will result in increased or decreased costs, to furnish to the promulgating agency all information upon which it bases its assertion if such information is in his control. In addition, the promulgating agency is authorized to require the submission of information, or materials which it deems relevant to the preparation of a cost and benefit assessment statement from a person who may be directly affected by the promulgation of the proposed rule, if such information is in the possession or control of such person. Any person who knowingly and willfully falsifies, conceals or covers up or makes any false, fictitious, or fraudulent statements or representation, or who in any way violates section 1001 of title 18, United States Code, in connection with any materials or information, submitted pursuant to this subsection, shall be liable for prosecution under section 1001 of title 18, United States Code.

If a person who makes a contention under this subsection is unwilling or unable to supply the necessary information and materials to justify such contention, the promulgating agency need not consider the contention of such person in its estimation of the costs and benefits of the proposed rule. Whenever an agency is requesting information from a person under this subsection, the agency may seek to compel disclosure of such information or production of such requested materials by issuance of a subpoena or other appropriate order, which order shall be enforceable in court if the order is not needlessly broad and if the materials and information sought are relevant to the preparation of a cost and benefit assessment statement. As subsection (j) makes clear, a court's inquiry would be limited to the enforceability of the subpoena.

Subsection (e) requires that all cost and benefit assessment statements prepared by an agency be initially published in one yearly report

in the Federal Register. Publication in the manner required by this subsection will provide a means for interested persons, the Congress and other government agencies to assess the performance of the agency with respect to the estimated costs and benefits of promulgated regulations which have a substantial economic impact. This requirement seeks to provide a means for determining which government programs entail unreasonable or excessive costs, as stated in the declaration of purposes in section 2(b)(4).

Any agency preparing a statement, pursuant to this section, should make available to interested persons as much information relevant to a cost and benefit assessment statement as is possible, consistent with the Freedom of Information Act. The Freedom of Information Act will, of couse, govern the agency's authority to withhold any information. Where, for example, it is possible for an agency to release information without compromising the confidentiality of the holder of a trade secret, the agency is encouraged to release the information in a way which provides such protection. Other requirements of the Freedom of Information Act, including the publication of a listing of available materials, are expected to be complied with by each agency. Each agency should implement this section in a way which reflects a principal purpose of this section, that all interested persons be provided with all information necessary to evaluate the costs and benefits of rules for which assessment statements have been prepared.

Subsection (f) requires the President to issue regulations providing guidelines for Federal agencies regarding the nature and content of the cost and benefit assessment statement and regulations which insure that any agency preparing such a statement shall be able to obtain information which it deems necessary or appropriate to the preparation of such a statement. The regulations providing guidelines should give the agencies a maximum amount of discretion with regard to the nature and content of the required statements so that each agency can implement the requirements of this section consistent with that agency's particular statutory mandates. It is the intent of the Committee that the regulations which insure that the agencies shall have access to necessary information shall be written in a way which guarantees maximum access by the agencies to relevant information.

The President is required to promulgate regulations on the basis of recommendations submitted to the President by the Office of Management and Budget, the General Accounting Office, and the Agency for Consumer Advocacy. It is the intent of this subsection that the President will consider from among the diverse proposals for regulations which are submitted by the three named agencies and the public. Four fundamental principles stressed through this section should be incorporated into regulations issued by the President. They are:

(1) that the requirements of this section shall not in any way alter the mandate of any agency, or impose any additional criteria or prerequisites for agency rule-making.

(2) that the requirements of this section shall not impose any unreasonable or excessive burden in the administrative process; and

(3) that interested persons have maximum access to information, materials and data used in the preparation of a cost and benefit assessment statement and

(4) that agencies have maximum access to information and materials for use in connection with the preparation of cost and benefit assessment statements.

The President is required to promulgate the required regulations in accordance with procedures set forth in subsection (b) and (c) of the new section inserted by sections 202(a) of Public Law 93-637. The procedures established by these subsections will insure that all interested persons have an opportunity to present relevant comments on proposed regulations. The President is required to give public notice of proposed rule-making under this subsection within sixty days after the effective date of this Act.

The President is required to transmit the regulations issued by the Congress, and is required to submit in addition the recommendations submitted to the President by the Office of Management and Budget, the General Accounting Office, and the Agency for Consumer Advocacy. The Congress shall have 90 legislative days to consider the proposals for regulations after which time the regulations shall go into effect unless either House of Congress by resolution of disapproval disapproves such regulations. However, Congress may by concurrent resolution make such changes in such regulations as it deems appropriate within such 90 legislative day period in which case such regulations will take effect in such modified form. A regulation or guideline which conflicts with any statutory requirement of an agency should not be considered applicable to that agency as stated in subsection (1).

Subsection (g) requires each Federal agency, or officer, that proposes legislation to the Congress which is likely, if enacted, to have a substantial economic impact, to accompany such legislative proposal with a cost and benefit assessment statement prepared in accordance with the provisions of subsection (a). A committee of Congress having jurisdiction over such legislative proposal may permit an agency submitting such proposal to postpone compliance with this subsection for up to 30 days from the date of submission to the Congress of such legislation.

Subsection (h) defines the terms "rule", "legislation", "benefit" and "cost" as used in this section. In drafting these definitions, the Committee has attempted to define both "cost" and "benefit" in the broadest way possible. It is for each agency preparing a statement under this section to decide which aspects of the definitions of "cost" and "benefit" are relevant to a particular promulgated rule or legislative proposal. If, in an agency's judgment, the particular benefits of a proposed rule are noneconomic benefits, such as benefits to the health and safety of individuals or benefits to the quality of life, the agency is not required or encouraged to necessarily seek to quantify such benefits or to express such noneconomic benefits in economic terms; although such agency may do so if it believes that such is necessary in order to present the benefits fairly.

Subsection (a) requires the agency to include in the statement the apparent relationship, if any, between foreseeable benefits and costs. Because of the breadth of the definitions of "costs" and "benefits" and the broad discretion which the agency is expected to exercise in determining which costs and which benefits are significant with respect to a proposed regulation or legislative proposal, it may be that in some instances there would not be an apparent relationship between the costs

and the benefits which could be expressed in a meaningful way. In such instances, it will suffice for the agency to set forth the costs, to set forth the benefits, and to state that it would not be feasible or useful to seek to state a relationship between the costs and the benefits.

In computing the estimated costs of a proposed regulation which would involve any production modification, the Committee intends, as stated previously, that the cost of such production modification be expressed in a way that discloses the estimated cost to any person required to make such modification. While the agency, of course, may estimate the cost of such production modification to the consumer, in such instances, it is important that the statement indicate assumptions which were made by the agency with regard to cost differential between the cost to the manufacturer and the cost to the consumer—i.e.—the mark-up. It may be, in some instances, that the agency will deem it unfeasible to estimate the cost of such modification to the consumer. In such a case, the agency is not required to make such an estimate.

Subsection (i) requires the Comptroller General of the United States to prepare a study of the implementation of this section three years after the effective date of this section, and to submit such study to the Congress. The report shall include an evaluation of the advantages and disadvantages of cost and benefit assessment statements and the nature and extent of Federal agency compliance with this section. Among other recommendations, the report shall include the Comptroller General's recommendations with regard to the necessity or advisability of the provisions of this section and of the need to amend subsection (j) which prohibits any judicial review of any of the provisions under this section.

Subsection (j) prohibits any court from reviewing in any way any cost and benefit assessment statement prepared pursuant to the requirements of this section or the extent of compliance of any such statement with the requirements of this section or the compliance by any agency with any requirement of this section. Pursuant to subsection (j), judicial review of final agency rules themselves will of course continue to be available under 5 U.S.C. 702.

Furthermore, since the statements prepared pursuant to this section are nonreviewable, it is the intention of the Committee that no statement prepared pursuant to this section be considered by any court as a ground for invalidating any aspect of any rule promulgated by any agency. However, where an agency is currently required to make an assessment of the costs and benefits of a particular proposed regulation, and where such assessment is currently admissable with respect to a review of the validity of such regulation, in such case, a reviewing court shall continue to consider such assessment prepared pursuant to any other authority without regard to any provision of this section.

No officer or agency of the United States other than the agency responsible for the preparation of a cost and benefit assessment statement and the duly authorized committees of the Congress shall have authorty to review, in any way, any cost and benefit assessment statement or the extent of compliance of any such statement with the requirements of this section or with regulations promulgated under subsection (g) of this section. This provision is intended to emphasize the strong belief of this Committee that each agency responsible for the preparation of cost and benefit assessment statements under this

section shall have complete independence and full control over all aspects of the preparation and dissemination of such statements. While the Committee recognizes that uniformity is often necessary for the smooth functioning of our massive Federal bureaucracy in order to avoid any unreasonable burden or delay, the Committee believes that, with respect to the requirements of this section, each agency should control the implementation of this section, and that the regulations promulgated pursuant to subsection (g) of this section should reflect this.

Subsection (k) states that the requirements of this section shall supercede any existing executive orders pertaining to the preparation of any economic, cost and/or benefit, inflationary or other like statement which an agency may presently be required to prepare. Executive Order 11821 dated November 17, 1974 would require all executive agencies to issue inflationary impact statements. The Committee believes it would be unreasonable and overly burdensome to require such agencies to prepare both cost and benefit assessment statements and inflationary impact statements.

The Committee does not intend for this section to change, in any way, the responsibilities of any agency to promulgate particular rules.

In order to leave no doubt about this very important point, Subsection (k) specifically provides that enactment of this section shall not in any way supercede or alter the substantive standards governing the applicable agency's rulemaking authority. These standards are embodied in "statute, regulation, or lawful practices." The latter phrase refers to practices established by, or pursuant, to statutes, regulations, or court decisions.

The provision assures that enactment of this section will not alter any applicable statute, regulation, or lawful practice which may now govern the extent to which an agency may consider the costs or benefits of its proposed action in exercising its rule-making authority. In a number of instances, agency statute, regulation, or lawful practice require that other considerations be paramount. For instance, the statute governing the Food and Drug Administration's regulation of food additives, the Delaney Amendment (21 U.S.C. 348) specifically provides that an additive shall be declared unsafe if it causes cancer in animals. The statutory standard leaves little or no discretion to the Agency to take economic matters into account in establishing standards of safety under this provision. Similarly, the law requires the Nuclear Regulatory Commission to place preeminent emphasis on safety when regulating nuclear power plants. Thus, if agency consideration in connection with its rule-making of a statement prepared pursuant to this section would be inconsistent, in any way, with the agency's statutes, regulations or lawful practices, then the provisions of subsection (k) would apply. Where the requirements of the statute are broader and explicitly contemplate the consideration of costs by the agency, then the cost and benefit assessment will assist the agency in its consideration of a proposed rule or proposed legislation.

Finally, subsection (k) also specifies that if, with respect to any promulgated rule, the promulgating agency is required by law to issue any statement which would include an assessment of the estimated costs and benefits of such rule or legislative proposal, such as in the case of a National Environmental Policy Act Statement, the agency

shall be relieved of any responsibility to prepare any cost and benefit assessment statement pursuant to this section.

Subsection (l) states that the provisions of this section shall become effective upon the effective date of implementing regulations submitted by the President pursuant to subsection (g). Necessary sums are authorized to be appropriated for the fiscal years 1976, 1977, and 1978. It is the intention of the Committee that the manner of implementation of the requirements of this section by an agency shall be dependent on the amount of funds appropriated by the Congress to carry out the provisions of this section. No agency shall be required to expend funds not appropriated under this subsection to carry out the requirements of this section, if such expenditures would hinder such agency's ability to carry out its other responsibilities.

Section 25. Effective Date

This section provides that the Act will take effect, except for section 24, 90 calendar days following the date of its enactment or before, should the President prescribe an earlier time for the establishment of the Agency. The section also provides that officers of the Agency are subject to be paid at the rates provided for in the Act, at any time after the date of enactment of the Act.

Section 26. Separability

This section is a separability clause which provides that, if any part of the Act is declared invalid, the remainder of the Act will continue in force.

CHANGES IN EXISTING LAW

In compliance with subsection 4 of rule XXIX of the Standing Rules of the Senate, 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 italic, and existing law in which no change is proposed is shown in roman):

Subchapter II of Chapter 53 of Title 5, United States Code

§ 5314. Positions at Level III.

* * * * * * *

(60) Administrator, Agency for Consumer Advocacy.

* * * * * * *

§ 5315. Positions at Level IV.

* * * * * * *

(100) Deputy Administrator, Agency for Consumer Advocacy.

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§ 5316. Positions at Level V.

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(135) General Counsel, Agency for Consumer Advocacy.

(136) Assistant Administrators, Agency for Consumer Advocacy (5).

ESTIMATED COSTS

In accordance with section 252(a) of the Legislative Reorganization Act of 1970 (Public Law 91–510), the Committee estimates that the costs of implementation of S. 200 would be as follows:

First year	$15,000,000
Second year	20,000,000
Third year	25,000,000

RECORD VOTE IN COMMITTEE

March 12, 1975

In compliance with section 133 of the Legislative Reorganization Act of 1946, as amended, rollcall votes taken during Committee consideration of this legislation are as follows:

Vote on Amendment to delete from section 16 exemption for FCC license renewal proceedings: 5 years—3 nays.

Yeas:	Nays:
Allen	Percy
Chiles	Javits
Nunn	Ribicoff
Brock	
Weicker	

Vote on Amendment to delete from section 16 eexemption for proceedings concerning labor-management relations: 6 yeas—7 nays.

Yeas:	Nays:
Allen	Jackson
Chiles	Percy
Nunn	Javits
Brock	Ribicoff
Weicker	Glenn
(Proxy)	(Proxy)
McClellan	Muskie
	Metcalf

FINAL PASSAGE: Ordered reported: [1] 8 yeas—1 nay.

