



STATEMENT OF THE COMMISSION
Regarding the Adoption of Revised Section 18 Rulemaking Procedures

July 9, 2021

The FTC’s revisions to Parts 0-1 of the Commission’s Rules of Practice will bring the Commission’s procedures for promulgating Trade Regulation Rules under Section 18 of the FTC Act in line with the statute’s requirements. These changes reflect the Commission’s serious appreciation of its statutory obligation to “avoid unnecessary costs or delay”¹ in those proceedings and our commitment to using all of our available tools robustly to protect consumers from the unfair and deceptive tricks and traps they face in our modern economy. in a dynamic and changing economic landscape. Indeed, the Commission rightfully responded to this grant of authority by initiating more than a dozen rulemakings in the few months and years after its passage.

³ Yet, in the intervening decades, we have nearly abandoned using Section 18 rulemaking as it was intended: to provide a participatory, dynamic process for setting out clear conduct rules for industry.

The change in approach began in the early 1980s amid a broad deregulatory wave, including at the Commission. The Federal Trade Commission Improvements Act of 1980 instituted some lasting revisions around the edges of FTC rulemaking, including adding a requirement to issue an Advance Notice of Proposed Rulemaking (ANPRM) before initiating rulemaking.⁴ However, the true and lasting changes to the FTC were self-imposed limitations through bureaucratic organization.

the agency-promulgated Rules of Practice. Parts 0 and 1 of these Rules shape Commission behavior and process for Section 18 rulemaking. The imposition of requirements beyond what Congress provided in statute has led to the widespread belief

¹ 15 U.S.C. § 57a(c)(2).

² Pub. L. No. 93-637, 88 Stat. 2183 (1975).

³ Though few of the Trade Regulation Rules from that initial burst of Section 18 activity have survived the ensuing deregulatory backlash, many other TRRs under various FTC authorities have continued to provide important regulatory guidance on issues of public concern. Among those are the Negative Option Rule (16 C.F.R. 425.1); the Franchise Rule (16 C.F.R. pt. 436); the Business Opportunity Rule (16 C.F.R. pt. 437); the Credit Practices Rule (16 C.F.R. pt. 444); the Funeral Rule (16 C.F.R. pt. 453); and the Eyeglass Rule (16 C.F.R. pt.

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Prospective trade rules will give businesses and consumers concrete guidance about their responsibilities and rights. Importantly the Commission will be able to exercise its prosecutorial discretion to seek a wide variety of relief, including redress, civil monetary penalties, reformation of contracts, and other relief, against first-time violators of Trade Regulation Rules under Section 19 of the FTC act. While r1.15 Td(unde)4 a (of)3 3d