

103^D CONGRESS
1ST SESSION

H. R. 489

To require public notice of and a period of public comment on any guideline proposed by the Department of Justice or the Federal Trade Commission with respect to the interpretation or implementation of the antitrust laws or to any policy relating to the enforcement of the antitrust laws.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 20, 1993

Mr. FISH introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To require public notice of and a period of public comment on any guideline proposed by the Department of Justice or the Federal Trade Commission with respect to the interpretation or implementation of the antitrust laws or to any policy relating to the enforcement of the antitrust laws.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Antitrust Procedural
5 Fairness Act of 1993”.

1 **SEC. 2. NOTICE OF AND PERIOD FOR COMMENT ON ANTI-**
2 **TRUST GUIDELINES.**

3 (a) NOTICE OF PROPOSED ANTITRUST GUIDE-
4 LINES.—General notice of the proposed issuance of any
5 antitrust guideline shall be published in the Federal Reg-
6 ister, unless the persons subject thereto are named and
7 either personally served or otherwise have actual notice
8 thereof in accordance with law. Such notice shall include—

9 (1) a statement of the time, place, and nature
10 of public proceedings applicable to the issuance of an
11 antitrust guideline,

12 (2) reference to the legal authority under which
13 such guideline is proposed, and

14 (3) either the terms or substance of the pro-
15 posed antitrust guideline or a description of the sub-
16 jects and issues involved.

17 (b) EXCEPTIONS.—Subsection (a) shall not apply—

18 (1) to any antitrust guideline relating only to
19 agency organization or personnel,

20 (2) to any antitrust guideline when the agency
21 for good cause—

22 (A) finds that notice and public procedure
23 with respect to such guidelines are impractica-
24 ble, unnecessary, or contrary to the public in-
25 terest, and

1 (B) publishes, at the time of publication of
2 the adopted antitrust guideline, such finding
3 and a brief statement of the reasons therefor,
4 or

5 (3) to any antitrust guideline issued after a
6 hearing required by statute.

7 (c) PERIOD FOR PUBLIC COMMENT.—An agency
8 shall provide a public comment period of not less than
9 sixty days after notice of the proposed issuance of an anti-
10 trust guideline with respect to which subsection (a) ap-
11 plies.

12 (d) PROCEDURE FOR PUBLIC COMMENT.—During
13 the public comment period required by subsection (c), any
14 interested person may submit written data, views, or argu-
15 ments. The agency may provide an opportunity for oral
16 presentations concerning the proposed antitrust guideline.

17 **SEC. 3. ISSUANCE OF ANTITRUST GUIDELINE.**

18 (a) BASIS FOR ADOPTION OF ANTITRUST GUIDE-
19 LINE.—After consideration of the relevant matter submit-
20 ted or presented with respect to a proposed antitrust
21 guideline, the agency shall incorporate in the antitrust
22 guideline adopted a concise general statement of basis and
23 purpose of such guideline.

24 (b) EFFECTIVE DATE OF ANTITRUST GUIDELINE.—
25 The required publication or service of an antitrust guide-

1 line shall be made not less than sixty days before its effec-
2 tive date, except as otherwise provided by the agency for
3 good cause (as described in subsection (b)(2)(A)) found
4 and published with the guideline.

5 **SEC. 4. MAINTENANCE OF FILES REGARDING ISSUANCE OF**
6 **ANTITRUST GUIDELINES.**

7 (a) FILE OF PROCEEDING REGARDING ISSUANCE OF
8 ANTITRUST GUIDELINE.—Beginning not later than the
9 date on which the agency provides notice of the proposed
10 issuance of an antitrust guideline, the agency shall main-
11 tain a file of each proceeding relating to the issuance of
12 such guideline, conducted in accordance with this Act. Ex-
13 cept as provided in subsection (b), such file shall include—

14 (1) the notice of the proposed issuance of such
15 guideline and any supplemental notice concerning
16 such issuance,

17 (2) copies of, or identification of, all studies and
18 documentary material upon which the agency sub-
19 stantially relied in formulating the proposed or final
20 guideline,

21 (3) copies of all written comments on the pro-
22 posed guideline, or area of inquiry, which were sub-
23 mitted pursuant to any agency notice of the pro-
24 posed issuance of such guideline published in the
25 Federal Register,

1 (4) all material which the agency by statute is
2 required to make public in connection with the issu-
3 ance of such guideline or which the agency wishes to
4 make part of the record, and

5 (5) the statements required of the agency in
6 formulating the guideline.

7 (b) EXCLUSION OF CERTAIN MATTERS.—Subsection
8 (a) shall not apply with respect to any matter which is
9 exempt under section 552(b) of title 5, United States
10 Code, from disclosure under section 552(a) of such title.

11 **SEC. 5. AMENDMENTS TO ANTITRUST GUIDELINES.**

12 For purposes of this Act, any amendment made, or
13 proposed to be made, by the agency to an existing anti-
14 trust guideline shall be deemed to be an antitrust guide-
15 line, or a proposed antitrust guideline, respectively.

16 **SEC. 6. DEFINITIONS.**

17 For purposes of this Act—

18 (1) the term “agency” means the Department
19 of Justice or the Federal Trade Commission,

20 (2) the term “antitrust guideline” means an
21 agency statement of general applicability designed—

22 (A) to implement or interpret any of the
23 antitrust laws, or

1 (B) to implement, interpret, or prescribe
2 any policy relating to the enforcement of any of
3 the antitrust laws,

4 (3) the term “antitrust laws” has the meaning
5 given it in subsection (a) of the first section of the
6 Clayton Act (15 U.S.C. 12(a)), except that such
7 term includes section 5 of the Federal Trade Com-
8 mission Act (15 U.S.C. 45) to the extent that such
9 section 5 relates to unfair methods of competition,
10 and

11 (4) the term “person” has the meaning given it
12 in section 551(a) of title 5, United States Code.

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