Yeas:	Nays:
Chiles	Allen
Glenn	
Percy	
Javits	
Brock	
Weicker	
Ribicoff	
Roth	
(Proxy)	
Jackson	
Muskie	
Metcalf	

[1] Committee rules provide that on "Final Passage" proxies may be allowed solely for the purpose of recording a member's position on the public record.

SUPPLEMENTAL VIEWS OF MR. METCALF

The Consumer Protection bill reported by this committee in 1972 included two basic provisions for supporting state consumer activities. One provided grants-in-aid to improve the enforcement and implementation of consumer protection laws, promote consumer education, and strengthen the professional competence of State regulatory agencies. The other authorized the Federal Administrator to intervene in State or local proceedings only on the request of the governor, an official duly authorized by a State to represent consumers, or by a State or local agency or court.

It is most unfortunate that the committee did put these provisions into the bill this year. One of the major criticisms voiced over and over by opponents is that the measure before us would concentrate administrative powers in Washington. My amendments recognize the role of the States and local governments in consumer protection and provide incentives for State and local enforcement and public policy in this critical area of governmental action.

Ten governors supported the Federal intervention approach to consumer protection which was in the 1972 version of the bill. They were: Forrest H. Anderson (Mont.), John A. Burns (Hawaii), Jimmy Carter (Ga.), Daniel J. Evans (Wash.), Wendell H. Ford (Ky.), William L. Guy (N.D.), Stanley K. Hathaway (Wyo.), Milton J. Shapp (Pa.), George C. Wallace (Ala.) and John C. West (S.C.). Governor Ronald Reagan (Cal.) was the only governor to express opposition.

Such intervention by the Federal Administrator (and the expertise and resources he brings with him) would be only at the request of the states and such Federal Administrator would always have the option to determine whether or not he could respond to such requests. There is no requirement in my provision that the Administrator intervene in State and local proceedings. He must determine that the proceedings may substantially affect interests of consumers and he must assess his own capability to represent adequately his position before the State or local agency or court. Finally, he is permitted to come in only if he receives a request in writing from the governor or any officials designated by the governor for such purpose, the head of an agency or an official duly authorized by a State to represent the interests of consumers or the head of any State or local agency or judge of a court conducting a proceeding.

Thus, any constitutional problems as to Federal interference with the jurisdiction of State and local governments are averted by the restricted nature of the provision.

A $900 billion consumer expenditure is projected for this year. This will be about two thirds of our gross national product. The lion's share of that expenditure will be subject to State and local laws, regulations, and other controls. Transportation, food, the gas and electric

bill, intra-state telephone service, personal effects and charges and insurance premiums are a few of these consumer items.

Just four industries—electric, telephone, natural gas and insurance companies—collect some one hundred and fifty billion dollars a year (1972 data) from consumers. Almost 90 percent of that $150,000,000,000 is regulated by State, rather than Federal, commissions. The States are where the action is on protection of the everyday, checkbook items in the consumer's budget. It is the State commissions, and the consumer interests which need representation before them, that must be strengthened if Congress is to provide meaningful consumer protection.

Testimony in the S. 200 hearing record shows that State officials want help from the Federal Government in presenting the consumers' case in proceedings before State commissions. Massachusetts Lt. Gov. Thomas P. O'Neill, Jr. and Rhode Island Attorney General Julius Michaelson, in testifying for amendments which would provide such help, stated that electric rates were the main consumer concern in their states. Assistance to the States was also advocated by Ralph Nader and witnesses from the Consumer Federation of America and United Automobile Workers. Similar viewpoints were presented to the Committee last fall, during our hearings on regulatory reform, by former Federal Power Commission Chairman Lee White, Pennsylvania Public Service Commissioner Herb Denenberg, and the Hon. William Doub, who has served on both State and Federal regulatory commissions.

The grant section, designed to strengthen the capacity of the States in their consumer protection work, would have had a ceiling authorization of $20 million in fiscal 1976, $40 million in fiscal 1977 and $50 million in fiscal 1978.

Cost of the amendment authorizing intervention in State and local proceedings would have been included in the over-all authorized spending limits in S. 200, which are $15 million for fiscal 1976, $20 million for fiscal 1977 and $25 million for fiscal 1978. The $25 million for 1978, for all of the agency's programs, costs, and activities, is less than what some 200 electric utilities reported spending on regulatory commission expenses in 1972.

In regulatory matters it is necessary to spend money in order to save far greater amounts for consumers of services provided by regulated corporations. Virginia State Senator Clive L. Duval, 2d, in his statement to the Committee in support of both the grants and intervention amendment, stated that the two large utilities—electric and telephone—in his state probably spend about a quarter of a million dollars in connection with each rate increase application to the State regulatory commission. Speaking as an experienced legislator who for years has intervened in State commissions at his own expense on behalf of his constituents he stated that he cannot take the time to prepare properly for these cases and "even more important, we do not have the financial resources to hire expert witnesses—accountants, engineers, financial experts—to rebut the well-prepared case presented by the utility in support of the rate increase."

The study recently conducted by the Subcommittees on Reports, Accounting and Management and Intergovernmental Relations, in cooperation with the Congressional Research Service and State utility

commissions, determined that last year investor-owned electric and gas utilities were granted more than $3 billion in rate increases in the general rate increase proceeding which Senator Duval described. These utilities received more than twice that amount through fuel adjustment clauses, for a total of $9.6 billion in rate increases in 1974, more than one and a half times as much as they had been granted in the previous quarter of a century. The complicated fuel adjustment clause increases are even more difficult to analyze and combat than general rate increase requests. Therefore the widespread use of fuel adjustment clauses adds compelling urgency for meaningful Federal assistance to consumers and State commissions in utility matters.

The wording of Section 6(g) of S. 200 is abjectly negative with reference to intervention. Section 6(h), however, permits communication with and provision of information and assistance to the States, but this is insufficient. There is no positive authority for the Administrator to intervene as can be found in 50 USC 481 (a) 4 where the General Services Administrator and the DOD are authorized to represent Federal agencies in proceedings before Federal and State regulatory bodies. DOD and GSA have intervened in hundreds of State commission proceedings during the past twenty six years. I have never heard any suggestion or inference that this Federal intervention has been improper. These agencies have saved the Federal Government hundreds of millions of dollars.

If the GSA can intervene in a utility rate case on behalf of the Government without seeking permission, why cannot the Administrator intervene on behalf of the U.S. consumer upon request of the States? It should be noted that the Administration is now attempting to get the GSA not to intervene in electric utility rate cases, as Congress authorized the agency to do a quarter of a century ago.

The need and support for Federal intervention in State commissions and courts on behalf of consumers has been documented in many volumes of hearings by the committee and its subcommittees during the 91st, 92nd and 93rd Congresses. The case is more compelling in the 94th Congress, because of the massive increases in utility bills. But the position taken by the Committee is a giant step backward from the responsive and constructive approach it took in the consumer protection bill it approved in 1972.

LEE METCALF.

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SUPPLEMENTAL VIEWS OF MR. WEICKER

S. 200 comes as a breath of fresh air to the American consumer. This bill would create an independent consumer advocate who will represent all Americans and will strive to secure for them the equity and impartiality of regulatory proceedings. I strongly support the overall objectives of this legislation; however, I cannot in conscience vote to provide exclusions from its provisions to any individual, group of individuals, federal or private organizations. As a practical matter, the Agency for Consumer Advocacy would probably not involve itself in the activities of the CIA, FBI, or the types of labor/management proceedings outlined in section 16. What concerns me is the continuance of a practice to provide exemptions for the powerful. One of the greatest issues in this country is whether there are two levels of the law; one which applies to the economically and/or numerically strong, and one that applies to the average citizen who does not have the wherewithal to stand up and be heard. The purpose of S. 200 is to provide that voice for the average citizen and on that basis I will vote to strike all exemptions from this bill. To do otherwise would deny equal application of the principals set forth in S. 200 and damage the credibility of this new Agency from the outset. For the Congress to legislate such exemptions further damages our credibility. Neither consumerism nor democracy need exemptions.

LOWELL P. WEICKER.

INDIVIDUAL VIEWS OF MR. NUNN

While I have grave reservations about the governmental principles embodied in this legislation, I voted to report the Consumer Protection Act favorably because of two amendments adopted by the Committee. My vote on final passage will depend to a large extent on whether these amendments are retained in the bill.

The first of these amendments provides that each rule, regulation and law proposed by Federal agencies be accompanied by a statement assessing its cost and benefit to consumers. In my estimation, this requirement should provide a picture of the true cost of government programs in economic terms, enabling consumers to understand for the first time the actual cost of their Federal Government. I feel that this amendment is of great importance to the free enterprise system of our Nation.

The second amendment broadens the exemption of small businesses from the information-gathering powers of the Agency for Consumer Advocacy under section 10 of the bill. As introduced, the bill provided that small businesses with not more than 25 employees would be exempt if they met certain other criteria now used by the Small Business Administration. I believe that it is unreasonable to set a limit based on the number of employees, because it provides little indication of the true financial condition or size of a business. As a result of this amendment, only those businesses with sufficient financial resources will be subject to the information-gathering powers of the ACA, which in my opinion presents the major potential source of harassment for the average American businessman from this new agency.

SAM NUNN.

MINORITY VIEWS OF MR. ALLEN

Ignoring a chance to let loose the eagle of regulatory reform, the Committee continues to hurl skyward, again and again, a dodo bird which it hatched six years ago. This pitiful, flightless thing has been bruised and battered beyond recognition in the process.

Frustrated supporters, so intent on proving that the creature can fly, appear to forget why they wished it to be airborne in the first place. There is no interest in the facts which show that we are dealing with an aberration doomed to return to extinction soon after it is left alone. If only it would be left alone.

This bill to create an Agency for Consumer Advocacy is a poor idea badly drafted. It should be rejected because it is not what was intended, not what is needed and certainly not suitable to become a law of which we can be proud. That this is so can be demonstrated beyond refutation with facts we no longer can afford to ignore.

S. 200 IS NOT WHAT IS INTENDED

1. It is Not a Proper Vehicle for Regulatory Reform

As originally conceived, the ACA was intended to "reform the entire governmental apparatus." [1] Almost everybody forgets this, and perhaps it is good that they do. A comparison of this bill with some of the genuine attempts to initiate a much needed comprehensive regulatory reform effort could prove embarrassing.[2] No one continues to contend seriously that the ACA is to be the agency to accomplish regulatory reform.

2. It is Not What Consumers Want

Then we were told by self-appointed representatives, in expensive full-page advertisements in leading newspapers, that an ACA is needed to fulfill a demand of "the American consumer"—"All 210 million of us." [3]

If that money were put into an effort to take a nation-wide poll to find out what was demanded by real consumers, these "representatives" would be joining me today in opposing this bill; they would, that is, if they take their representation function seriously. Such a poll was taken this year by the respected Opinion Research Corporation of Princeton, New Jersey; some of the results were as follows: [4]

> Only 20 percent of the total population had heard of the proposed consumer advocacy agency, and of these relatively few could tell the researchers what the agency was designed to do.

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[1] Statement of Ralph Nader, *Hearings on H.R. 6037 Before a Subcomm. of the House Comm. on Government Operations*, 91st Cong., 1st Sess., 175 (1969).

[2] See, e.g., my bill to establish a temporary National Commission on Regulatory Reform, S.J. Res. 7, 94th Cong., 1st Sess.

[3] See, e.g., the advertisement of the National Consumers League, *Washington Post*, Sept. 18, 1974, at A–23.

[4] "Government and the Consumer," A Public Opinion Study Conducted for the Business Roundtable by Opinion Research Corporation (March, 1975), Summary of Principal Findings, at iii, iv.

> On the direct question as to whether they would support or oppose setting a consumer advocacy agency up over all existing consumer-related agencies, 75 percent of consumers said that they would oppose doing this and would favor, instead, making existing agencies work better.
>
> Of the 13 percent who did favor setting up the new agency, 6 percent (almost half) withdrew their support upon finding that the proposed cost of the new agency would be at least $60 million for the first three years.

Thus, 81 percent of consumers oppose this bill, a bill that some consumer "representatives" claim to be supported by all consumers. Is this the type of consumer "representation" that could be expected by the ACA? Of course it is.

