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# NATIONAL COMMISSION ON PRODUCT SAFETY



## HEARING BEFORE THE COMMITTEE ON COMMERCE UNITED STATES SENATE NINETY-FIRST CONGRESS

SECOND SESSION

ON

## NATIONAL COMMISSION ON PRODUCT SAFETY

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JUNE 24, 1970

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NATIONAL COMMISSION ON PRODUCT MARKET

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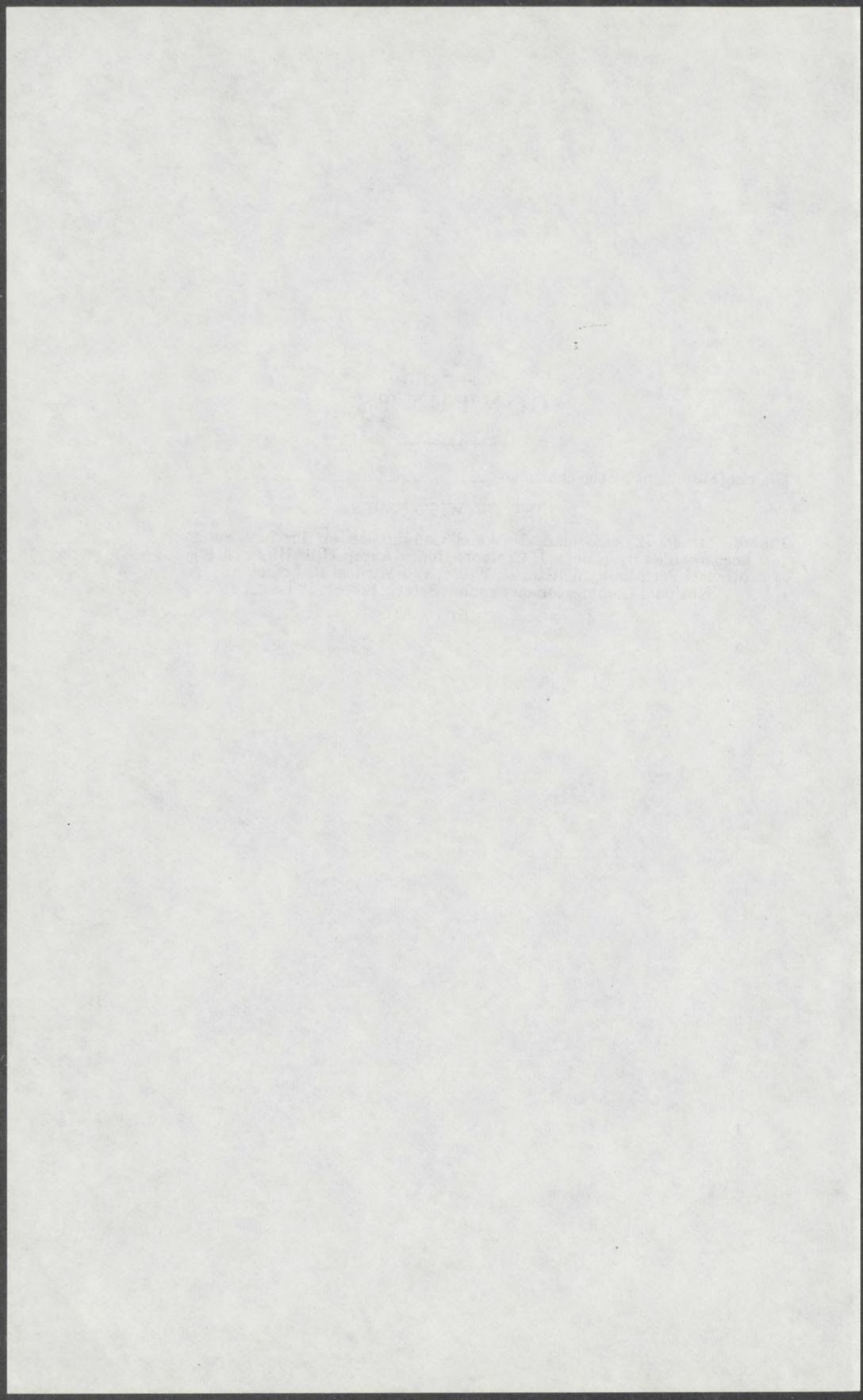
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# NATIONAL COMMISSION ON PRODUCT SAFETY

WEDNESDAY, JUNE 24, 1970

U.S. SENATE,  
*Committee on Commerce,*  
*Washington, D.C.*

The committee met at 9:50 a.m., in room 5110, New Senate Office Building, Hon. Warren G. Magnuson (chairman) presiding.

Present: Senators Magnuson, Pastore, Hart, Moss, Cotton, Pearson, and Baker.

## OPENING STATEMENT BY THE CHAIRMAN

The CHAIRMAN. The committee will come to order.

We will have some other members of the committee who will be here shortly. This week is a very busy week in the Senate and a lot of them have other commitments, but they will be here.

The chairman has a short statement he would like to read.

On behalf of the members of the Commerce Committee, we welcome this morning the members of the National Commission on Product Safety, whose strenuous efforts and dedication to the tasks drafted by this committee and assigned by Congress nearly 4 years ago are about to come to an end.

After an initial review of the Commission's report other members of the committee and I are deeply impressed with its several aspects.

First, the Commission has done its work thoroughly. Detailed case studies are interwoven with broad statistical and engineering analysis to produce a clear portrait of the total unwanted and unwarranted product injuries that occur in this Nation every day and every year.

Second, the portrait of neglect and indifference in product safety design, the very magnitude of the numbers of injuries involved and the personal tragedies buried in these numbers is appalling.

Third, let us make no mistake of it, the Commission's recommendations are bold and far-reaching. And may I say this is what the committee wanted. And I think they were wise decisions.

We will give careful scrutiny to each and every one of the Commission's recommendations at future hearings and in executive deliberation. But as of today I'm convinced the Commission's report makes a sound case for strong, innovative omnibus product safety legislation.

As the life of this Commission draws to a close, I think it appropriate to point out its work would not have been possible without the uncommon, unwaivering support given by the senior Republican member of this committee, Senator Cotton.

Staff member assigned to this hearing: S. Lynn Sutcliffe.

I also want the members of the Commission to know that the American consumer is fortunate in having as chairman of our Consumer Subcommittee Senator Moss, who in leading the legislative battle in toy safety based on your interim recommendations, demonstrated his dedication and capacity to deliver on behalf of American consumers.

To Chairman Elkind and members of the Commission and staff, this committee wants to express its deep appreciation for the work you have done. We promise you that your work has not come to an end. We promise you that the task to which you have addressed yourselves will be taken up firmly by other hands and specifically by this committee.

Senator Moss, you have a statement too, I believe.

Senator Moss. Yes, Mr. Chairman; thank you.

May I take this opportunity to compliment you and Senator Cotton for your foresight in establishing the National Commission on Product Safety. I have had the pleasure of working very closely with the Commission in developing and passing the Child Protection and Toy Safety Act of 1969. I concur wholeheartedly in your assessment of its performance—it has, indeed, been outstanding.

In its final report the Commission has defined the problem: 20 million people injured each year as a result of incidents connected with consumer products; 110,000 people permanently disabled; 30,000 killed; a cost to the Nation of more than \$5.5 billion.

To solve this problem the National Commission on Product Safety has recommended the passage of an omnibus Products Safety Act administered by an independent Consumer Products Safety Commission.

Given the scope of the problem in terms of human suffering and financial loss, it is now imperative that Congress begin the task of forging an overall approach to product safety. The important guideposts erected by the Product Safety Commission will prove invaluable as the Senate Commerce Committee begins its legislative task.