3. It Has Been Adulterated

Perhaps the most frequently stated argument in the long history of the consumer advocacy proposals leading up to S. 200 is this one: Consumers have no central agency to represent their interests, but the vested special interests do—farmers are represented by the Department of Agriculture, workers by the Department of Labor and businessmen by the Department of Commerce.[5]

If anyone continues to make that argument in support of S. 200, you can be sure that person has not read this mangled bill. Consider the following:

> S. 200 specifically requires the ACA to protect and promote the interests of commercial farmers as well as ultimate consumers of farm products (imagine the ACA appealing a milk marketing order decision on the grounds that the price was not high enough).[6]

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[5] Statements of this argument in the hearings, alone, are as follows: Hearings on S. 1571 Before the Subcomm. on Reorganization and International Organizations of the Senate Comm. on Government Operations, 86th Cong., 2d Sess., at 28 (Sen. Kefauver), 42 (Sen. Keating), 53 (twice; Sen. Engle), 123 and 125 (Cooperative League, USA), 133 (Northwest Public Power Association); Hearings on H.R. 7179 Before a Subcomm. of the House Comm. on Government Operations, 89th Cong., 1st Sess., at 31 (Rep. Rosenthal), 36, 37 (Consumers Union), 83 (Wisconsin Att'y Gen.), 94 (Rep. Erlenborn), 124, 127 (Sen. R. Kennedy), 131 (Sen. Javits), 144 (Persia Campbell), 155 (Frank O'Conner, NYC City Council), 207 (Nat'l Retail Merchants Ass'n), 242, 243, 244 (Rep. Rosenthal); Hearings on H.R. 6037 and Related Bills Before a Subcomm. of the House Comm. on Government Operations, 91st Cong., 1st Sess., at 82 (Rep. Mikva), 126, 132 (Ill. Fed. of Consumers), 149 (Rep. Rosenthal), 151 (William Kaye), 187 (Consumers Union), 218 (Rep. Rosenthal), 263 (Rep. Biaggi), 268 (Rep. Eilberg), 271 (Rep. Friedel), 272 (Rep. Pepper); Hearings on S. 3434 and 2544 Before the Subcomm. on Administrative Practice and Procedures of the Senate Comm. on the Judiciary, 91st Cong., 2d Sess., at 50 (Ralph Nader); Hearings on S. 2045, S. 3097, S. 3165, S. 3240 Before the Subcomm. on Executive Reorganization and Government Research of the Senate Comm. on Government Operations, 91st Cong., 2d Sess., at 145 (Chamber of Commerce), 316 (Sen. Montoya); Hearings on H.R. 6037 (Revised) Before a Subcomm. of the House Comm. on Government Operations, 91st Cong., 2d Sess., at 56, 57 (Rep. Rosenthal), 61, 62 (Rep. Dwyer), 62, 63 (Chamber of Commerce), 62, 63 (Rep. Rosenthal); Hearings on S. 860 and S. 2045 Before the Subcomm. on Executive Reorganization of the Senate Comm. on Government Operations, 91st Cong., 1st Sess., at 17 (Rep. Rosenthal), 507 (Bess Myerson Grant), 775 (National Telephone Cooperative Ass'n); Hearings on S. 1177 and H.R. 10835 Before the Subcomm. on Executive Reorganization and Government Research of the Senate Comm. on Government Operations, 92d Cong., 1st Sess., at 28 (Rep. Rosenthal); Hearings on H.R. 16, H.R. 3809, H.R. 254, H.R. 1015, and Related Bills Before a Subcomm. of the House Comm. on Government Operations, 92d Cong., 1st Sess., at 557, 558 (Rep. Corman); Hearings on S. 707 and S. 1160 Before the Subcomm. on Reorganization, Research and International Organizations of the Senate Comm. on Government Operations, 93d Cong., 1st Sess., at 348 (Betty Furness and Sen. Allen), 519, 520 (Consumers Union), 539, 540 (Sen Javits); Hearings on H.R. 14, H.R. 21 and H.R. 564 Before a Subcomm. of the House Comm. on Government Operations, 93d Cong., 1st Sess., at 189, 190 (Rep. Holifield), 208 (Consumers Union), 229 (Mary Gardiner Jones), 328 (Rep. Holifield).

[6] Those who use any goods or services for agricultural purposes are expressly defined as "consumers" for the purposes of the bill. See S. 200, § 14(7). Thus, the mandate of this bill to protect and promote the "interests of consumers" is synonymous with protecting and promoting the "interests of farmers." The fact that these important interests may be diametrically opposed in some situations is one of many problems left for ACA resolution.

S. 200 specifically prohibits the ACA from using any—*any*—of its powers in relation to labor disputes and labor agreements (imagine a dock strike affecting the entire east coast and the ACA not even able to make mention of it in its consumer information releases).[7]

S. 200 exempts from certain ACA functions small businesses (think of the real problem consumers have with fly-by-night operators).[8]

A provision to exempt from ACA advocacy any radio or television broadcast license renewal proceeding by the Federal Communications Commission was struck from S. 200 in Committee, and the majority views of this report state that the exemption still applies, even though we struck it down (see the last paragraph of the explanation of section 16).

It is obvious that significant segments of the economy greatly (and justifiably) fear this bill, and, if they shout loudly enough, the standard procedure is to give them special treatment. In other words, do anything to get the dodo to fly, even if you have to clip its already inadequate wings to save weight.

4. It Contradicts Itself

Finally, there are two parallel arguments supporters of S. 200 make relating to the present Federal administrative process. The first is that Federal agencies do not operate as they were intended; they abuse the authority granted to them.[9]

I agree with that, as a generalization. Unfortunately, those who use it to support this bill conveniently ignore two very important facts—

(1) this is a bill to create *yet another* Federal agency which, if they are correct in their underlying assumption, will abuse the power granted to *it*, and

(2) the opportunity for abuse (that is, the amount of discretion to be granted to the ACA) would be greater than ever has been granted by Congress to any agency, a fact that will be made obvious by reading these views.

The parallel argument is that, even where present federal agencies do not actively abuse their authority, they all too often only hear one side of the story before they make decisions affecting consumers; the consumer voice is never heard because consumers lack the time, money and expertise to appear, and, therefore, the decisionmaking process is defective.[10]

Again, two critically important factors are overlooked—

(1) If consumers do not have the time, money or expertise to appear before an agency such as the Federal Power Commission (to use a frequently cited agency as an example), this bill certainly will not confer upon these same consumers the needed time,

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[7] See S. 200, § 16(a).

[8] See, e.g., S. 200, §§ 10(a)(4) and 18.

[9] See, e.g., prepared statement of Ralph Nader, *Hearings on S. 200 Before the Senate Comm. on Government Operations*, 94th Cong., 1st Sess., 3 (Feb. 24, 1975): "Thousands of pages of Congressional hearings document the regulatory abuses which have resulted in unnecessary harm to consumers both in dollars and in avoidable risks to health and safety."

[10] See, e.g., the statement of Carol Foreman for the Consumer Federation of America, *Hearings on S. 200 Before the Senate Com. on Government Operations*, 94th Cong., 1st Sess., 54 (transcript of Feb. 20, 1975): "The agency or commission bases its decisions on complex economic and legal material presented by an industry and the consumer has no ability to present adequate data on the other side of the issue."

money and expertise to appear before the ACA to tell it what should be told to the FPC, and

(2) The drafters and supporters of this bill clearly appear to be afraid that some real consumers might disagree with the ACA's views on what is in their interest; they have taken steps to assure that the view of the ACA will always prevail, even over the views of real consumers—the bill provides that the ACA's determination of the consumer interest in any matter cannot be challenged in court by anyone.[11]

Thus, we have a situation where the ACA can, by law, state without fear of successful contradiction that it is speaking for 210 million consumers, even when a majority of these consumers oppose what the ACA is advocating. No regulatory agency has such sweeping power that is unchallengeable. This is a very serious defect in the bill and its underlying concept.

The "interests of consumers" is a vast, unchartered, constantly shifting area subject to many conflicting interpretations. Supporters of this bill claim that there are, however, many situations where the interests of consumers would be abundantly clear, and that it is in these situations where the ACA would concentrate its advocacy.

Perhaps it would be more than interesting to cite just one of these situations, as described by a leading consumer representative in consumer advocacy agency hearings during the last Congress. This supporter of S. 200, who does not own an automobile, stated that the ACA's position on mandatory seat belt devices in automobiles would be "quite clear"—it would use its considerable powers to advocate installation of such devices in the interest of consumers.[12]

I recoil at the thought of having an ACA Administrator with such clarity of thought unencumbered by knowledge of what those he represents want. But that, of course, is what we must have if this bill is to be put into operation, since consumers do not have the time, money or expertise to appear before Federal agencies.

S. 200 IS NOT WHAT IS NEEDED

1. It Is An Anachronism

The concept of a Federal consumer advocacy agency was born during the New Deal, tried then in varying specialized temporary forms, and pronounced unsuccessful to the point where President Franklin D. Roosevelt rejected proposals for a permanent agency for these purposes.[13]

To those wedded to the concept of creating Federal agencies to solve all or most of society's problems, it may appear to be a logical step to create a watchdog agency to watch the errant watchdogs that they felt were necessary in the first place. But this is drab and doctrinaire thinking.

Big Government which has become bad Government, in large part because of its bigness, cannot be made better by making it bigger. It is odd that many of those who support this bill do not see the irony

[11] See S. 200, § 21(b).

[12] *Hearings on H.R. 14, H.R. 21, and H.R. 564 Before a Subcomm. of the House Comm. on Government Operations*, 93d Cong., 1st Sess., 278 (Statement of Ralph Nader); see also the reply of Rep. Erlenborn on the general public's view of electronic ignition interlock system for seat belts which were then required, *id.*, at 279.

[13] For the history of this proposal, see Leighton, *Consumer Protection Agency Proposals: The Origin of the Species*, 25 Ad. L. Rev. 269 (American Bar Association, 1973).

when they attack the business community with their antitrust theories on bigness is badness, while at the same time justifying this proposed method of pervasively controlling business activity from its inception.

2. It Is Inflationary

In fact, it is well-documented that this country suffers from a serious overregulation of commerce.[14] It is now undisputed that a fair share of the blame for our current inflationary spiral must be laid at the many doorsteps of the Federal Government, that one of the most insidious contributors to inflation is well-intentioned increasing control over the operations of the marketplace which increases the costs of production and distribution.[15]

A reading of this bill and any of the many hearings on it or its predecessors clearly will demonstrate that its supporters desire and envision more regulation, more pervasively applied, to be the result of S. 200—not less. The ACA is to be a primer for the bureaucratic pump.

Thus, the initial suggested funding of $60,000,000 for the first three years of the ACA is just to be an expensive rut leading to yet another fiscal rat hole. Added to these millions will be the millions in increased costs borne by other Federal agencies due to the demands and advocacy of the ACA and, especially the increased costs in the marketplace of more Federal regulation. A free lunch this is not.

And, of course, we cannot ignore the natural Federal growth factor. The rarified atmosphere of Washington can be counted on to ensure that the ACA will blossom into the biggest, most litigious law firm ever known.

In fact, supporters of this bill may be counting on this inevitability. In testimony on the Public Council Corporation bill, the concept of which was merged into this bill,[16] one of the leading proponents of S. 200 testified that he imagined a federal advocacy agency with 400 to 500 lawyers petitioning for 20 to 30 rulemaking actions *per week* in other agencies.[17]

That's 1,040 to 1,560 new regulatory proceedings in a year, assuming, as we must, that no one else would have the time, money, expertise or inclination to so petition. Yet supporters of S. 200 stoutly maintain that they favor the concept of regulatory reform, and that the ACA could aid in this effort.[18]

In addition, the majority report makes clear what many of us have long expected; this is truly a full employment act for lawyers. In its explanation of section 6(e), the majority notes that the ACA will be hiring private attorneys to do its advocating under contract.

3. It Is the Wrong Approach

To solve the problem of abuse of authority by Federal agencies, it is proposed to create another agency capable of greater abuse but with no power to fire existing officials who abuse their power.

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[14] See generally, Weidenbaum, *Government-Mandated Price Increases* (American Enterprise Institute for Public Policy Research, 1975).

[15] *Id.*

[16] S. REP. No. 883, 93d Cong., 2d Sess. (Part 1), at 3.

[17] *Hearings on S. 3434 and S. 2544 Before the Subcomm. On Administrative Practice and Procedures of the Senate Comm. on the Judiciary,* 91st Cong., 2d Sess. 63 (Statement of Ralph Nader).

[18] See, *e.g., Hearings on S. 200 Before the Senate Comm. on Government Operations,* 94th Cong., 1st Sess., 56 (transcript of Feb. 20, 1975; Consumer Federation of America).

To solve the problem caused by the fact that consumers do not appear in large numbers before Federal agencies, it is proposed that we create another agency before which consumers also will not appear, and have that new agency appear before the old agencies as a consumer.

To help solve the problem caused by Federal agencies issuing too many regulations, it is proposed that we create an agency which will prod other agencies to issue more regulations.

The difference, promoters of S. 200 ask us to believe, is that this ACA will never abuse its authority, always know exactly what the consumer wants or needs, always petition for regulations that are needed and always fight against those which are not. Who said *caveat emptor* was dead?

The longer we continue to ignore reality this way, the more difficult it is going to be when we decide, finally, to exercise our responsibility correctly—find out in detail what is wrong with these agencies and take direct action on behalf of consumers to solve the problems.

If parents of a large family find themselves too busy to care properly for their many children, and the children, in turn, misbehave, would you recommend that the parents attempt to have yet another child in the hope that it would learn to discipline and tell stories on its older sisters and brothers? This bill not only follows that concept, it leaves it up to the new child to determine for itself what is and is not misbehavior.

S. 200 IS A DISGRACE TO THE SENATE

A poorly conceived idea often is reflected by the difficulty one has in converting it from intuition into materiality. Very few good, timely ideas take more than six years to get enacted by Congress, and virtually none get more and more removed from reality over such a period. Yet that has happened to this bill, and opposition to it has been steadily on the increase since 1970.

1. The Special Interest Labor Amendment Is "Cynical"

The exemption for labor disputes and labor agreements illustrates well the regressive nature of this bill. The New York Times editorialized strongly against this provision, calling it "a special-interest exemption that is foreign to the whole concept of independence for the new" ACA, and saying that is was "politics at its most cynical." [19]

S. 200 presently provides that, "This Act shall not apply to . . . a labor dispute . . . or to a labor agreement. . . ." [20] That means, of course, that no authority granted to the ACA in S. 200 may be used in relation to labor disputes or agreements.

For example, it could not intervene in National Labor Relations Board or Federal Mediation and Conciliation Service activities or any other Governmental effort concerning these matters or concerning the development of policy in these areas. The ACA could not even use its information gathering and dissemination powers to inform consumers of what the Government is doing in these areas—The Freedom of Information Act, available to any private citizen, would not even be available to the ACA to get information in these areas.

[19] March 14, 1975, at 38.
[20] S. 200, § 16(a).

How did this sweeping exemption come about? The history of the provision symbolizes all that is wrong with this bill.