To the Commissioners and staff of the National Commission on Product Safety, I extend my thanks for a job well done. The Heffron report has already aided the Consumer Subcommittee in its oversight hearings on the Flammable Fabrics Act. I am sure that the final report of the Commission will direct Congress toward a comprehensive legislative plan for perfecting the consumer's right to safety in the products he buys. I pledge that I will vigorously pursue a legislative solution to the problems the Commission has exposed—a solution hammered out of the recommendations of the Commission and the constructive suggestions of other interested parties.

I do, indeed, Mr. Chairman, believe that an outstanding job has been done by this very fine Commission, and I commend all of the members of the Commission for their enlightened and effective report.

The CHAIRMAN. I might say to the Commission members that the legislation that we speak about is on its way to the committee and we will have jurisdiction over it soon. Then the committee will have to decide how to proceed on this and other recommendations.

Senator Cotton?

Senator COTTON. I wish to commend you, Mr. Elkind, and your fellow Commissioners on your report.

As a cosponsor with the distinguished chairman of this committee of the resolution that is now Public Law 90-146, I look forward to examining that report.

Although I am sure that the individual members of this Commission will continue to take an interest in legislative development and will, from time to time, give the committee the benefit of your advice and suggestions, your work formally is done. That of this committee is just beginning.

Under the leadership of the distinguished chairman of this committee, who has pioneered in this field, and all of the other members of the committee who are keenly interested, I am sure you may depend upon us to give careful consideration to your report and follow it by proper action.

On my own part, I thank you for your effort and congratulate you on your work product—the report you have presented to us today.

Thank you, Mr. Chairman.

The CHAIRMAN. Senator Pearson, do you have any remarks?

Senator PEARSON. No, thank you.

The CHAIRMAN. Senator Hart?

Senator HART. No.

The CHAIRMAN. Mr. Elkind, maybe it would be well if you introduced the members of the Commission to the committee and the staff members who did a lot of work for you.

**STATEMENT OF ARNOLD B. ELKIND, CHAIRMAN, NATIONAL COMMISSION ON PRODUCT SAFETY; ACCOMPANIED BY EMORY J. CROFOOT; HENRY AARON HILL; HUGH L. RAY; MICHAEL PERTSCHUK; WILLIAM R. WHITE; AND MICHAEL R. LEMOV**

Mr. ELKIND. Yes, indeed.

Senator Magnuson, gentlemen, I would like to present Mr. Emory Crofoot at the far right end of the table. Mr. Crofoot is an attorney from Portland, Oregon.

Sitting next to Mr. Crofoot is Mr. Hugh Ray, who is retired director of the merchandising and testing laboratories of Sears, Roebuck & Co.

I will skip the next gentleman who may be a complete stranger to you, and turn to Dr. Henry Hill from Haverhill, Mass., and then we have two of our fine professional people, our executive director, Mr. William White, and our very competent counsel, Mr. Michael Lemov.

Two of our colleagues were not able to be here today.

I have skipped over Mr. Michael Pertschuk because he is directly related to the expression of gratitude I wish to convey to this committee, not only for making this Commission possible and supporting it in the most meaningful way, but for making available to us the talents of your chief counsel, Mr. Pertschuk. He has been a tower of strength on this Commission, and a source of personal satisfaction and affection, I might add, for the Commission's Chairman. I am very happy to acknowledge his contribution to our efforts, Mr. Chairman.

The CHAIRMAN. All right, Mr. Elkind, you have a statement I believe. We would be glad to hear from you.

Mr. ELKIND. Yes.

Yesterday the President and Members of Congress received copies of our final report. And today as Chairman of the National Commission—

The CHAIRMAN. May I interrupt you just a minute?

This report, of course, is going to be in great demand and maybe later on in your statement you will tell us about it, but the committee would like to have at least some detail as to how these reports will be made available and whether we should have committee prints, because I am sure every member of the committee and many, many people will want to see a copy of this report. So if that is not in your statement, we can talk about that later.

Mr. ELKIND. I would be very happy to cover the points at this time, Mr. Chairman.

Mr. White?

Mr. WHITE. Yes. We will have copies available to all members of the committee and others, but it would be desirable if the demand is great to have a committee print.

The CHAIRMAN. I am thinking about the public, consumers groups, and other Members of Congress. I am sure there is going to be widespread demand for copies of this final report. We are going to have to print quite a few of them.<sup>1</sup> ☉

Go ahead.

Mr. ELKIND. Mr. Chairman, study and investigations must precede recommendations and we devoted the better part of 2 years to investigations.

As you anticipated in the legislation establishing this Commission, we found unreasonable hazards to American consumers from household products.

American technology is a worldwide marvel. Surely a country famed for its innovative techniques can apply this expertise to safety. We found, however, that appearance, performance, and sometimes potential obsolescence were first considerations. Safety, generally speaking, might be called the low man on the merchandising totem pole. America and Americans are promotion minded. And it is easy to promote and sell something that looks smart and apparently does what is asked of it. Manufacturers seem to accept the idea that safety does not sell as an article of faith.

The prevailing opinion for decades seems to have been that if a consumer is injured he must have misused the product. We found this is not necessarily so. And we further found out that a certain amount of consumer misuse can be anticipated and allowed for if the design engineers are heeded. We do not imply that a manufacturer willingly markets a hazardous product. But we do maintain that too often he does not take safety design factors into account.

The American householder surrounds himself with products for which there are no standards. Not all these products, of course, are lethal or even injurious. But far too many common household products contain an element of danger. We believe that something can and should be done about this. It seems absurd to have an American home an unsuspected boobytrap.

<sup>1</sup> See Appendix for a reprint of the Commission's Summary of Findings, Recommendations and Proposed Consumer Product Safety Act.

For example, we found that architectural glass often used in homes for sliding doors causes about 150,000 injuries a year. But glass panels made of safety-glazed material will not shatter into jagged shards, so that most of these injuries should never have occurred.

We found hot water vaporizers which heat water to about 180 degrees after a few hours' operation. Young children have repeatedly tipped them over. Their screams awaken parents, but not in time to prevent second- and third-degree burns over large portions of their bodies.

We found high rise bicycles which—with their stylish "banana" seat, high handle bars, and small front wheels—encourage and facilitate stunt riding, and consequently cause a greater number of injuries.

Furniture polish using 95 percent petroleum distillates has caused fatal chemical pneumonia in young children who have ingested it. Such polishes are packaged in ordinary screw cap bottles, colored like soft drinks, and scented attractively.

Power rotary lawnmowers chop off toes and fingers and hurl objects at bystanders with the speed of shell fragments. An estimated 140,000 persons are injured by these machines each year. Careful redesign would reduce these dangers.

Some of the toys which triggered our concern last year are still available in the marketplace in spite of the passage of the Child Protection and Toy Safety Act of 1969.

These products and the following additional product categories were found by the Commission to include unreasonably hazardous makes and models: color television sets, fireworks, floor furnaces, glass bottles, household chemicals, infant furniture, ladders, power tools, protective headgear, unvented gas heaters, and wringer washing machines.

In many cases we found consumers could not reasonably be expected to protect themselves because they could not know the hazard existed or how to deal with it effectively. In many cases the risk could be reduced at minimal cost, either by redesigning the product or adding to it an inexpensive safety feature. The annual cost of product-related injuries in the United States may exceed \$5.5 billion.

Other hazardous products also mentioned in our report escaped being called "unreasonable" in part because we lacked time to investigate them as fully as the 16 categories already mentioned. These products are listed in a section of our report called Unfinished Business. If those words contain a hint of our anxiety let me assure you it is entirely intentional. After further study it is quite possible that many of these products and others we do not even know about may also be found unreasonably hazardous to American consumers.