During the debate on the first consumer advocacy agency bill ever to pass a chamber of Congress, the 1970 Senate Consumer Protection Agency bill, prominent mention was made by a leading sponsor of a Library of Congress report on the 34 Federal agencies conducting consumer programs which would be covered by that bill.[21]

This Report, titled "Major Consumer Activities and Programs of Federal Departments and Agencies," is found in the 1969 Senate hearings on consumer advocacy proposals.[22] It is, for the most part, a summary of a 1961 House Committee report on 33 agencies and their programs which gave consumer advocacy proposals (especially early proposals for a Department of Consumer Affairs) a considerable boost.[23]

References to these reports are so numerous during the long history of consumer advocacy proposals, that space allows room for a footnote to only the references in the hearings.[24] They are, beyond a doubt, the most popular used source materials to "prove" the need for a centralized Federal consumer agency.

I go to some length to point all this out for a very good reason. Among the agencies and their "*Major Consumer Activities*" cited in these source materials which are widely quoted by supporters of an ACA are the following, and I quote: [25]

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[21] 116 CONG. REC. S19048 (daily ed., Nov. 30, 1970; remarks of Sen. Percy).

[22] Reprinted in *Hearings on S. 860 and S. 2045 Before the Subcomm. on Executive Reorganizatioin of the Senate Comm. on Government Operations*, 91st Cong., 1st Sess., 67, *et seq.*

[23] See H. REP. NO. 1241, 87th Cong. 1st Sess.

[24] Hearings on H.R. 7179 Before a Subcomm. of the House Comm. on Government Operations, 89th Cong., 2d Sess., at 31 (Rep. Rosenthal), 34 (Rep. Erlenborn), 36, 38 (Consumers Union), 61 (Rep. Brown), 64 (Rep. Erlenborn), 86 (Wisconsin Att'y Gen.), 89 (Rep. Erlenborn), 109 (Nat'l Consumers League), 124 (Sen. R. Kennedy), 137, 149 (Rep. Erlenborn), 194 (Rep. Harvey), 198 (Sen. Hart), 202, 204 (Chamber of Commerce), 204 (Metropolitan New York Consumer Council), 241, 237 (Rep. Rosenthal), 241 (Bur. of Budget), 244, 245 (Rep. Rosenthal), 306 (Rep. Erlenborn); Hearings on H.R. 6037 and Related Bills Before a Subcomm. of the House Comm. on Government Operations, 91st Cong., 1st Sess., at 40 (Rep. Rosenthal), 61 (Rep. Dwyer), 100 (Rep. Rosenthal), 101 (Esther Peterson), 122 (N.Y. Att'y Gen.), 126 (Ill. Fed. of Consumers), 150 (William Kaye), 174 (Rep. Rosenthal), 175 (Ralph Nader), 201 (Rep. Rosenthal), 232 (Justice Dept.), 261 (Rep. Addabbo), 261 (Rep. Annunzio), 262 (Rep. Bell), 263 (Rep. Biaggi), 263, 264 (Rep. Dulski), 267, 268 (Rep. Eilberg), 269 (Rep. Frazer), 272 (Rep. Halpern), 274 (Rep. Hanna), 277 (Rep. Long), 278 (Rep. MacDonald), 280 (Rep. Murphy), 286 (Nat'l Grange); Hearings on S. 3434 and 2544 Before the Subcomm. on the Judiciary, 91st Cong., 2d Sess., at 2 (Sen. E. Kennedy); Hearings on S. 2045, S. 3097, S. 3165, S. 3240 Before the Subcomm. on Executive Reorganization and Government Research of the Senate Comm. on Government Operations, 91st Cong., 2d Sess. at 315 (Sen. Montoya); Hearings on H.R. 6037 (Revised) and Related Bills Before a Subcomm. of the House Comm. on Government Operations, 91st Cong., 2d Sess., at 54 (Chamber of Commerce); Hearings on S. 860 and S. 2045 Before the Subcomm. on Executive Reorganization of the Senate Comm. on Government Operations, 91st Cong., 1st Sess., at 1 (Sen. Ribicoff), 8 (Sen. Nelson), 12 (Sen. Gurney), 13 (Sen. Nelson), 17, 19, 23 (Rep. Rosenthal), 67–72 (Library of Commerce), 76 (Sen. Nelson), 345 (Betty Furness), 573 (James Goddard), 786 (W. Forte); Hearings on S. 1177 and H.R. 10835 Before the Subcomm. on Executive Reorganization and Government Research of the Senate Comm. on Government Operations, 92d Cong., 1st Sess., at 19 (Rep. Rosenthal); Hearings on H.R. 16, H.R. 3809, H.R. 254, H.R. 1015 and Related Bills Before a Subcomm. of the House Comm. on Government Operations, 92d Cong., 1st Sess., at 223 (N.Y. Att'y Gen.), 340 (National Consumer Law Center), 358, 359 (Rep. Corman), 558 (Rep. Coughlin), 560 (Rep. Eilberg), 563 (Rep. Gonzalez), 565, 566 (Rep. Morse); Hearings on S. 707 and S. 1160 Before the Subcomm. on Reorganization, Research and International Organizations of the Senate Comm. on Government Operations, 93d Cong., 1st Sess., at 765 (Bay Area Grocers Ass'n), 781 (National Consumer Finance Ass'n), 861 (Trebilcock); Hearings on H.R. 14, H.R. 21, and H.R. 564 Before a Subcomm. of the House Comm. on Government Operations, 93d Cong., 1st Sess., at 262 (Rep. Rosenthal), 657 (N.Y. Att'y Gen.).

[25] Quoting from reprint of Library of Congress Report, see note 22, at pages 68, 71, 72. (Emphasis added.)

Federal Mediation and Conciliation Service: 1. Avoidance or minimization of *labor disputes* by providing mediation services.

National Labor Relations Board: 1. Minimization or prevention of disruption to interstate commerce resulting from *labor disputes.*

National Mediation Board: 1. Achievement of peaceful settlement of *labor disputes* in the airlines and railroad industries.

Thus, from the inception of the consumer advocacy concept, it was specifically recognized that Federal involvement in labor disputes and agreements had a "major" impact on the interests of consumers and it was specifically intended that the consumer advocacy agency should make a contribution in these areas.

Then, during the 1971 House hearings, the AFL–CIO witness was asked to supply for the record a legal memorandum on whether the proposed consumer advocacy agency (then called a Consumer Protection Agency) might wish to intervene on behalf of consumers against a union in an NLRB case.

The response from the AFL–CIO associate General Counsel was succinct: "I think that it is possible to imagine instances in which the Consumer Protection Agency might wish to intervene in a proceeding before the NLRB to take a position contrary to the interest of a union." [26]

The legal opinion then went on to say that it was "rather unlikely" that the CPA could make a finding required of it by that bill prior to intervention. That restrictive finding was one of many safeguards found in earlier bills which have long since disappeared. Thus, in relation to bills like S. 200, the AFL–CIO's answer to the question of whether the consumer advocacy agency would wish to intervene in NLRB proceedings to protect consumers was an *unqualified* "Yes."

The House passed its CPA bill 14 days after reporting it. The report on that 1971 bill, as had the report on the 1970 House CPA bill and the report on the 1970 Senate CPA bill, highlighted the 33-agency study of major consumer protection activities which expressly included the labor-related activities mentioned earlier.[27] No special exemption relating to labor disputes or agreements was in the 1971 House-passed bill or the 1970 Senate-passed bill.

One would have thought at that time the labor issue was settled—labor disputes and agreements affecting consumers clearly were within the jurisdiction of the consumer advocacy agency. But something or somebody, was silently afoot.

The CPA bill reported by this Committee in 1972 was silent on the labor issue, but the Committee report, mysteriously, stated that NLRB proceedings and FCC license renewal proceedings "are beyond the jurisdiction of the CPA." [28] This gratuitous legislative history to an ill-fated bill did not miss the trained eye of the very distinguished former Senator Sam J. Ervin, who declared and proved in his Minority Views that such proceedings were definitely covered by that bill.[29]

[26] Hearings on H.R. 16, H.R. 3809, H.R. 254 and H.R. 1015 before a Subcommittee of the House Committee on Government Operations, 92d Cong., 1st Sess., at 258.
[27] H. Rep. No. 542, 92d Cong., 1st Sess., at 3; H. Rep. No. 1361, 91st Cong., 2d Sess., at 3; S. Rep. No. 1331, 91st Cong., 2d Sess., at 5.
[28] S. Rep. No. 1100, 92d Cong., 2d Sess., at 62.
[29] *Id.*, at 80, *et seq.*

Since the closet "exemptions" were then exposed by one of the Senate's leading lawyers, there was little point in hiding them in the 93d Congress. The House bill, which passed that chamber, had a complete exemption for labor disputes and agreements.[30] The Senate bill, which did not pass, had a partial exemption—it only prohibited the ACA from using its advocacy rights in relation to labor disputes, but the ACA could still gather and disseminate information about such matters.[31]

As was seen at the beginning of this discussion, our bill now has a complete exemption rather than a limited one. The bill continues to get less powerful in relation to favored special interests.

We are asked to believe that labor disputes and agreements have no relation to marketplace transactions. It is hoped that we forget that the National Labor Relations Act, under which the now exempted NLRB and the Federal Mediation and Conciliation Service fall, expressly says that such activities can burden interstate commerce to the point of restraining the availability of consumer goods and affecting their prices.[32]

We are asked to believe that Federal adjudications of labor disputes are private matters. It is hoped that we forget that the Supreme Court and other courts have held just the opposite, that they are public interest matters affecting consumers greatly.[33]

We are asked to believe that the "adversarial" relationship between big business and big labor in labor disputes serves as adequate protection for consumers. It is hoped that we forget the New York Times editorial pointing out that, "The records of the National Labor Relations Board and the courts abound in cases in which unions on their own or in collusion with employers disregard the public interest pushing up prices or limiting competition." [34]

We are asked to believe that the ACA will be a prudent agency, never treading where it does not belong. It is hoped that we forget that organized labor does not believe a word of this, and insists that unions expressly be protected from, to use one AFL–CIO official's statement, "another government agency intervening in labor-management relations, sticking its nose into our affairs." [35]

We are asked to believe that "this labor exemption first started with big business support" in the form of testimony by the Ford Motor Company in the House.[36] It is hoped that we forget that the cited testimony was in *total opposition* to the creation of any ACA, and that problems arising from ACA intervention in labor disputes was just one example of why we should have *no* ACA, rather than an ACA with a labor exemption.[37]

We are asked to believe that Congress never intended to subject these labor activities to ACA scrutiny. It is hoped that we forget our own, much cited studies and the fact that Senator Edward Kennedy's

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[30] H.R. 13163, § 17 (93d Cong., 2d Sess.).
[31] S. 707 § 6(a)(11).
[32] 29 U.S.C. § 151.
[33] See, e.g., *N.L.R.B.* v. *Font Mill Co.*, 360 U.S. 301 (1959); *NLRB* v. *United Packinghouse Workers of America*, AFL–CIO, 275 F. 2d 816 (1960).
[34] March 14, 1975, at 38.
[35] 120 CONG. REC. S12761 (daily ed., July 17, 1972; Statement of AFL–CIO Legislative Director).
[36] Hearings on S. 200 Before The Senate Comm. on Government Operations, 94th Cong., 1st Sess., 25 (transcript of Feb. 24, 1975; testimony of Ralph Nader).
[37] See the testimony of Ford Motor Company, Hearings on H.R. 14, H.R. 21 and H.R. 564 Before a Subcomm. of the Comm. on Government Operations, 93d Cong., 1st Sess., 251.

Public Counsel Corporation bill (the concept of which was purposely merged into the ACA bill) [38] provided expressly for a Federal public advocate to participate in NLRB proceedings.[39]

2. It Proposes Disruption of Agency Activity

The ACA would be granted an *unchallengeable right* to advocate the interests of consumers in the unstructured activities of other agencies through the presentation of views either orally or in writing.[40] Under this right, it is the ACA which determines whether it should insert itself into the agency, and rules of practice by that agency which might govern such ACA advocacy are subservient to that right.[41]

Further, there also is recognition that such unstructured activities of federal agencies move from stage to stage, and, therefore, the ACA's advocacy rights are to be considered as being renewable at each stage—"The fact that [an ACA advocate] has participated in the investigatory phase of an activity does not impair his right to participate in a later phase of the activity, such as the reaching of a settlement, the decision to initiate formal proceedings, or even a decision to discontinue the investigation." [42]

Finally, the provision under which this ACA advocacy right is granted requires that the Agency holding the unstructured activity give "full consideration" to the views of the ACA.[43] That is, the ACA must "have a full opportunity to submit its views to the decision-making authority *before* any decision is made either to take, or not take, certain action, where the [ACA] determines a substantial consumer interest is at stake." [44] [Emphasis added.]

This, of course, sounds very good in the abstract, but when it is applied to an actual agency activity of interest to consumers some serious questions are raised. For example, supporters of the bill have stated that they wish the ACA to use this power to participate in negotiations in the Middle East by the Secretary of State which concern, at least in part, oil availability.[45] Senator Ervin asked last year: "Can anyone imagine the Secretary of State telling some sheik, 'Excuse me, before I decide on your new proposition, I must contact the Administrator of the [ACA] or one of his agents.' It would appear that an advocate of the [ACA] will have to fly around with the Secretary of State—that would be the only way possible to comply with the letter of this proposed law." [46]

To be sure, the ACA is admonished to present its case in such situations "in an orderly manner and without causing undue delay" [47]—that is why an ACA agent must fly around with the Secretary of State if he is to take his advocacy seriously—but the fact remains that an agency's failure to recognize the ACA's rights would subject its relevant action to judicial review.

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[38] Supra, n. 16.
[39] S. 3434, 91st Cong., 2d Sess., proposed 5 U.S.C. § 582(3).
[40] § 6(a)(3) and 21(b).
[41] S. Rep. No. 883, 93d Cong., 2d Sess., 22.
[42] Id., at 21.
[43] §6(a)(3).
[44] S. Rep. No. 883, 93d Cong., 2d Sess., 21.
[45] 120 Cong. Rec. S11760 (daily ed., June 27, 1974); see also the extensive discussion of this matter at 120 Cong. Rec. S12791–12796 (daily ed., July 17, 1974).
[46] S. Rep. No. 883, Part 2 (Minority Views of Senators Ervin, Allen, Brock and Nunn), 93d Cong., 2d Sess., 10.
[47] §6(a)(3).