The annual toll of 20 million injuries—110,000 of which cause permanent disability—and 30,000 deaths are associated with a great variety of products. To accept the status quo in view of this appalling waste of human lives would be to betray our mandate as well as our moral sensitivities.

I might add at this point that this is violence in the home by any definition. Strangely enough, these figures would seem to indicate that when an American leaves the streets and highways—where he may suspect that he is in jeopardy—to enter his home, he is in a more dangerous environment than he just left.

Because American industry may lack the incentive for safety necessary to overcome what may be an irreconcilable profit motive, government must be its gadfly. Cognizant of the national character of the problem, and having borne witness to paramount examples of the failure of municipal and statewide attempts at redress, we believe that the leadership in this effort to eliminate unreasonable hazards in the marketplace is appropriately and peculiarly a function of the Federal Government. The Federal role should be to encourage movement and concern with respect to safety, to oversee performance, and to police and punish those who unreasonably violate their duty to produce safe products—all of this, without interfering with the creative and innovative energies of the free enterprise system.

Methods now used to reduce hazards associated with these products are chronically deficient; namely, industry self-regulation (by standards-making groups, trade associations, testing labs, or by each manufacturer); some limited Federal safety laws; State and local laws and private common law actions. We have concluded that none of these controls nor any combination of them presently provides adequate protection for consumers.

Self-regulation relies on voluntary safety standards. We found instances where an industry's notion of a standard seemed to be whatever was a little better than shoddy. These are arrived at through assent of manufacturers—or a consensus among them—which permits the least responsible members of an industry to retard progress in reducing hazards. Once consensus is reached the standards are legally unenforceable. Furthermore, the efforts of individual manufacturers, sometimes laudable, to raise levels of safety and avoid tragic death and injury, are usually retarded by competitive economic forces.

In the standards-making process itself, consumer representation—broadly meaning nonindustry representation—is often a kind of window dressing without the least potential for influencing the outcome of a standard, much less having the votes to defeat it.

Authority under Federal law to curb hazards in consumer products within our area of concern is virtually nonexistent. We have listed about 350 categories of consumer products in our report which are basically unregulated or underregulated. Congress has hitherto opted for a piecemeal approach by passing acts treating hazards associated with a single product or class of products. Even the implementation of these acts is hampered by unnecessary procedural obstacles, weak investigative powers, inadequate and ill-fitting sanctions, timid administration, and small budgets. No Government agency possesses general authority to assure that products which may harbor unreasonable risks conform to minimum safety standards and to inform the consumer of essential safety information.

State and local laws also demonstrate the inadequacies of existing safety legislation. These laws, often passed in response to specific tragedy, frequently deal with such isolated products as bedding, matches or exploding golf balls. In addition to the laws' limited effectiveness in protecting consumers they often present significant obstacles to manufacturers who are forced to comply with conflicting State and local requirements.

Finally, the common law, though increasingly successful in compensating victims, seldom causes manufacturers to take preventive measures as a result of adverse judgments. Even if they do, it is too late to help the victims of misdesigned products.

What are our recommendations to end this clearly unsatisfactory situation?

We need first a national program to assist in reducing hazards associated with consumer products. This program should be aimed at preventing accidents through encouraging careful design and testing of products. We believe the recommendations we now place before this committee are the least expensive and most effective means toward that end.

Enactment of a comprehensive Consumer Product Safety Act is our first recommendation. It contains in legislative form the best answers we have found to the problems I discussed earlier. It is an omnibus act. It provides a way to deal with all consumer products, not just specific items or classes of products.

To assure that safety receives the attention it deserves we recommend that the Consumer Product Safety Commission to be created upon passage of the act should be an independent agency. The commission can then devote its full time and full budget to problems of safety. Safety will not be lost in the complexities of a larger department. An independent agency is also more visible. It can more easily communicate with the public and industry. We learned during our 2-year existence that industry will often take the initiative to reduce hazards when a hazardous situation is brought to its attention. We believe an independent Commission with the powers I will discuss can more easily do this.

The primary powers we have proposed for the Commission are to:

- (1) Develop and set mandatory consumer product safety standards when necessary;
- (2) Enjoin use of consumer products which violate Federal safety standards or are unreasonably hazardous;
- (3) Require notice to consumers and recall or replacement of substantially defective products;
- (4) Make reasonable on-site inspection of manufacturing facilities;
- (5) Establish an injury information clearinghouse to analyze causes of product-related deaths and injuries and disseminate information to the public on consumer products; and
- (6) Conduct public hearings and subpoena witnesses and documents.

Under the proposed legislation, if safety standards are insufficient to insure reasonable safety of certain products the Commission is empowered to ban those products from the market by a rulemaking procedure; if the hazard presents an imminent danger to the public health, the Commission can ban the products during the proceeding. In addition we recommend that the Commission have authority to seek an injunction in the Federal courts where an unreasonably hazardous product is being marketed.

To insure compliance with its orders the Commission should be able to draw from a wide and appropriate range of civil and criminal penalties. For example, the proposed act imposes a fine of \$2,000 per viola-

tion on any person who manufactures, offers for sale or introduces into commerce a product which does not meet mandatory standards or which has been banned. Each product violating the act is a separate offense, but fines may not exceed \$500,000 for related series of offenses. Criminal penalties of up to \$50,000 fine and 180 days in jail are suggested for knowing or willful violations. Under our proposed Consume Product Safety Act, the Commission can require manufacturers or sellers to notify purchasers of a product that it does not comply with Federal standards or is defective and unreasonably dangerous. Finally, the new Commission could order the product recalled or have a manufacturer bring it into compliance with applicable mandatory standards.

We also concluded that consumers should be encouraged to help themselves in case of injury. We thus recommend treble damage suits by injured persons, either individually or as a class, against a manufacturer causing an injury by a knowing or willful violation of a Federal consumer product safety standard.

To facilitate consumers' helping themselves, courts have recently relaxed the traditional rules of "standing" to allow more consumers to defend their own interests in agency proceedings. Yet time and expense limits consumer participation. To insure that consumer interests are consistently defended, we propose a Consumer Safety Advocate whose exclusive responsibility is to defend consumer interests. His authority will extend to receiving and acting on complaints from the public, Congress or other agencies, proposing modifications of standards or other regulations, requesting initiation of Commission proceedings, and appearing before the Commission in rulemaking proceedings. The Advocate, we expect will make effective consumer representation before the new Commission.

I have already mentioned that good mandatory safety standards are important to insuring the safety of household products. But adherence to standards, particularly with complex products, can only be verified by sophisticated testing methods. In appropriate cases, a testing program will be essential. We rejected as unnecessary and exorbitantly expensive premarket testing of all consumer products by Government. As an alternative we recommend that the Consumer Product Safety Commission have the authority, in cooperation with the Department of Commerce, to accredit private testing laboratories and require independent testing of products in situations where a mandatory Federal standard is in effect or where the Commission finds a substantial hazard exists.

Prevention is the key to reducing the number of product injuries. Yet despite careful design and premarket testing, products on the market may be found unreasonably hazardous. To act effectively, the Commission must identify as quickly as possible these unreasonable hazardous products. We have, therefore, recommended that the new Commission operate an Injury Information Clearinghouse to collect, analyze, and publicize information on causes and prevention of product-related injuries.

We know such a program is needed. Our Commission did not find good reliable sources of data on such injuries. We have experimented with data collection techniques including a touchtone telephone system which records in a central data bank information from several hos-

pitals near Washington and Memphis, Tenn. As an experiment, the system worked. We hope that, suitably expanded, it will provide the kind of "early warning system" the Nation needs.