Supporters of this bill tell us not to worry, however, because the ACA "will act with discretion and prudence and will not be reckless." [48] But it is troubling to see that they have also argued that the need for this bill is based in part on the fact that federal agencies are not prudent as a whole. It is even more troubling when we are told by the same supporters that certain special interests must be exempted from the ACA's scope of operations because of a fear that it will meddle where it should not, such as this statement: "Where big business and big labor face each other in terms of the relations between them, there the [ACA] does belong . . . ." [49]

3. The "Dual Prosecutor" Problem

Granting the ACA the unchallengeable right to assign itself any available advocacy status in any formal agency proceeding [50] may cause some unexpected problems in the slim area of agency adjudications of alleged violations of law. In many of these, full party status is limited to the two principals, the respondent charged with the violations and the agency lawyer prosecuting the complaint. Intervention by others is usually subject to the discretion of the forum agency, and to limitations which are not applicable to the principals.

ACA intervention as of right as a full party in such adjudications would allow it to be a dual prosecutor. Supporters of this concept have objected strenuously to the term "prosecutor," on the mistaken belief (and in disregard of our own hearing records) that agency lawyers do not have a prosecutorial function in such proceedings.[51]

The House bill of last year contained a partial exemption in this area, limiting the ACA to an *amicus curiae* in proceedings which seek "primarily to impose a fine or forfeiture which the [forum] agency may impose under its own authority for an alleged violation of" law.[52] California's forward-looking consumer advocacy law, which contains many similar provisions to the federal ACA proposals, also addresses this problem by *exempting fully* from intervention by its Department of Consumer Affairs any agency "adjudications of an alleged violation by any person named as a defendant or respondent." [53]

S. 200 contains no limitation other than a hortatory clause admonishing the ACA not to intervene as a party in any federal proceeding *unless* the ACA determines that it is necessary to intervene as a party.[54]

The problem, as it has been briefly stated in relation to a Federal Trade Commission adjudication, is this: [55]

> To the extent that the [ACA] follows a line of prosecution identical to that of the FTC prosecutor, we have useless, expensive and delaying duplication; to the extent that the [ACA's] line of prosecution diverges from that of the FTC, we have an outsider not only usurping FTC's congressionally-mandated responsibility, but subjecting a citizen (as of yet innocent) to conflicting prosecutions. Very serious due process

[48] 118 Cong. Rec. S15659 (daily ed., Sept. 21, 1972; remarks of Sen. Javits).
[49] 120 Cong. Rec. S12766 (daily ed., July 17, 1974; remarks of Sen. Javits).
[50] The ACA "may as of right intervene as a party or otherwise participate" in such proceedings. § 6(a)(2).
[51] For extensive substantiation of the accuracy of this term, see 120 Cong. Rec., S12796, et seq (daily ed., July 17, 1974).
[52] H.R. 13163, 93d Con., 2d Sess., § 6(c).
[53] Cal. Bus. and Prof. Code, Ch. 4, § 320.
[54] § 6(a).
[55] S. Rep. No. 883, Part 2 (Minority Views), 93d Cong., 2d Sess., 12.

questions are raised when two prosecutors see who can out prosecute whom.

One would think that, in light of the more far-reaching exemptions already included in the bill, this exceedingly small area would be limited to protect due process. But no. The only agency adjudications of law violations worthy of exemption, apparently, are NLRB adjudications of unfair labor practices.

4. It Proposes Federal Guerrilla Warfare

The fact that the ACA is to be a nonregulatory agency with no proprietary interests to protect sets it apart from many federal agencies. It also raises a question whether it is appropriate for such an agency to have the right to seek to overturn in court the final decisions of the government made by regulatory agencies.

As was stated by Senator Ervin last year, this guarantees that the ACA is to be a "Congressionally-ordained expert agency fighting another Congressionally-ordained expert agency in an embarrassing *U.S. v. U.S.* court battle to determine who speaks for the Government." [56]

Those who favor granting a broad judicial review right to the ACA point out that government agencies challenge each other frequently in the courts. They forget that these cases invariably involve an overlapping of regulatory or proprietary mandates given to the agencies by Congress, but to be intentionally withheld from the ACA. As Senator Ervin made clear, "It is one thing for the Justice Department to challenge [another agency's approval of a] merger in court; it is entirely another thing for the [ACA], a nonregulatory agency, to challenge such a merger where the Justice Department has failed to do so." [57]

This power clearly implies that Congress does not trust the judgment of the regulatory agencies which it created. All right. But can anyone tell me why Congress is ready to trust the judgment of the untried ACA in light of its view that other instrumentalities of its own making cannot be trusted?

5. Its Information-Gathering and Dissemination Powers are Overblown

An interesting question of whether Congress is willing to cut off its nose to spite its face arises in relation to the information provisions of the bill.

Under S. 200, trade secrets and other confidential business information voluntarily submitted to a federal agency that could have obtained it through subpoena or other formal action would be accessible to the ACA as a matter of right.[58] Such commercially sensitive information then could be publicly disclosed, if the source agency did not put any restrictions on such disclosure.[59]

This is bad enough, but things get considerably worse when the ACA goes after sensitive information that is not in the hands of the Government or otherwise on the public record. In such cases, the ACA

[56] S. Rep. No. 883, Part 2 (Minority Views), 93d Cong., 2d Sess., 15.
[57] *Id.*, at 17.
[58] § 10(b)(7)(B), referring to such sensitive information described in 5 U.S.C. § 552(b)(4).
[59] § 8 and 11(b).

can get that information by issuing court-enforceable interrogatories or orders for general or special reports to anyone engaged in a business, industry or trade (except if it relates to labor disputes or agreements, of course).[60]

If the ACA, in its sole expert opinion, decides that trade secrets and similar information should be released *immediately* "to protect the health or safety of the public," it is empowered to do so.[61] (It should be noted that this is a regulatory function, no matter how supporters might characterize it.)

Further, such information would be subject to discretionary release by the ACA upon petition by anyone under the Freedom of Information Act if it were received from private sources or from another agency which does not expressly request that it be withheld.[62]

The implications here are immense. We are asked to develop an entirely new concept of trade secret law. Because of the ACA's explicit authority to publish such information, current prohibitions on publication of such information do not apply to the ACA as they would to regulatory agencies.[63] This opens an avenue of indirect publication by these agencies through the ACA, if they wish, and subjects the information to disclosure by the ACA to petitioners (including competitors) under the Freedom of Information Act, if the ACA wished to grant such a petition.

It is interesting that the news media is not exempted from this provision. The ACA could demand that sources or other material accepted in confidence be revealed to it for publication. Consumers Union, which is a publisher, called this "an important issue" some time ago.[64] But nothing was done to resolve it; a host of "more important" issues seems to have been brought to the attention of the Committee by more persuasive special interests than the press.

CONCLUSION

Much more can, should—and will, I am sure—be said about this bad idea whose time has come and gone.

To my colleagues in the Senate who agree with the idea of establishing yet another Federal agency for consumers, all I would ask is that you personally read this complex bill and attempt to understand its details now. If you do, I feel confident that S. 200 will be set aside or dramatically revised when it comes to the floor.

JAMES B. ALLEN.

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[60] § 10(a).

[61] § 11(c)(4). In other cases, the ACA would have to give owners of the information a maximum of 10 days notice to allow them to attempt to stop publication; but there appears to be few, if any grounds upon which such an injunction might be granted.

[62] § 11(a).

[63] See, e.g., 18 U.S.C. § 1905 which makes it a crime for Federal employees to disclose trade secrets and similar sensitive information "to any extent *not authorized by law.*"

[64] Hearings on S. 707 and S. 1160 before the Subcommittee on Reorganization, Research and International Organizations of the Senate Committee on Government Operations, 93d Cong., 1st Sess., 524.

TEXT OF S. 200 AS REPORTED

A BILL To establish an independent consumer agency to protect and serve the interest of consumers, 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 "Consumer Protection Act of 1975".

STATEMENT OF FINDINGS AND PURPOSES

SEC. 2. (a) The Congress finds that the interests of consumers are inadequately represented and protected within the Federal Government; that regulations have been adopted and statutes have been enacted by the Federal Government without first securing available information as to the estimated costs and benefits of such regulations and statutes; and that vigorous representation and protection of the interests of consumers are essential to the fair and efficient functioning of a free market economy. Each year, as a result of this lack of effective representation before Federal agencies and courts, consumers suffer personal injury, economic harm, and other adverse consequences in the course of acquiring and using goods and services available in the marketplace. Federal programs which fail to provide benefits that are commensurate with the costs thereof may be a factor in the economic problems of the United States.

(b) The Congress therefore declares that—

(1) A governmental organization to represent the interests of consumers before Federal agencies and courts could help the agencies in the exercise of their statutory responsibilities in a manner consistent with the public interest and with effective and responsive government. It is the purpose of this Act to protect and promote the interests of the people of the United States as consumers of goods and services which are made available to them through commerce or which affect commerce by so establishing an independent Agency for Consumer Advocacy.

(2) It is the purpose of the Agency for Consumer Advocacy to represent the interests of consumers before Federal agencies and courts, receive and transmit consumer complaints, develop and disseminate information of interest to consumers, and perform other functions to protect and promote the interests of consumers. The authority of the Agency to carry out this purpose shall not be construed to supersede, supplant, or replace the jurisdiction, functions, or powers of any other agency to discharge its own statutory responsibilities according to law.

(3) It is the purpose of this Act to promote protection of consumers with respect to the—

(A) safety, quality, purity, potency, healthfulness, durability, performance, repairability, effectiveness dependability availabil-

ity and cost of any real or personal property or tangible or intangible goods, services, or credit;

(B) preservation of consumer choice and a competitive market;

(C) prevention of unfair or deceptive trade practices;

(D) maintenance of truthfulness and fairness in the advertising, promotion, and sale by a producer, distributor, lender, retailer, or other supplier of such property, goods, services and credit;

(E) furnishing of full, accurate, and clear instructions, warnings, and other information by any such supplier concerning such property, goods, services, and credit;

(F) protection of the legal rights and remedies of consumers; and

(G) providing of estimates of the costs and benefits of programs and activities established by Federal Government regulations and legislation.

(4) It is the purpose of section 24 of this Act to estabilsh a means for estimating in advance the costs and benefits of Federal legislation or rules that have substantial economic impact, in order to determine which Government programs entail unreasonable or excessive costs."

(5) This Act should be so interpreted by the executive branch and the courts so as to implement the intent of Congress to protect and promote the interests of consumers, and to achieve the foregoing purposes.

ESTABLISHMENT

SEC. 3. (a) There is hereby established as an independent agency of the United States within the executive branch of the Government the Agency for Consumer Advocacy. The Agency shall be directed and administered by an Administrator who shall be appointed by the President, by and with the advice and consent of the Senate, for a term coterminous with the term of the President, not to exceed four years. The Administrator shall be an individual who by reason of training, experience, and attainments is exceptionally qualified to represent the interests of consumers. There shall be in the Agency a Deputy Administrator who shall be appointed by the President, by and with the advice and consent of the Senate. The Deputy Administrator shall perform such function, powers, and duties as may be prescribed from time to time by the Administrator and shall act for, and exercise the powers of, the Administrator during the absence or disability of, or in the event of a vacancy in the office of, the Administrator. On the expiration of his term, the Administrator shall continue in office until he is reappointed or his successor is appointed and qualifies. The Administrator may be removed by the President for inefficiency, neglect of duty or malfeasance in office.

(b) No employee of the Agency while serving in such position may engage in any business, vocation, other employment, or have other interests, inconsistent with his official responsibilities.

(c) There shall be in the Agency a General Counsel who shall be appointed by the Administrator.

(d) The Administrator is authorized to appoint within the Agency not to exceed five Assistant Administrators.

POWERS AND DUTIES OF THE ADMINISTRATOR

SEC. 4. (a) The Administrator shall be responsible for the exercise of the powers and the discharge of the duties of the Agency, and shall have the authority to direct and supervise all personnel and activities thereof.

(b) In addition to any other authority conferred upon him by this Act, the Administrator is authorized, in carrying out his functions under this Act, to—

(1) subject to the civil service and classification laws, select, appoint, employ, and fix the compensation of such officers and employees as are necessary to carry out the provisions of this Act and to prescribe their authority and duties;

(2) employ experts and consultants in accordance with section 3109 of title 5, United States Code, and compensate individuals so employed for each day (including traveltime) at rates not in excess of the maximum rate of pay for Grade GS–18 as provided in section 5332 of title 5, United States Code, and while such experts and consultants are so serving away from their homes or regular place of business, pay such employees travel expenses and per diem in lieu of subsistence at rates authorized by section 5703 of title 5, United States Code, for persons in Government service employed intermittently;

(3) appoint advisory committees composed of such private citizens and officials of the Federal, State, and local governments as he deems desirable to advise him with respect to his functions under this Act, and pay such members (other than those regularly employed by the Federal Government) while attending meetings of such committees or otherwise serving at the request of the Administrator compensation and travel expenses at the rate provided for in paragraph (2) of this subsection with respect to experts and consultants: *Provided*, That all meetings of such committees shall be open to the public and interested persons shall be permitted to attend, appear before, or file statements with any advisory committee, subject to such reasonable rules or regulations as the Administrator may prescribe;

(4) promulgate, in accordance with the applicable provisions of the Administrative Procedure Act, title 5, United States Code, such rules, regulations, and procedures as may be necessary to carry out the provisions of this Act, and assure fairness to all persons affected by the Agency's actions, and to delegate authority for the performance of any function to any officer or employee under his direction and supervision;

(5) utilize, with their consent, the services, personnel, and facilities of other Federal agencies and of State, regional, local, and private agencies and instrumentalities, with or without reimbursement therefor, and to transfer funds made available under this Act to Federal, State, regional, local, and private agencies and instrumentalities as reimbursement for utilization of such services, personnel, and facilities;

(6) enter into and perform such contracts, leases, cooperative agreements, or other transactions as may be necessary to carry

out the provisions of this Act, on such terms as the Administrator may deem appropriate, with any agency or instrumentality of the United States, with any State, or any political subdivision thereof, or with any person;

(7) accept voluntary and uncompensated services, notwithstanding the provisions of section 3679(b) of the Revised Statutes (31 U.S.C. 665(b));

(8) adopt an official seal, which shall be judicially noticed;

(9) establish such regional offices as the Administrator determines to be necessary to serve the interests of consumers;

(10) conduct conferences and hearings and otherwise secure data and expression of opinion;

(11) accept unconditional gifts or donations of services, money or property, real, personal, or mixed, tangible or intangible;

(12) designate representatives to serve or assist on such committees as he may determine to be necessary to maintain effective liaison with Federal agencies and with State and local agencies carrying out programs and activities related to the interests of consumers; and

(13) perform such other administrative activities as may be necessary for the effective fulfillment of his duties and functions.

(c) Upon request made by the Administrator, each Federal agency is authorized and directed to make its services, personnel, and facilities available to the greatest practicable extent within its capability to the Agency in the performance of its functions.

(d) The Administrator shall prepare and submit simultaneously to the Congress and the President, not later than April 1 of each year beginning April 1, 1976, an annual report, which shall include a description and analysis of—

(1) the activities of the Agency, including its representation of the interests of consumers before Federal agencies and Federal courts;

(2) the major Federal agency actions and Federal court decisions affecting the interests of consumers;

(3) the assistance given the Agency by other Federal agencies in carrying out the purposes of this Act;

(4) the performance of Federal agencies and the adequacy of their resources in enforcing consumer protection laws and in otherwise protecting the interests of consumers, and the prospective results of alternative consumer protection programs;

(5) the appropriation by Congress for the Agency, the distribution of appropriated funds for the current fiscal year, and a general estimate of the resource requirements of the Agency for each of the next three fiscal years; and

(6) the extent of participation by consumers in Federal agency activities, and the effectiveness of the representation of consumers before Federal agencies, together with recommendations for new legislation, new budget authority for the Agency, and administrative actions to deal with problems discussed in the report, to protect and represent the interests of consumers more effectively, and to carry out the purposes of this Act.

FUNCTIONS OF THE AGENCY

SEC. 5. (a) The Agency shall, in the performance of its functions, advise the Congress and the President as to matters affecting the interests of consumers; and shall protect and promote the interests of the people of the United States as consumers of goods and services made available to them through the trade and commerce of the United States.

(b) The functions of the Administrator shall be to—

(1) represent the interests of consumers before Federal agencies and courts to the extent authorized by this Act;

(2) conduct and support research, studies, and testing to the extent authorized in section 9 of this Act;

(3) submit recommendations annually to the Congress and the President on measures to improve the operation of the Federal Government in the protection and promotion of the interests of consumers;

(4) obtain information and publish and distribute material developed in carrying out his responsibilities under this Act in order to inform consumers of matters of interest to them, to the extent authorized in this Act;

(5) receive, transmit to the appropriate agencies and persons, and make publicly available consumer complaints to the extent authorized in section 7 of this Act.

(6) conduct conferences, surveys, and investigations, including economic surveys, concerning the needs, interests, and problems of consumers: *Provided*, That such conferences, surveys, or investigations are not duplicative in significant degree of similar activities conducted by other Federal agencies;

(7) cooperate with State and local governments and encourage private enterprise in the promotion and protection of the interests of consumers;

(8) keep the appropriate committees of Congress fully and currently informed of all the Agency's activities, when asked or on his own initiative;

(9) publish, in language readily understandable by consumers, a consumer register which shall set forth the time, place, and subject matters of actions by Congress, Federal agencies, and Federal courts, and other information useful to consumers;

(10) encourage the adoption and expansion of effective consumer education programs;

(11) encourage the application and use of new technology, including patents and inventions, for the promotion and protection of the interests of consumers;

(12) encourage the development of informal dispute settlement procedures involving consumers;

(13) encourage meaningful participation by consumers in the activities of the Agency;

(14) promote the consumer interests of farmers in obtaining a full suppy of goods and services at a fair and equitable price; and

(15) perform such other related activities as he deems necessary for the effective fulfillment of his duties and functions.

REPRESENTATION OF CONSUMERS

SEC. 6. (a)(1) Whenever the Administrator determines that the result of any Federal agency proceeding or activity may substantially affect an interest of consumers, he may as of right intervene as a party or otherwise participate for the purpose of representing an interest of consumers, as provided in paragraph (2) or (3) of this subsection. In any proceeding, the Administrator shall refrain from intervening as a party, unless he determines that such intervention is necessary to represent adequately an interest of consumers. The Administrator shall comply with Federal agency statutes and rules of procedure of general applicability governing the timing of intervention or participation in such proceeding or activity and, upon intervening or participating therein, shall comply with laws and agency rules of procedure of general applicability governing the conduct thereof. The intervention or participation of the Administrator in any Federal agency proceeding or activity shall not affect the obligation of the Federal agency conducting such proceeding or activity to assure procedural fairness to all participants.

(2) Whenever the Administrator determines that the result of any Federal agency proceeding which is subject to the provisions of section 553, 554, 556, or 557 of title 5, United States Code, relating to administrative procedure, or which involves a hearing pursuant to the admininstrative procedural requirements of any other statute, regulation, or practice, or which is conducted on the record after opportunity for an agency hearing, or which provides for public notice and opportunity for comment, may substantially affect an interest of consumers, he may as of right intervenue as a party or otherwise participate for the purpose of representing an interest of consumers in such proceeding.

(3) With respect to any Federal agency proceeding not covered by paragraph (2) of this subsection, or any other Federal agency activity, which the Administrator determines may substantially affect an interest of consumers, the Administrator may participate by presenting written or oral submissions, and the Federal agency shall give full consideration to such submissions of the Administrator. Such submissions shall be presented in an orderly manner and without causing undue delay. Such submission need not be simultaneous with that of any other person.

(b) At such time as the Administrator determines to intervene or participate in a Federal agency proceeding under subsection (a)(2) of this section, he shall issue publicly a written statement setting forth his findings under subsection (a)(1), stating concisely the specific interest of consumers to be protected. Upon intervening or participating he shall file a copy of his statement in the proceeding.

(c) To the extent that any person, if aggrieved, would by law have such right, the Administrator shall have the right, in accordance with the following provisions of this subsection, to initiate or participate in any Federal court proceeding involving a Federal agency action—

(1) The Administrator may, as of right, and in the manner prescribed by law, initiate any civil proceeding in a Federal court which involves the review of a Federal agency action that the Administrator determines may substantially affect an interest of consumers. If the Administrator did not intervene or otherwise participate in the Federal agency proceeding or activity out of which such agency action arose, the Administrator, before initiating a proceeding to obtain judicial review, shall petition such agency for rehearing or reconsideration thereof, if the statutes or rules governing such agency specifically authorize rehearing or reconsideration. Such petition shall be filed within sixty days after the Federal agency action involved, or within such longer period as may be allowed by applicable procedures. The Administrator may immediately initiate a judicial review proceeding if the Federal agency does not finally act upon such petition within sixty days after the filing thereof, or at such earlier time as may be necessary to preserve the Administrator's right to obtain effective judicial review of the Federal agency action. Where the Administrator did not intervene or otherwise participate in the Federal agency proceeding or activity out of which the judicial proceeding arises, the court shall determine whether the Administrator's initiation of such judicial proceeding pursuant to this subsection would impede the interests of justice. When the Administrator initiates a judicial proceeding arising out of a Federal agency proceeding or activity in which he did not intervene or otherwise participate, he shall file a statement setting forth the reasons why he did not so intervene or otherwise participate in such proceeding or activity, for the court's consideration in connection with whether the initiation of such proceeding would impede the interests of justice.

(2) The Admininstrator may, as of right, and in the manner prescribed by law, intervene or otherwise participate in any civil proceeding in a Federal court which involves the review or enforcement of a Federal agency action that the Administrator determines may substantially affect an interest of consumers.

(3) The initiation or other participation of the Administrator in a judicial proceeding pursuant to this subsection shall not alter or affect the scope of review otherwise applicable to the agency action involved.

(d) When the Administrator determines it to be in the interest of consumers, he may request the Federal agency concerned to initiate such proceeding, or to take such other action, as may be authorized by law with respect to such agency. If the Federal agency fails to take the action requested, it shall promptly notify the Administrator of the reasons therefor and such notification shall be a matter of public record.

(e) Appearances by the Agency under this Act shall be in its own name and shall be made by qualified representatives designated by the Administrator.

(f) In any Federal agency proceeding in which the Administrator is intervening or participating pursuant to subsection (a) (2) of this section, the Administrator is authorized to request the Federal agency to issue, and the Federal agency shall, on a statement or showing (if such statement or showing is required by the Federal agency's rules

of procedure) of general relevance and reasonable scope of the evidence sought, issue such orders, as are authorized by the Federal agency's statutory powers, for the copying of documents, papers, and records, summoning of witnesses, production of books and papers, and submission of information in writing.

(g) The Administrator is not authorized to intervene in proceedings or actions before State or local agencies and courts.

(h) Nothing in this section shall be construed to prohibit the Administrator from communicating with, providing information to, or providing assistance requested by any Federal, State, or local agencies and courts at any time and in any manner consistent with law or agency rules.

(i) Each Federal agency shall review its rules of procedure of general applicability, and, after consultation with the Administrator, issue any additional rules which may be necessary to provide for the Administrator's orderly intervention or participation, in accordance with this section, in its proceedings and activities which may substantially affect the interests of consumers. Each Federal agency shall issue rules determining the circumstances under which the Administrator may be allowed to make simultaneous submissions under subsecton (a)(3) of this section. Any additional rules adopted pursuant to the requirements of this subsection shall be published in proposed and final form in the Federal Register.

(j) The Administrator is authorized to represent an interest of consumers which is presented to him for his consideration upon petition in writing by a substantial number of persons or by any organization which includes a substantial number of persons. The Administrator shall notify the principal sponsors of any such petition within a reasonable time after receipt of any such petition of the action taken or intended to be taken by him with respect to the interest of consumers presented in such petition. If the Administrator declines or is unable to represent such interest, he shall notify such sponsors and shall state his reasons therefor.

CONSUMER COMPLAINTS

SEC. 7. (a) Whenever the Administrator receives from any person any complaint or other information which discloses—

(1) an apparent violation of law, agency rule or order, or a judgment, decree, or order of a State or Federal court relating to an interest of consumers; or

(2) a commercial, trade, or other practice which is detrimental to an interest of consumers;

he shall, unless he determines that such complaint or information is frivolous, promptly transmit such complaint or information to any Federal, State, or local agency which has the authority to enforce any relevant law or to take appropriate private action. Federal agencies shall keep the Administrator informed to the greatest applicable extent of any action which they are taking on complaints transmitted by the Administrator pursuant to this section.

(b) The Administrator shall promptly notify producers, distributors, retailers, lenders, or suppliers of goods and services of all complaints of any significance concerning them received or developed under this section unless the Administrator determines that to do so

is likely to prejudice or impede an action, investigation, or prosecution concerning an alleged violation of law.

(c) The Administrator shall maintain a public document room containing, for public inspection and copying (without charge or at a reasonable charge, not to exceed cost), an up-to-date listing of all consumer complaints of any significance which the Agency has received, arranged in meaningful and useful categories, together with annotations of actions taken in response thereto. Unless the Administrator, for good cause, determines not to make any specific complaint available, complaints listed shall be made available for public inspection and copying: *Provided*, That—

(1) the party complained against has had a reasonable time to comment on such complaint and such comment, when received, is displayed together with the complaint;

(2) the agency to which the complaint has been referred has had a reasonable time to notify the Administrator what action, if any, it intends to take with respect to the complaint;

(3) the complainant's identity is to be protected when he has requested confidentiality. Whenever the complainant requests that his identity be protected, the Administrator shall place an appropriate designation on the complaint before making it available to the public;

(4) no unsigned complaints shall be placed in the public document room.

CONSUMER INFORMATION AND SERVICES

SEC. 8. (a) In order to carry out the purposes of this Act the Administrator shall develop on his own initiative, and subject to the other provisions of this Act, gather from other Federal agencies and non-Federal sources, and disseminate to the public in such manner at such times, and in such form as he determines to be most effective, information, statistics, and other data including, but not limited to matter concerning—

(1) the functions and duties of the Agency;

(2) consumer products and services;

(3) problems encountered by consumers generally, including annual reports on interest rates and commercial and trade practices which may adversely affect consumers; and

(4) notices of Federal hearings, proposed and final rules and orders, and other pertinent activities of Federal agencies that affect consumers.

(b) All Federal agencies which, in the judgment of the Administrator, possess information which would be useful to consumers are authorized and directed to cooperate with the Administrator in making such information available to the public.

STUDIES

SEC. 9. The Administrator is authorized to conduct, support, and assist research, studies, plans, investigations, conferences, demonstration projects, and surveys concerning the interests of consumers.

INFORMATION GATHERING

SEC. 10. (a)(1) The Administrator is authorized, to the extent required to protect the health or safety of consumers, or to discover consumer fraud or substantial economic injury to consumers, to obtain data by requiring any person engaged in a trade, business, or industry which substantially affects interstate commerce and whose activities he determines may substantially affect an interest of consumers, by general or specific order setting forth with particularity the consumer interest involved and the purposes for which the information is sought, to file with him a report or answers in writing to specific questions concerning such activities and other related information. Nothing in this subsection shall be construed to authorize the inspection or copying of documents, papers, books, or records, or to compel the attendance of any person. Nor shall anything in this subsection require the disclosure of information which would violate any relationship privileged according to law. Where applicable, chapter 35 of title 44, United States Code, shall govern requests for reports under this subsection in the manner in which independent Federal regulatory agencies are subject to its provisions.