Redesigning and producing safe products may cost money. Sometimes the cost is low. But when safety is expensive, big producers are better able to bear the burden than small ones. We do not intend our proposals to be anticompetitive.

We do not want to disadvantage smaller producers. The Commission has, therefore, urged that the Small Business Administration be empowered to make "product disaster" loans to small producers who might suffer hardships from engineering expense or retooling to meet higher standards of safety.

These in brief are our most important findings and recommendations. Others contained in our final report complement those I have mentioned, but the basic program is now before you.

Thank you for inviting me to appear on behalf of the Commission.

I would be happy to answer any questions you may have, Mr. Chairman.

The CHAIRMAN. Thank you, Mr. Elkind. We appreciate this fine synopsis of the report itself. We haven't all had a chance to read it completely, but we will.

Somewhere in the report you wrote that if making a product safer became too expensive for the manufacturer, you could work with the manufacturer to find some place in between where the hazards would be reduced. The manufacturer would not reach the maximum of safety because that would be too expensive, but somewhere in between, so that the manufacturer would be able to meet competition.

Do you recall that? It was in the paper this morning. I thought it was a very good statement because a lot of people who are in business are wondering about this. We had this same thing with the Automobile Safety Act. I remember once I said you could make an automobile perfectly safe; you know, have a padded cell and put some wheels on it and everybody would be happy. But there are other factors.

The Commission made some statement on that; I don't know just where it is in the report.

Mr. ELKIND. We indicated, Mr. Chairman, that the exposure to risk that is appropriate for society, on any given product, is a quasi-political decision that depends on a number of factors, technology, expense, the level of our humanitarian concern, the degree of affluence of our society, and therefore, it would be appropriate that these decisions be made with Government supervision and participation because the Government is in the best position to exercise the kind of judgment needed in that difficult area. So that in a way this Commission could be a brake on unnecessary designs which would price other goods of the same type out of the marketplace.

The CHAIRMAN. Or that might not even be practical.

Mr. ELKIND. Yes.

The CHAIRMAN. There is somewhere in between where we can do the job you suggest without completely violating the whole spirit of competition and progress.

Mr. ELKIND. Exactly. It is a very delicate problem.

The CHAIRMAN. Yes. Now, you state that over 20 million Americans each year are injured and 30,000 are killed. If Congress would enact a comprehensive product-safety plan as you have suggested in your final report, how many of these injuries and deaths could be prevented?

Mr. ELKIND. The best estimates we have had, Mr. Chairman, is that the range would be between 20 and 10 percent, so that I have averaged it out at 15 to have one figure. Say 15 percent is a fair figure.

The CHAIRMAN. Of course we have discussed before the establishment of a commission such as this, as when we established the Federal Trade Commission way back. Did you folks come to the conclusion that that in itself would stimulate people to make a safer product?

Mr. ELKIND. Oh, yes. Yes, that I think is the philosophy that has guided the Commission here. We have been concerned with finding ways and means of motivating industry to move ahead in this area.

The CHAIRMAN. Yes. As you pointed out so well in your statement, we created this Commission because there were so many aspects of this we couldn't go into. This committee has acted, I think, responsibly, but it has been a hit and miss deal with one thing or another. For instance, the Flammable Fabrics Act was the outgrowth of some young ladies who were burned to death by very flammable imported sweaters.

Something had to happen. And we had to pick out certain products. We have gone into such things as lawnmowers, and I must say that because of this I think the lawnmower manufacturers are voluntarily trying to make a safer lawnmower. They are now competing on that basis—who has the safest one—not necessarily the one that cuts the most grass.

Senator PASTORE. Or costs less.

The CHAIRMAN. Yes; and the Commission was created so we could take a look at this whole picture. But we have taken up different areas of this safety matter and that is why your Commission's report is so valuable.

Now did the Commission formulate any cost estimates on the establishment and maintenance of this Commission?

Mr. ELKIND. Yes, the first year the cost would be \$5 million, we believe; the second year \$7.5 million and the third year and each year thereafter \$10 million.

The CHAIRMAN. Now you advocated the creation of an independent agency, which generally speaking, personally now, I think is the best way to do this. I don't know how the other committee members feel; we are going to have to take this up.

But in your statement you justify this by saying it could direct its total energies to this one thing. And this is appealing. Otherwise, if they got mixed up in a department, they would be diluted a little bit in doing their job.

Mr. ELKIND. Yes, these problems are esoteric; they are the easiest one to shove under the rug; they have the least appeal, I think, of most consumer problems, because of the American ethos; most Americans think it is always going to be the other guy that is involved in these things. And therefore safety in a competitive situation, for funding, for people, for programs, will get downgraded. And it has to have independence to do the job.

The CHAIRMAN. Of course, that has been the whole theory of independent agencies, but sometimes this committee has found they become captives of the very industry they are regulating.

I don't know if there is any formula to cure that. It depends on the people themselves to see that this does not happen. In this case, of course, we would want people who could cooperate with industry and find out how to do a better job.

Mr. ELKIND. We have tried to meet that problem, Mr. Chairman, by borrowing from the institution of the ombudsman in Sweden. We provide for a Consumer Safety Advocate in this agency to create that kind of thing.

The CHAIRMAN. Yes, this would help it considerably. This might be an idea for some other independent agencies I know who come before this committee.

Senator Cotton, I know you have some questions.

Senator COTTON. Very brief.

Mr. Chairman, first I think this is an excellent, comprehensive statement. I think the chairman of the committee has put his finger on the one difficulty that we may find when we move into the legislative field, and that is the question of the independent agency and how it is to be correlated with other agencies of Government.

I think many of the members of this committee present this morning are also members, along with the chairman, of the Appropriations Committee.

We have found, I think, whenever we create a new agency and try to pull in all of the activities and concentrate them, that we never can do a really clean job. Rather, it sometimes spills over into other agencies and those other agencies come up and need more personnel to perform their functions. We run into the constant difficulty of proper staffing and proper funding.

Now in your recommendations the matter of dangerous foreign imports of course goes to the Secretary of the Treasury. The matter of reimbursement for unreasonable expense you suggest goes into the Small Business Administration. The matter of safety laboratories goes into or collaborates with the Department of Commerce.

I think we all recognize you just can't erect a new agency out in the middle of the desert. There must be some overlap with other agencies. That feature of it, I think, may be one of the knotty problems with which this committee will have to struggle.

I wonder if you would care to comment just a bit further on that point?

Mr. ELKIND. Well, I believe that our legislation envisages the Commission's having pre-emptive control over the safety aspects of imports in the consumer product area as opposed to the Secretary of the Treasury.

The certification of laboratories by the Department of Commerce, Bureau of Standards, while it is an ongoing process in that laboratories will be coming along from time to time seeking certification, as it relates to the system, it is sort of a one shot deal; you certify them and then you check their credentials from time to time, as opposed to the ongoing control of the Commission.

So there is not too much of an overlap there. I think the agencies would fit together and work together without any problem.

Now, as for the Small Business Administration, I don't know how many corporations would find it necessary to apply to get financial assistance. My guess would be that they would be few and far between, so there wouldn't be too much of a problem correlating activities in that area.

There are, however, some fuzzy areas, some ambiguities that would remain to be ironed out on jurisdiction.

Senator CORRON. Just one other point. Based upon a hasty examination, I believe I discern that in the matter of dealing with the safety of imported foreign products, you more or less follow the same pattern that we have already followed in the automobile field. Of course, when you get into a large quantity of products I anticipate—and I guess that Senator Pastore would anticipate the same thing, because we and others have been going through this fight for some protection of textiles and other American products—that shutting out products over such a wide field because of safety factors will result in loud and agonized screams from the State Department and the Department of Commerce on their trade agreements that they have entered into with other nations.