(2) The Administrator shall not exercise the authority under paragraph (1) of this subsection if the information sought—

(A) is available as a matter of public record; or

(B) can be obtained from another Federal agency pursuant to subsection (b) of this section; or

(C) is for use in connection with his intervention in any agency proceeding against the person to whom the interrogatory is addressed if the proceeding is pending at the time the interrogatory is requested.

(3) In the event of noncompliance with any interrogatories or requests submitted to any person by the Administrator pursuant to paragraph (1), any district court of the United States within the jurisdiction of which such person is found, or has his principal place of business, shall issue an order, on conditions and with such apportionment of costs as it deems just, requiring compliance with a valid order of the Administrator. The district court of the United States shall issue such an order upon petition by the Administrator or on a motion to quash, and upon the Administrator's carrying the burden of proving in court that such order is for information that may substantially affect the health or safety of consumers or may be necessary in the discovery of consumer fraud or substantial economic injury to consumers, and is relevant to the purposes for which the information is sought, unless the person to whom the interrogatory or request is addressed shows that answering such interrogatory or request will be unnecessarily or excessively burdensome.

(4) The Administrator shall not have the power to require the production or disclosure of any data or other information under this subsection from any small business. For the purpose of this paragraph, "small business" means any person that, together with its affiliates, including any other person with whom such person is associated by means of a franchise agreement, does not have assets exceeding $7,500,000, does not have net worth in excess of $2,500,000, and does not have an average annual net income, after Federal income taxes, for the preceding two years in excess of $250,000 (average net income

to be computed without benefit of any carryover loss). Nothing in this paragraph shall be construed to prohibit the Administrator from requesting the voluntary production of any such data or information. Notwithstanding this paragraph, the Administrator shall have the power, pursuant to paragraph (1) to obtain information from a small business if necessary to prevent imminent and substantial danger to the health or safety of consumers and the Administrator has no other effective means of action. The Administrator shall, not later than eighteen months after the date on which this Act becomes effective, submit to Congress a detailed report with respect to the effect of the limitations contained in this paragraph on the purposes of this Act, for such action as the Congress may deem appropriate.

(b) Upon written request by the Administrator, each Federal agency is authorized and directed to furnish or allow access to all documents, papers, and records in its possession which the Administrator deems necessary for the performance of his functions and to furnish at cost copies of specified documents, papers, and records. Notwithstanding this subsection, a Federal agency may deny the Administrator access to and copies of—

(1) information classified in the interest of national defense or national security by an individual authorized to classify such information under applicable Executive order of statutes, and restricted data whose dissemination is controlled pursuant to the Atomic Energy Act (42 U.S.C. 2011 et seq.);

(2) policy and prosecutorial recommendations by Federal agency personnel intended for internal agency use only;

(3) information concerning routine executive and administrative functions which is not otherwise a matter of public record;

(4) personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(5) information which such Federal agency is expressly prohibited by law from disclosing to another Federal agency, including, but not limited to, such expressly prohibited information contained in or related to examination, operating, or condition reports concerning any individual financial institution prepared by, on behalf of, or for the use of an agency responsible for regulation or supervision of financial institutions;

(6) information which would disclose the financial condition of individuals who are customers of financial institutions; and

(7) trade secrets and commercial or financial information described in section 552(b)(4) of title 5, United States Code—

(A) obtained prior to the effective date of this Act by a Federal agency, if the agency had agreed to treat and has treated such information as privileged or confidential and states in writing to the Administrator that, taking into account the nature of the assurances given, the character of the information requested, and the purpose, as stated by the Administrator, for which access is sought, to permit such access would constitute a breach of faith by the agency; or

(B) obtained subsequent to the effective date of this Act by a Federal agency, if the agency has agreed in writing as a condition of receipt to treat such information as privileged or

confidential, on the basis of its reasonable determination set forth in writing that such information was not obtainable without such an agreement and that failure to obtain such information would seriously impair performance of the agency's function.

Before granting the Administrator access to trade secrets and commercial or financial information described in section 552(b)(4) of title 5, United States Code, the agency shall notify the person who provided such information of its intention to do so and the reasons therefor, and shall, notwithstanding section 21(b), afford him a reasonable opportunity, not to exceed ten days, to comment or seek injunctive relief. Where access to information is denied to the Administrator by a Federal agency pursuant to this subsection, the head of the agency and the Administrator shall seek to find a means of providing the information in such other form, or under such conditions, as will meet the agency's objections.

(c) Consistent with the provisions of section 7213 of the Internal Revenue Code of 1954 (26 U.S.C. 7213), nothing in this Act shall be construed as providing for or authorizing any Federal agency to divulge or to make known in any manner whatever to the Administrator, solely from an income tax return, the amount or source of income, profits, losses, expenditures, or any particular thereof, or to permit any Federal income tax return filed pursuant to the provisions of the Internal Revenue Code of 1954, or copy thereof, or any book containing any abstracts or particulars thereof, to be seen or examined by the Administrator, except as provided by law.

LIMITATIONS ON DISCLOSURES

SEC. 11. (a) Except as provided in this section, section 552 of title 5, United States Code, shall govern the release of information by any officer or employee of the Agency.

(b) No officer or employee of the Agency shall disclose to the public or to any State or local agency any information which was received solely from a Federal agency when such agency has notified the Administrator that the information is within the exceptions stated in section 552(b) of title 5, United States Code, and the Federal agency has determined that the information should not be made available to the public; except that if such Federal agency has specified that such information may be disclosed in a particular form or manner, such information may be disclosed in such form or manner.

(c) The following additional provisions shall govern the release of information by the Administrator pursuant to any authority conferred by this Act, except information released through the presentation of evidence in a Federal agency or court proceeding pursuant to section 6—

(1) The Administrator, in releasing information concerning consumer products and services, shall determine that (A) such information, so far as practicable, is accurate, and (B) no part of such information is prohibited from disclosure by law. The Administrator shall comply with any notice by a Federal agency pursuant to section 11(b) that the information should not be

made available to the public or should be disclosed only in a particular form or manner.

(2) In the dissemination of any test results or other information which directly or indirectly disclose product names, it shall be made clear that (A) not all products of a competitive nature have been tested, if such is the case, and (B) there is no intent or purpose to rate products tested over those not tested or to imply that those tested are superior or preferable in quality over those not tested.

(3) Notice of all changes in, or any additional information which would affect the fairness of information previously disseminated to the public shall be promptly disseminated in a similar manner.

(4) Where the release of information is likely to cause substantial injury to the reputation or good will of a person, the Administrator shall notify such person of the information to be released and afford him a reasonable opportunity, not to exceed ten days, to comment or seek injunctive relief, unless immediate release is necessary to protect the health or safety of the public. The district courts of the United States shall have jurisdiction over any action brought for injunctive relief under this subsection, or under section 10(b)(7).

(d) In any suit against the Administrator to obtain information pursuant to the provisions of section 552 of title 5, United States Code, where the sole basis for the refusal to produce the information is that another Federal agency has specified that the documents not be disclosed in accordance with the provisions of subsection (b) of this section, the other Federal agency shall be substituted as the defendant, and the Administrator shall thereafter have no duty to defend such suit.

NOTICE

SEC. 12. (a) Each Federal agency considering any action which may substantially affect an interest of consumers shall, upon request by the Administrator, notify him of any proceeding or activity at such time as public notice is given.

(b) Each Federal agency considering any action which may substantially affect an interest of consumers shall, upon specific request by the Administrator, promptly provide him with—

(1) a brief status report which shall contain a statement of the subject at issue and a summary of proposed means concerning such subject; and

(2) such other relevant notice and information, the provision of which would not be unreasonably burdensome to the agency and which would facilitate the Administrator's timely and effective intervention or participation under section 6 of this Act.

(c) Nothing in this section shall affect the authority or obligations of the Administrator or any Federal agency under section 10(b) of this Act.

SAVING PROVISIONS

SEC. 13. (a) Nothing in this Act shall be construed to affect the duty of the Administrator of General Services to represent the interests of

the Federal Government as a consumer pursuant to section 201(a)(4) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 481(a)(4)).

(b) Nothing in this Act shall be construed to relieve any Federal agency of any responsibility to protect and promote the interests of consumers.

(c) Nothing in this Act shall be construed to limit the right of any consumer or group or class of consumers to initiate, intervene in, or otherwise participate in any Federal agency or court proceeding or activity, nor to require any petition or notification to the Administrator as a condition precedent to the exercise of such right, nor to relieve any Federal agency or court of any obligation, or affect its discretion, to permit intervention or participation by a consumer or group or class of consumers in any proceeding or activity.

DEFINITIONS

SEC. 14. As used in this Act, unless the context otherwise requires—

(1) "Administrator" means the Administrator of the Agency for Consumer Advocacy;

(2) "Agency" means the Agency for Consumer Advocacy;

(3) "agency action" includes the whole or part of an agency "rule," "order," "license," "sanction," "relief," as defined in section 551 of title 5, United States Code, or the equivalent or the denial thereof, or failure to act;

(4) "agency activity" means any agency process, or phase thereof, conducted pursuant to any authority or responsibility under law, whether such process is formal or informal;

(5) "agency proceeding" means agency "rulemaking", adjudication", or "licensing", as defined in section 551 of title 5, United States Code;

(6) "commerce" means commerce among or between the several States and commerce with foreign nations;

(7) "consumer" means any individual who uses, purchases, acquires, attempts to purchase or acquire, or is offered or furnished any real or personal property, tangible or intangible goods, services, or credit for personal, family, agricultural, or household purposes;

(8) "Federal agency" or "agency" means "agency" as defined in section 551 of title 5, United States Code. The term shall include the United States Postal Service, the Postal Rate Commission, and any other authority of the United States which is a corporation and which receives any appropriated funds, and, unless otherwise expressly provided by law, any Federal agency established after the date of enactment of this Act, but shall not include the Agency for Consumer Advocacy;

(9) "Federal court" means any court of the United States, including the Supreme Court of the United States, any United States court of appeals, any United States district court established under chapter 5 of title 28, United States Code, the District Court of Guam, the District Court of the United States Customs Court, the United States Court of Customs and Patent Appeals,

the United States Tax Court, and the United States Court of Claims;

(10) "individual" means a human being;

(11) "interest of consumers" means any health, safety, or economic concern of consumers involving real or personal property, tangible or intangible goods, services, or credit, or the advertising or other description thereof, which is or may become the subject of any business, trade, commercial, or marketplace offer or transaction affecting commerce, or which may be related to any term or condition of such offer or transaction. Such offer or transaction need not involve the payment or promise of a consideration;

(12) "participation" includes any form of submission;

(13) "person" includes any individual, corporation, partnership, firm, association, institution, or public or private organization other than a Federal agency;

(14) "State" means each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Canal Zone, Guam, American Samoa, and the Trust Territory of the Pacific Islands; and

(15) "submission" means participation through the presentation or communication of relevant evidence, documents, arguments, or other information.

CONFORMING AMENDMENT

SEC. 15. (a) Section 5314 of title 5, United States Code, is amended by adding at the end thereof the following:

"(60) Administrator, Agency for Consumer Advocacy."

(b) Section 5315 of such title is amended by adding at the end thereof the following:

"(100) Deputy Administrator, Agency for Consumer Advocacy."

(c) Section 5316 of title 5, United States Code, is amended by adding at the end thereof the following new paragraphs:

"(135) General Counsel, Agency for Consumer Advocacy."

"(136) Assistant Administrators, Agency for Consumer Advocacy (5)."

EXEMPTIONS

SEC. 16. (a) This Act shall not apply to the Central Intelligence Agency, the Federal Bureau of Investigation, or the National Security Agency, or the national security or intelligence functions (including related procurement) of the Departments of State and Defense (including the Departments of the Army, Navy, and Air Force) and the military weapons program of the Energy Research and Development Administration, or to a labor dispute within the meaning of section 13 of the Act entitled "An Act to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes", approved March 23, 1932 (29 U.S.C. 113), or of section 2 of the Labor Management Relations Act (29 U.S.C. 152), or to a la-

bor agreement within the meaning of section 201 of the Labor Management Relations Act, 1947 (29 U.S.C. 171).

(b) Nothing in this Act shall be construed, and no authority in this Act shall authorize, the Administrator to intervene in any United States Department of Agriculture proceeding without considering the consumers' interest in an adequate supply of food, and without considering the interests of farmers in maintaining an adequate level of income and production.

SEX DISCRIMINATION

SEC. 17. No person shall on the ground of sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity carried on or receiving Federal assistance under this Act. This provision will be enforced through agency provisions and rules similar to those already established, with respect to racial and other discrimination, under title VI of the Civil Rights Act of 1964. However, this remedy is not exclusive and will not prejudice or cut off any other legal remedies available to a person alleging discrimination.

FAIRNESS FOR SMALL BUSINESS

SEC. 18. (a) It is the sense of the Congress that small business enterprises should have their varied needs considered by all levels of government in the implementation of the procedures provided for throughout this Act.

(b) (1) In order to carry out the policy stated in subsection (a), the Small Business Administration (A) shall to the maximum extent possible provide small business enterprises with full information concerning the procedures provided for throughout this Act which particularly affect such enterprises, and the activities of the various agencies in connection with such provisions, and (B) shall, as part of its annual report, provide to the Congress a summary of the actions taken under this Act which have particularly affected such enterprises.

(2) To the extent feasible, the Administrator shall seek the views of small business in connection with establishing the Agency's priorities, as well as the promulgation of rules implementing this Act.

(3) In administering the programs provided for in this Act, the Administrator shall respond in an expeditious manner to the views, requests, and other filings by small business enterprises.

(4) In implementing this Act, the Administrator shall, insofar as practicable, treat all businesses, large or small, in an equitable fashion; due consideration shall be given to the unique problems of small business so as not to discriminate or cause unnecessary hardship in the administration or implementation of the provisions of this Act.

(5) For the purposes of this section, the term "small business" shall have the same meaning as provided in section 10(a)(4) of this Act.

AUTHORIZATION OF APPROPRIATIONS

SEC. 19. There are authorized to be appropriated to carry out the provisions of this Act, except section 24, not to exceed $15,000,000 for the fiscal year ending June 30, 1976, not to exceed $20,000,000 for the

fiscal year ending June 30, 1977, and not to exceed $25,000,000 for the fiscal year ending June 30, 1978. Any subsequent legislation to authorize appropriations under this Act for the fiscal year beginning on July 1, 1978, shall be referred in the Senate to the Committee on Government Operations and to the Committee on Commerce.

EVALUATION BY THE COMPTROLLER GENERAL

SEC. 20. (a) The Comptroller General of the United States shall audit, review, and evaluate the implementation of the provisions of this Act by the Agency for Consumer Advocacy.

(b) Not less than thirty months nor more than thirty-six months after the effective date of this Act, the Comptroller General shall prepare and submit to the Congress a report on his audit conducted pursuant to subsection (a), which shall contain, but not be limited to, the following:

(1) an evaluation of the effectiveness of the Agency's consumer representation activities;

(2) an evaluation of the effect of the activities of the Agency on the efficiency, effectiveness, and procedural fairness of affected Federal agencies in carrying out their assigned functions and duties;

(3) recommendations concerning any legislation he deems necessary, and the reasons therefore, for improving the implementation of the objectives of this Act as set forth in section 2.

(c) Copies of the report shall be furnished to the Administrator of the Agency for Consumer Advocacy, the chairmen of the Senate Committees on Commerce and on Government Operations, and the chairman of the Committee on Government Operations of the House of Representatives.

(d) Restrictions and prohibitions under this Act applicable to the use or public dissemination of information by the Agency shall apply with equal force and effect to the General Accounting Office in carrying out its functions under this section.

MISCELLANEOUS PROVISIONS

SEC. 21. (a) Nothing in this Act could be construed to limit the discretion of any Federal agency or court, within its authority, including a court's authority under rule 24 of the Federal Rules of Civil Procedure, to grant the Administrator additional participation in any proceeding or activity, to the extent that such additional participation may not be as of right, or to provide additional notice to the Administrator concerning any agency proceeding or activity.

(b) (1) No act or omission by the Administrator or any Federal agency relating to the Administrator's authority under sections 6 (a), (d), (f), (i), and (j), 7, 10, 11, and 12 of this Act shall affect the validity of an agency action or be subject to judicial review: *Provided*, That—

(A) the Administrator may obtain judicial review to enforce his authority under sections 6 (a), (d), (f), (i), and (j), 10, and 12 of this Act: *Provided*, That he may obtain judicial review of the Federal agency determination under section 6(f) of this Act

only after final agency action and only to the extent that such determination affected the validity of such action;

(B) a party to any agency proceeding or a participant in any agency activity in which the Administrator intervened or participated may, where judicial review of the final agency action is otherwise accorded by law, obtain judicial review following such final agency action on the ground that the Administrator's intervention or participation resulted in prejudicial error to such party or participant based on the record viewed as a whole; and

(C) any person who is substantially and adversely affected by the Administrator's action pursuant to section 6(f), 10(a), or 11 of this Act may obtain judicial review, unless the court determines that such judicial review would be detrimental to the interests of justice.

(2) For the purposes of this subsection, a determination by the Administrator that the result of any agency proceeding or activity may substantially affect an interest of consumers or that his intervention in any proceeding is necessary to represent adequately an interest of consumers shall be deemed not to be a final agency action.

TRANSFER OF CONSUMER PRODUCT INFORMATION COORDINATING CENTER

SEC. 22. (a) All officers, employees, assets, liabilities, contracts, property, and records as are determined by the Director of the Office of Management and Budget to be employed, held, or used primarily in connection with the functions of the Consumer Product Information Coordinating Center in the General Services Administration are transferred to the Agency and all functions of the Administrator of General Services administered through the Consumer Product Information Coordinating Center are transferred to the Agency.

(b) (1) Except as provided in paragraph (2) of this subsection, personnel engaged in functions transferred under this section shall be transferred in accordance with applicable laws and regulations relating to transfer of functions.

(2) The transfer of personnel pursuant to this section shall be without reduction in classification or compensation for one year after such transfer.

PUBLIC PARTICIPATION

SEC. 23. (a) After reviewing its statutory authority and rules of procedure, relevant agency and judicial decisions, and other relevant provisions of law, each Federal agency shall issue appropriate interpretations, guidelines, standards, or criteria, and rules of procedure, to the extent that such rules are appropriate and are not already in effect, relating to the rights of individuals who may be affected by agency action to—

(1) petition the agency for action;
(2) receive notice of agency proceedings;
(3) file official complaints (if appropriate) with the agency;
(4) obtain information from the agency; and
(5) participate in agency proceedings for the purpose of representing their interests.

Such interpretations, guidelines, standards, criteria, and rules of procedure shall be published in proposed and final form in the Federal Register.

(b) Each Federal agency shall take all reasonable measures to reduce or waive, where appropriate, procedural requirements for individuals for whom such requirements would be financially burdensome, or which would impede or prevent effective participation in agency proceedings.

(c) Any rules of procedure issued by any Federal agency pursuant to this section shall be published in a form and disseminated in a manner that is designed to inform, and that is able to be understood by, the general public.

COST AND BENEFIT ASSESSMENT STATEMENTS

SEC. 24. (a). In furtherance of the purpose and policy of section 2(b)(4) of this Act, and except as otherwise provided in this Act, each Federal agency which is authorized to promulgate rules (as defined in section 551(4) of title 5, United States Code), shall prepare a cost and benefit assessment statement with respect to any rules to which section 553(b) of title 5, United States Code is applicable, which are likely to have a substantial economic impact. Each such statement shall be short and concise and, together with such supporting documentation as the agency in its discretion determines to be necessary or appropriate, shall consist of the following three elements:

(1) estimated costs, that are foreseeable as a result of the effective implementation of such rule;

(2) estimated benefits, that are foreseeable as a result of the effective implementation of such rule; and

(3) the apparent relationship, if any, between such costs and benefits.

To to the extent deemed practicable by the agency responsible for its preparation, each cost and benefit assessment statement shall indicate in an appendix the assumptions, if any, which were made by it regarding the means, or alternative means, and attendant costs of compliance with the proposed rule, including any manufacturer's costs and consumer costs reflected in the price of any product affected by such rule.

(b) With respect to any proposed rule subject to the requirements of subsection (a), each Federal Register notice of proposed rulemaking shall request interested persons to submit to the applicable agency, in writing, comments, materials, data, information and other presentations relevant to the preparation of the required cost and benefit assessment statement.

(c) Each such agency shall, to the extent it deems necessary or appropriate, seek to obtain comments, materials, data, information, and presentations relevant to the costs and benefits, if any, likely to ensue from effective implementation of any proposed rule, within the time prescribed for consideration of the proposed rule, from other Federal agencies and persons. No extentions of time for comment shall be granted solely for the purpose of receiving any such presentations with respect to such benefits.

(d) Each person who contends that effective implementation of a proposed rule will result in increased or decreased costs, shall furnish to the applicable agency the information upon which he bases such assertion, and which is in his possession, is known to him, or is subject to his control. Such information shall be furnished to the agency in such form, manner, and detail as such agency in its discretion prescribes. Whenever any relevant information, which an applicable agency deems necessary or appropriate to the preparation of a cost and benefit assessment statement, is or may be in the possession or control of a person who may be directly affected by the proposed rule, such agency is authorized to request such relevant information as reasonably described by it, and such person shall furnish such relevant information promptly to such agency. Such request for information shall be enforceable by appropriate orders by any court of the United States. Such information as is furnished shall be considered a statement for purposes of section 1001 of title 18, United States Code.

(e) A cost and benefit assessment statement prepared pursuant to subsection (a) shall be first published at the end of the year in the Federal Register in a report which shall contain all cost and benefit assessment statements applicable to rules promulgated during the preceding 12 months. All relevant information developed or received by the applicable agency in connection with the preparation of such statement shall be available to all interested persons, subject to the provisions of section 552 of title 5, United States Code.

(f) The President shall issue, pursuant to the provisions of this subsection, (1) regulations providing guidelines for Federal agencies as to the nature and content of any cost and benefit assessment statement required by subsection (a) and (2) regulations which shall insure that any agency shall be able to obtain information deemed by it to be necessary or appropriate to the preparation of any such cost and benefit assessment statement. Such regulations shall be issued by the President upon the recommendations submitted to the President by the Office of Management and Budget, the General Accounting Office, and the Agency for Consumer Advocacy. In issuing or modifying any regulations implementing this section, the President shall proceed in accordance with the procedures prescribed by subsections (b) and (c) of the new section inserted by section 202, Public Law 93–637, (88 Stat. 2193; 15 USC 57a(b), (c)). The President shall provide public notice of proposed rule-making to implement this subsection within 60 days of the effective date of this Act. After issuance of any regulations implementing this section, the President shall transmit them to the Congress, together with all recommendations submitted to the President pursuant to this subsection. Such regulations shall take effect 90 legislative days after such transmittal to the Congress by the President, unless either House of Congress by resolution of disapproval, pursuant to procedures established by chapter 35, title 44, United States Code, and by section 1017 of The Congressional Budget and Impoundment Control Act of 1974 (31 U.S.C. 1407), disapproves such regulations, except that Congress may by concurrent resolution modify such regulations within such 90-day period, in which case such regulations shall take effect in such modified form.

(g) No Federal officer or agency shall submit proposed legislation to the Congress which is likely, if enacted, to have a substantial eco-

nomic impact, unless such legislation is accompanied by a cost and benefit assessment statement. The statement required by this subsection shall be prepared in accordance with the provisions of subsection (a). The requirements of this subsection may be postponed upon the request of a committee of Congress having jurisdiction over such legislative proposal, for a period not to exceed 30 days from the date of submission to the Congress of such legislation.

(h) In addition to the definitions in section 14 of this Act, the following definitions shall apply with respect to the provisions of this section:

(1) The term "rule" means "rule" as defined by section 441 (4) of title 5, United States code;

(2) The term "legislation" or "law" means a statute of the United States or any amendment thereto;

(3) "benefit" includes any direct or indirect, tangible or intangible, gain or advantage which the agency, in its discretion, deems proximately related to the promulgation of a proposed regulation or the enactment of the proposed legislation. The term shall include such nonquantifiable benefits as the agency identifies and describes. Benefits may include the costs that would be likely to result from the agency's failure to act, but which are likely to be avoided by the agency's action; and

(4) "cost" includes any direct or indirect expense, including component costs of production and supply, and any loss, penalty, or disadvantage which the agency, in its discretion, deems proximately related to the promulgation of a proposed regulation, or the enactment of proposed legislation, the term shall include such nonquantifiable costs as the agency identifies and describes.

(i) The Comptroller General of the United States shall monitor and evaluate the implementation of this section. In addition to any other reports or studies made by the Comptroller General relating to this section, he shall, three years after the effective date of this section, conduct a comprehensive review of this section including an evaluation of the advantages and disadvantages of cost and benefit assessment statements and of the nature and extent of Federal agency compliance with this section. The Comptroller General shall prepare and submit to the Congress a report based on such study and review. Such report shall include, but need not be limited to, his recommendations as to the necessity or advisability of the provisions of this section, and of the need to amend subsection (k), or any other provision, of this section.

(j) No court shall have the jurisdiction to review, or enforce or shall review, or enforce and, except for the general review of the effectiveness of this section provided for in subsection (i), no officer or agency of the United States, other than the agency responsible for the preparation of a cost and benefit assessment statement and the duly authorized committees of the Congress, shall have the authority to review, or enforce or shall review, or enforce, in any way the compliance of any cost and benefit assessment statement with this section, or, except where the agency preparing such a statement seeks to enforce in court its request for information, the compliance by such agency with any other requirement of this section, including the man-

ner or process by which such statement is prepared. *Provided*, that a Federal court may, upon the request of any interested person, review and enforce compliance with the provisions of this subsection.

(k) The requirements of this section shall supersede the requirements of any existing executive order imposing any economic, cost-benefit, inflationary or other similar impact assessment requirement. No requirement of this section shall alter or supersede any Federal agency statutory requirement, regulation or lawful practice which such agency determines to be inconsistent with any of the requirements of this section. Further, no agency shall be required to prepare and issue a cost and benefit assessment statement required by this section, if information which would be contained in such statement is encompassed within another statement required by law to be prepared in connection with the promulgation of the applicable rule.

(l) The provisions of this section shall become effective upon the effective date of implementing regulations submitted by the President under subsection (g) of this section. There are hereby authorized to be appropriated such sums as are necessary to carryout the provisions of this section for the fiscal year 1976, 1977, and 1978.

EFFECTIVE DATE

SEC. 25. (a) This act shall take effect ninety calendar days following the date on which this Act is enacted, or on such earlier date as the President shall prescribe and publish in the Federal Register.

(b) Any of the officers provided for in this Act may (notwithstanding subsection (a)) be appointed in the manner provided for in this Act at any time after the date of the enactment of this Act. Such officers shall be compensated from the date they first take office at the rates provided for in this Act.

SEPARABILITY

SEC. 26. If any provision of this Act is declared unconstitutional or the applicability thereof to any person or circumstance is held invalid, the constitutionality and effectiveness of the remainder of this Act and the applicability thereof to any persons and circumstances shall not be affected thereby.

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