I think that is going to be a very serious problem. I am wondering if there should be a new agency, and whether or not there should be an arbitrary power to stop the importation of inherently dangerous and hazardous products, without getting mixed up with the Treasury Department and Commerce Department and all of the rest of them.

Would you comment on that?

Mr. ELKIND. Yes, I completely agree with the Senator and I might add that other societies that are engaged in the importation and exportation of consumer products have within the past several years found it necessary to adopt legislation and set up agencies similar to that that we are suggesting here.

So it is conceivable that similar Commissions functioning in other countries, in Sweden, Great Britain, Canada, Japan, and Western Germany might very well refuse to accept some of our products because of the inadequacy of safety requirements.

Senator CORRON. I can't resist observing at this point that that rule doesn't seem to work. Every country on earth with whom we trade sets up trade barriers in the form of import licenses and tariffs—

Senator PASTORE. So another one wouldn't hurt us too much.

Senator CORRON. Yes. But we just don't do that, because they say there is something wicked about it. So I am not so sure in this field that if other countries set up these restrictions, the fact that they do, and the fact that they continue to do so will be given very much weight. It is hard for me to comprehend that the attitude of the State Department and Department of Commerce and others would change materially. I am not so sure that works out, because we have seen them take the attitude in this country that no matter what other countries do, restraint of trade in any form is something that invades the sancto-sanctorum and we Americans can't do it.

I hope it won't work out that way in this regard, but I am a little afraid.

Thank you, Mr. Chairman.

The CHAIRMAN. Just to pursue that point, the Congress, this committee and others, we have taken action when we have some kind of a catastrophe or something that becomes obvious. Then of course all of these agencies act immediately to ban the dangerous products. Take the sweater case for example. But I think if we are going to have this Commission at all, it ought to be able to do the preventive work, not after it happens, and have the authority to say this product is unsafe for American use.

That is the only way it will work. Otherwise we will be going, as the Senator from New Hampshire says, through the rigamarole of departments and trade agreements and everything else.

I don't think it should be any other way, after reasonable testing and all of this.

Mr. ELKIND. Yes.

The CHAIRMAN. One thing I forgot about was the test matter. What about the cost of getting a product tested? Who would bear the cost?

Mr. ELKIND. Well, if it is a certification program that the Commission thinks is necessary for a given product, the manufacturer would have to pay the independent laboratory for it.

The CHAIRMAN. Send his product in and they would test it and then he might then have a right to say that his product meets the minimum standards for safety, whatever the Commission decides that is. Is that right?

Mr. ELKIND. Well, we don't know whether—

The CHAIRMAN. That is what they do at the Bureau of Standards now.

Mr. ELKIND. We would require the test and then require the laboratory to certify on the product that it did comply with the standards.

The CHAIRMAN. Yes, that is a detailed matter that the Commission would have to work out.

Senator Pastore?

Senator PASTORE. In that particular case, would you mean that every single product that is produced abroad and in this country would have to undergo this testing?

Mr. ELKIND. Oh, no.

Senator PASTORE. We don't mean that?

Mr. ELKIND. Not at all, sir.

Senator PASTORE. It would only mean in cases where you were suspicious there was jeopardy to life and limb?

Mr. ELKIND. And where the certification appeared to be an appropriate answer.

Senator PASTORE. Now in reading your statement, and I have caught up with the reading of it as I sat here, you make a very valid point when you speak of these vaporizers, that in many instances a child receives third degree burns, which leads me to this question: Your thrust naturally will be toward the manufacturer. In other words, what you are trying to do is eliminate the manufacturing of items that are injurious to health and limb?

Mr. ELKIND. Yes, sir.

Senator PASTORE. How would you deal with this insofar as foreign manufacturers are concerned? As Mr. Cotton brought out, we are a trading nation, we buy a lot more than we sell, although people in the State Department try to disabuse us of that, but we do buy more abroad than we sell abroad. There is no question about it, otherwise we would never have a deficit in our balance of payments.

Now the question I ask is how would you get let's say at a Japanese manufacturer?

Mr. ELKIND. The Commission would have jurisdiction over imports, no question about it.

Senator PASTORE. At what point would you exercise it? At the point of entry?

Mr. ELKIND. At the point of entry, yes. Not only that, the manufacturers would have to make some kind of certification that they were subject to process here and would respond.

Senator PASTORE. In every instance?

Mr. ELKIND. Yes.

Senator PASTORE. In other words, you get a certification from the foreign manufacturer, no matter what his country, that his product was meeting American standards?

Mr. ELKIND. Yes.

Senator PASTORE. And then you would have the authority, if there was any suspicion that was being violated, to hold up the product at the port of entry and make your examination?

Mr. ELKIND. Yes, sir.

Senator PASTORE. Before it got into the hands of the retailers and consumers?

Mr. ELKIND. Beforehand, yes.

Senator PASTORE. That is very refreshing and very encouraging, because it is true as you point out on page 5, that "Because American industry has lacked the incentive for safety necessary to overcome what may be an irreconcilable profit motive, Government must be its gadfly."

But, I find that while we are derelict in many respects with this question of safety, because of the profit motive, I have found it is more pronounced insofar as foreign manufacturers are concerned. And I think there has to be a tremendous amount of emphasis there.

As the chairman brought out, that sweater he was talking about was an imported sweater. And we have met time and time again on the question of standards even on woolens, where they pick up these loose ends or reprocessed cloth and Americans have to have a label on it that is pure wool. We can go into any factory in America and make that inspection, but we can't go into every factory say in a foreign country and make that inspection and we can't tell, once it comes in and once the cloth is put together. Yet one product is being sold as pure wool when it is not really a pure wool product.

I would hope that in all of this process that while we get after the American manufacturers, we make sure the foreign manufacturers have to live up to the same rules.

Mr. ELKIND. There is no question about it, Senator.

I might say last year when we presented a number of toys to Senator Moss' subcommittee, a number of them were made in foreign countries and were imports.

Senator PASTORE. One final question. In your examination or investigation over the last 2 years, where do you find more fault, American-made products on a percentage basis or foreign made products? Can you answer that question?

Mr. ELKIND. No, we didn't make that kind of study.

The CHAIRMAN. I might say any one of your people can answer if you want, all except Mike; we will hear from him later.

Senator PASTORE. I would hope you would look into that.

The CHAIRMAN. I mean you can call on any other members to respond.

Mr. ELKIND. The best statement I could make, Senator, is that we found hazards in both domestic and foreign products.

Senator PASTORE. Oh, I know that, that is a cliché. That isn't answering my question.

Mr. ELKIND. I can't answer your question.

Senator PASTORE. I would hope at a future date you could be a little more responsive to that question.

Mr. RAY. I will attempt to answer your question, Senator.

When you take consumer products that go into the home and relate the percent that are domestically manufactured and those that are imported, your imports at the most are not going to be more than 12 or 15 percent.

Senator PASTORE. That is right.

Mr. RAY. What we can answer is the category of product. We found, I would say, in toys that the large percentage of what we would call unreasonably hazardous toys were imported. But this does not necessarily hold true in all categories of goods.

Senator PASTORE. I know. But when it comes to toys we have found the foreign-made toys on a percentage basis have been more injurious to the safety of the consumer than American-made toys.

Mr. RAY. We would say probably, because we didn't go into that depth. We didn't look at every one of the hundreds of toys.

Senator PASTORE. Some day when you find out the true answer, I hope you will give me a categorical answer.

The CHAIRMAN. Senator Pearson?

Senator PEARSON. Mr. Elkind, in your introductory statement you made note of the marvel of American technology and you thought that perhaps technology could be redirected and its expertise used for safety. Then you went on to say that unfortunately appearance and potential obsolescence is the first order of priority. And the words "potential obsolescence" caught my eye.

You considered that, I know, in the light that those products that have long wear are perhaps the most dangerous. But what evidence did you find in the study of consumer items where there is an intentional or built-in potential obsolescence?

Mr. ELKIND. We or course, Senator, were not directed to study the question of whether or not products do have built-in obsolescence.

Senator PEARSON. May I interrupt and facetiously say the women in my family think there is a worldwide conspiracy that hose are made to last for just a certain length of time.

I suspect there is some truth in it.

Mr. ELKIND. This is strictly a personal observation, it is not a professional conclusion, but there are few people I know who would take the converse of that proposition and claim that endurance is a target for our consumer products.

Senator PEARSON. Thank you very much. I have no further questions.

The CHAIRMAN. Senator Moss?

Senator MOSS. Thank you, Mr. Chairman. I too want to express my appreciation for the very excellent statement that you have made, Chairman Elkind. I have just two or three questions.

The first has to do with this Consumer Safety Advocate that you recommend. How would this advocate operate to insure the American consumer that the Consumer Product Safety Commission is doing its job?

Mr. ELKIND. Of course we have to assume that he is going to be a conscientious appointee. If he is, then it would be his responsibility to make public statements that would present the consumers' point of

view. After all, the Commission itself has more of a judicial function. They have to balance equities between manufacturers and consumers and make adjustments. But we think it is important to have a capable individual, a high-placed individual, in the Commission itself who would have no divided loyalties and no judicial function. He is there as an advocate to take the consumer point of view, to take it openly and make his views, and the proceedings of the Commission open to the public and visible.

The purpose here is to do two things. First, it develops a kind of dynamic tension within the Commission, so that there is a rivalry, which we found to be a good thing. And second, it puts the spotlight of public attention on what is going on in that commission. If the spotlight is there, the performance we think will be better.

Senator Moss. I wonder if this advocacy function could be fulfilled by a consumer advocate outside of the Consumer Product Safety Commission?

For example, one current legislative proposal calls for the creation of a consumer protection agency and one of the functions of that agency would be to seek on behalf of the American consumer safe products.

Would this arrangement be compatible with the recommendations of your Commission?

Mr. ELKIND. It would be compatible, but I think that the results would be better if the safety spokesman were only a safety spokesman, rather than a broad-range consumer spokesman, for the same reason I alluded to earlier. The problems of safety are peculiarly of the type that do not generate interest and excitement. We would like to see safety isolated as a governmental function and standing on its own two feet.

Senator Moss. The proposed legislation for the creation of a Consumer Product Safety Commission exempts from the Commission's authority automobiles, flammable fabrics, cigarettes, foods, drugs, cosmetics, pesticides, and radiation hazards, because these products have already been covered by other legislation.

Why didn't the Commission evaluate these programs and make recommendations with respect to which programs would remain independent of the Consumer Product Safety Commission and which should be brought into the Commission?

Mr. ELKIND. Well, we didn't want to extend our work into an area that we didn't think had been assigned to us. We did study several existing agency programs, as you know, Senator Moss, to learn lessons as to what we would recommend here.

Now it is perfectly true that the safety program we have set up for this Commission could readily be adapted or broadened into other areas. But there again we did not know the considerations that Congress had in setting up the separate departments, in the Department of Transportation for automobile safety, a separate thing for cigarettes, and so forth.

We felt it would be presumptuous on our part to express opinions in this area. But the machinery is there, it seems to me, for a consolidated safety agency with a broad spectrum of powers relating to all products.

Dr. HILL. Mr. Chairman, may I answer that question?

Senator Moss. Yes.

Dr. HILL. Three weeks ago I was here talking before Senator Moss' hearings on the oversight of the Flammable Fabrics Act. At that time, not wanting to pre-empt what we were going to say this morning, I did say I felt in the long run that the flammable fabrics, particularly, could be incorporated into the consumer product safety agency which we are recommending this morning.

I would like now, since the Commissioners are here and the report is out, to say that very strongly.

As we read Public Law 91-46, we didn't feel it was within our purview specifically to go beyond those household products which are not covered by other legislation. But now having examined the other legislation, having reached the conclusions which we have, I certainly would be in favor of including flammable fabrics and I think perhaps the committee or the Congress, after it examines some of the other programs, may very well find the consumers' best interests would be served by having them all represented in this one agency.

Thank you.

Senator Moss. Doesn't your report really take in already the Federal Hazardous Substances Act?

Mr. ELKIND. Well, there is some overlapping with the coverage of the Federal Hazardous Substances Labelling Act, because we don't think that that legislation is flexible enough to cover all of the contingencies that are presented by the products that come within its purview. It is a sort of all-or-nothing statute; you either ban it or you require a certain labeling and that is about all the Government can do.

The problems are too complex, it seems to me, and it seemed to my colleagues, to permit that kind of authority to be the extent of governmental interest.

The CHAIRMAN. Well, Mr. Elkind, there are some of these acts that we have passed, as was pointed out, dealing with individual matters like the flammable fabrics. I think if this commission is created some of these have to be folded in where they deal primarily with safety.

Obviously automobile safety is another subject. But many of these acts which deal primarily with safety, I think we will have to consider whether we fold them into the jurisdiction of this commission so it covers all of them.

Mr. ELKIND. We haven't expressed a view on that, because we defer to you on that.

The CHAIRMAN. I understand. That is our job up here, not yours.

Senator Moss. The enabling clause of the Joint Resolution creating the National Commission on Product Safety states: "Whereas it is desirable for such Commission to make recommendations as it deems appropriate for remedial action by the President, the Congress, the States, and private industry," and so on.

Why have remedial recommendations not included recommendations for rearranging the existing product safety programs?

Mr. ELKIND. There again, Senator Moss, we felt that it would be arrogant on the part of the Commission to express our views on a broad subject which involves Government organization and where the Senate and Members of the House have a broader range of experience in observing these matters and can probably make a better judgment in the area than we can.

After all, except for Mr. Pertschuk, we do not live in this world that you do.

Senator MOSS. The recommendations that you make for enforcing safety, which includes a certification program, are somewhat similar or may be identical with the certification program recently advocated by the Federal Trade Commission in the flammable fabrics area. Isn't that so?

Mr. ELKIND. It is similar. It is not identical, though.

Senator MOSS. The one they recommended?

Mr. LEMOV. Senator, does that refer to requiring testing programs prior to the use of the certification?

Senator MOSS. Yes. Chairman Weinberger testified before the subcommittee a week or two ago on this.

Mr. ELKIND. It is the same provision, I am told.

Senator MOSS. I wonder if the consumer product safety commission would utilize the field personnel of any existing Government agency to monitor consumer products and insure that they are in compliance with established safety standards, or if not, why not?

Mr. ELKIND. We would hope to have monitoring done not only by appropriate Governmental personnel in connection with the buying policies of the Government, but we would also hope to have the cooperation of States and cities in monitoring performance, so that there would be a constant communication and reporting back and policing of the country through the use of other than direct commission employees.

Senator MOSS. In the civil penalty section of the proposed legislation you recommend the establishment of a \$2,000 fine for violation of the act. Is it the judgment of the Commission that this is a stiff enough penalty?

Mr. ELKIND. That was the way we felt. Of course that is per violation, Senator MOSS.

Mr. PERTSCHUK. It means per product.

Senator MOSS. So it might be aggregated as high as a half million dollars?

Mr. ELKIND. Yes.

The CHAIRMAN. Of course that is a matter the committee has to decide, the Commerce Committee.

Senator MOSS. In the proposed consumer product safety act, does the commission provide for private remedies?

Mr. ELKIND. Yes, sir. We ask that the act authorize consumers who are injured as a result of a knowing violation of the Federal standards to be authorized, as in the case of anti-trust violations, to bring an action for treble damages. And the only burden would be to prove that it was a knowing violation.

In those cases we also suggest that the class action remedy provided by rule 23 of the Federal Rules of Civil Procedure be made applicable.

Senator MOSS. If there is a willful violation?

Mr. ELKIND. If the claim is for a willful violation of a Federal standard.

Senator MOSS. How important do you think it is to unlock the doors of the court house and allow the consumer to pursue his private remedy?

Mr. ELKIND. I think it is very important. One of the major goals of our society, I am sure, is justice, and anything that opens up the courts to the people, brings more people into the courthouse, where they can

witness first-hand the concern of the judges and juries for their individual rights, is a plus in the governmental scheme.

Senator Moss. As you are probably aware, there is a class action remedy bill that is presently being considered here. I just wanted to get your reactions to the general feeling of class action as an appropriate remedy for consumers.

Mr. ELKIND. On the general question, Senator, we have considered this, deliberated over this problem of whether to take a position and it was our feeling we should confine ourselves to the area of our specialty and that our views expressed at this time would be redundant in view of the discussion that has been going on currently.

So I cannot give you a Commission position on that question.

Senator Moss. Well, thank you. Let me again commend you, Mr. Chairman, and all of the members of the Commission and your staff for a very excellent job.

I think this has certainly been a tremendous contribution in this field of consumer protection and consumer safety. Thank you.

Thank you, Mr. Chairman.

The CHAIRMAN. Senator Baker?

Senator BAKER. Mr. Chairman, I will reserve my questions until later. I assume we will have other hearings on this subject?

The CHAIRMAN. Oh, yes.

Senator BAKER. It was only this morning of course that I had a copy of the report. I read in this morning's Washington Post that the bill which is appended to it has been introduced by the chairman, I believe, and I have not seen a copy of it.

The CHAIRMAN. For the record, it hasn't actually been introduced, but it will be within a couple of hours. We have it all ready, but last night we had a little problem on the floor.

Senator BAKER. Yes. But I haven't seen the bill and as far as I know none of us have had a chance to examine it. Since I read in the paper it had been introduced, I resolved that I would wait until I got a chance to read it before I went further into this testimony.

I am delighted to see the committee's chief counsel here as a part of this Commission. I assume he had some part in writing the bill, and we will have a chance to discuss it later.

Thank you.

Senator COTTON. May I just ask one question?

The CHAIRMAN. Yes, go ahead.

Senator COTTON. I am sure all of us are going to be wrestling with this proposal. There have been many necessary fields of activity, however, that we have started out on with flags flying and great ambition. Yet, when it gets into operation—whatever law is passed—and the time for enforcement comes, we have to tighten up so much on personnel that it loses its effect.

I think that is going to loom up in this case. You have done a magnificent job and we must carry on. But we still have this problem.

Now I gather from your very fine statement and from a hasty look at the report that these hazardous products fall into two categories. One is the category of appliances and the other includes things like floor waxes and other like products. Is that a fair statement?

Mr. ELKIND. They fall into more categories than that, Senator Cotton. We treated the categories in terms of their characteristics as far

as causing injury is concerned, whether it would burn or explode or whether it was poisonous if ingested. That is the way we did it.

Senator COTTON. I understood that. But I am simply using the example of floor wax as covering many products.

I just want to throw a parting shot to you concerning the problem and the expense of enforcement. For example, when a new drug is put out, the Food and Drug Administration of course doesn't let it go on the market until it investigates to see if there are side effects and so on. They have to come to the Food and Drug Administration, show them the product, show them the analysis, and satisfy them in order to get a license or permission to put it on the market.

That system couldn't possibly be followed with a multitude of products. But when you come to electrical and mechanical appliances, such as lawnmowers and others that possibly are hazardous, would it not save a lot of expense and have a great preventive effect if that class of products had to come to the Commission rather than be put on the market and later have the Commission investigate and pursue and find out what is hazardous and what isn't? That would narrow the initiative of the Commission to all of these other substances.

I am trying to think of some way so that we don't start out with a great project here and then let it fall by the wayside by not sufficiently enforcing it.

Mr. ELKIND. Well, we rejected premarketing clearance of a broad range of products because of the expense; it is just too costly. We believe that the legislation is broad enough and flexible enough to permit a very simple process whereby the Commission identifies a hazard, and having identified the hazard, it can say, "Well, this is the kind of product where the best control would be a certification program." That would mean that the manufacturer would be required to have an independent laboratory certify that the product complies with standards.

Now if the standards that exist in the marketplace are adequate, they wouldn't even necessarily have to be Federal standards, products could be certified just to existing voluntary standards. If a standard were inadequate, then we would challenge the manufacturers to come forward within a given time with a standard. And if they don't do the job, then the Commission would step in and set the performance standard for them, and then insist on the certification to that performance standard.

The only area where we have considered shifting the burden of starting things off to the manufacturing community is in the area of new and innovative products. There we have tried to be very careful not to discourage ingenuity and progress.

This was the problem that the Commission faced in this area. So we came up with a compromise. We have asked that the Commission have authority to promulgate standards and procedures for the purpose of insuring that new consumer products are adequately designed and tested.

So what we have done really is pass the buck to the Commission and say, "Well, you tackle this problem as the situation exists."

Senator COTTON. Thank you. Thank you, Mr. Chairman.

The CHAIRMAN. Did the Commission make any recommendations that if this Commission was appointed where it should be located physically?

Mr. ELKIND. We hadn't considered that question at all.

The CHAIRMAN. It is just the Chair's personal opinion that it ought to be out of town, so they would be more independent. That is my personal viewpoint on it. Not Seattle, but someplace else. I don't want to be where they are located, because I would have to be there personally every day.

Well, I think you looked at this matter of making it reasonable and practical for the manufacturers to have, not necessarily shortcuts, but an easy way to get their products in front of this Commission. And this is what you have to do. There will be a great number of them, I imagine, before they ever put a products on the market who will come down and say, "Look, this is all right? If it is not, how should we change it?" This is the way the Federal Trade Commission should work and it does in many cases.

So that the manufacturer wouldn't be tied up with a lot of redtape and as you point out we wouldn't deny new products or competition or profits; we don't intend to do that.

It seems to me that every manufacturer of products that you take a look at, will read this report very carefully and do a lot of things way ahead of the promulgation of standards or the legislation itself.

So you have promoted safety in household products I am sure, already. There are many things that manufacturers can do that wouldn't cost much more—sometimes wouldn't cost as much.

So, unless there are further questions, we thank you very much and we will all join in saying it was a job well done.

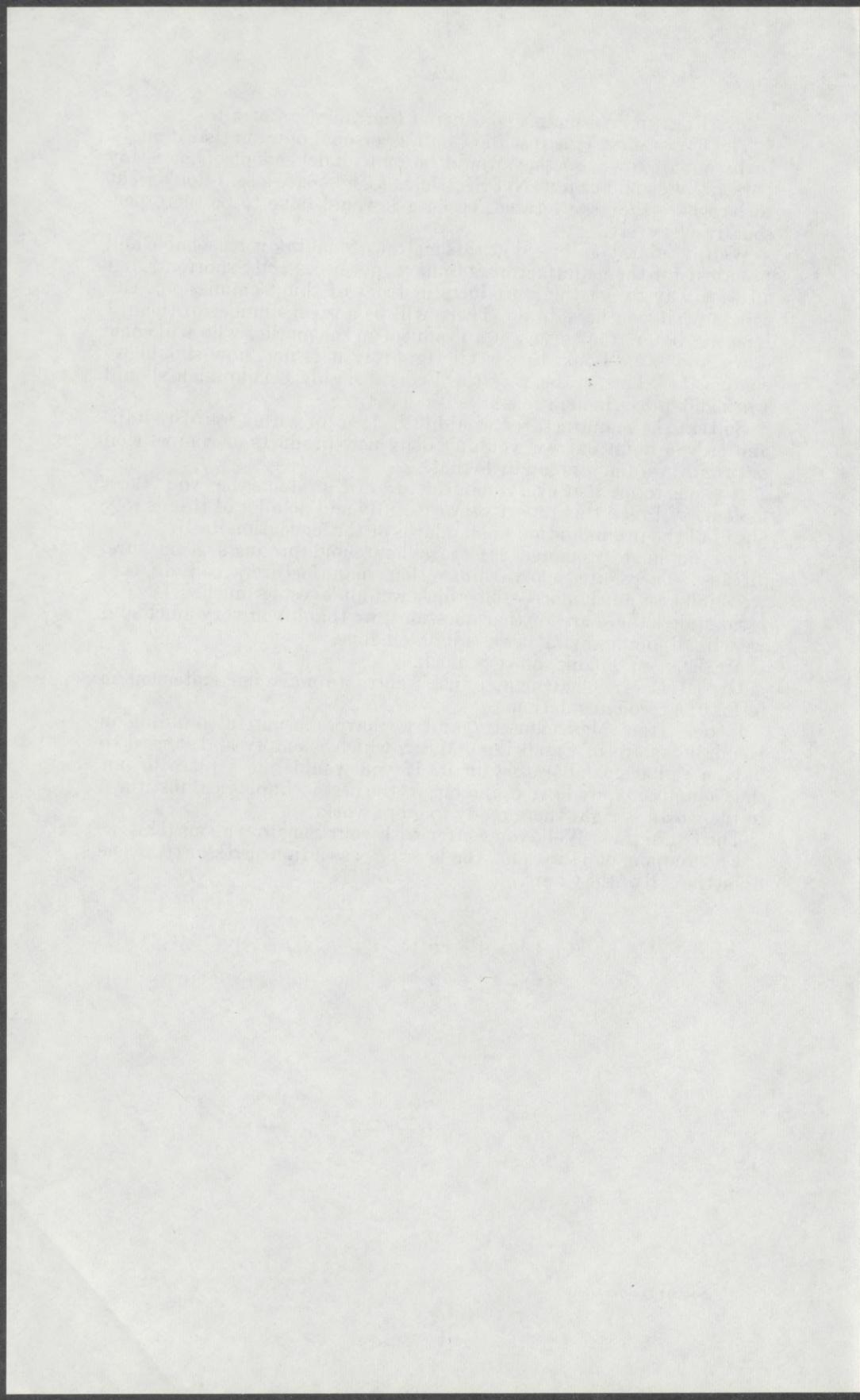
Mr. ELKIND. Thank you very much.

Dr. HILL. Mr. Chairman, I just wanted to make one statement in terms of a recommendation.

I come from Massachusetts, and we have a beautiful building in Kendall Square in Cambridge, Mass., which is empty and it used to have a radiation laboratory in it. If you would like a place to put the Commission, we have it and one of the best technological institutes in the world is right there ready to go to work.

The CHAIRMAN. Well, you confer with your Senators about that.

(Thereupon, at 11:20 a.m., the hearing was adjourned, to reconvene upon the call of the Chair.)



APPENDIX

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NATIONAL  
COMMISSION  
ON PRODUCT  
SAFETY



FINAL REPORT  
PRESENTED TO THE PRESIDENT AND CONGRESS  
JUNE, 1970

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## NATIONAL COMMISSION ON PRODUCT SAFETY

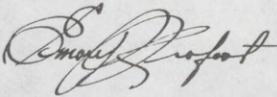
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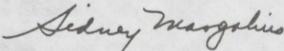
To the President and Congress of the United States:

Pursuant to Section 2(c), Public Law 90-146, I have the honor to transmit herewith the final report of the National Commission on Product Safety containing its findings, conclusions, and recommendations.

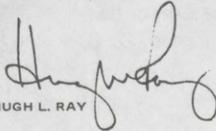
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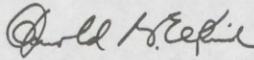
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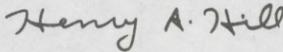
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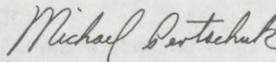
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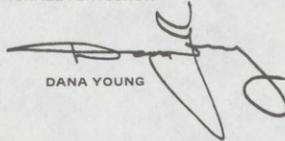
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The President  
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# FOREWORD

The National Commission on Product Safety was authorized by Public Law 90-146. The Commission was appointed by President Lyndon B. Johnson on March 27, 1968. The findings, conclusions, and recommendations which follow are the end product of the intervening efforts of the seven-man, bipartisan Commission, the staff, and a number of contractors retained by the Commission for insight into specialized fields.

When it authorized the Commission, Congress recognized that modern technology poses a threat to the physical security of consumers. We find the threat to be bona fide and menacing. Moreover, we believe that, without effective governmental intervention, the abundance and variety of unreasonable hazards associated with consumer products cannot be reduced to a level befitting a just and civilized society.

Rhetoric, educational campaigns, piecemeal legislation, and appeals to conscience serve the useful function of mitigating the fallout of injuries induced by our complex technology. But we believe, on the basis of the evidence presented to us, that a concerned government can and should provide a continuing system to assure that our great technological resources are used to protect consumers from unreasonable product risks.

Perhaps a case can be made for the acceptability of wilful personal risk-taking by an occasional well-informed consumer, but there is no justification for exposing an entire populace to risks of injury or death which are not necessary and

which are not apparent to all. Such hazards must be controlled and limited not at the option of the producer but as a matter of right to the consumer. Many hazards described in this report are unnecessary and can be eliminated without substantially affecting the price to the consumer.

Unfortunately, in the absence of external compulsion it is predictable that there will continue to be an indecent time lag between exposure to a hazard and its elimination. Other advanced nations apparently have discovered this flaw in the output of competitive free enterprise and have made safe products an ongoing governmental objective.

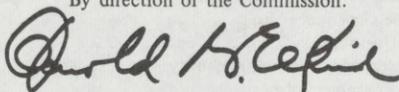
This report proposes means which afford American industry an opportunity to progress voluntarily toward product safety and which, at the same time, should guarantee a new dynamism to that effort. Our suggested procedures are equitable to the consumer and producer alike. The goal is clear. This Nation's safety standards and practices must have an exemplary quality consistent with the primacy of American technology.

The operative processes responsible for the unacceptable conditions we found are truly impersonal. Producers, sellers, and buyers have been trapped by complex economic forces which have been understood by too few and addressed all too seldom.

A major concern of our recommendations has been to provide government with an adaptive instrumentality for protecting the consumer from product hazards for a reasonable time to come. The historic stream of product safety flows swiftly and erratically. The quality of protection appropriate at a given time depends on technology, the economy, and the temper of our humanitarian concern. If acted upon, this final report will be a beginning to an era of consumer protection rather than an end to our endeavors.

Although this report is directed to the President and Congress, we earnestly hope that consumers, businessmen, and the professional and academic communities will find its contents useful in the common search for methods to protect human life and safety in an environment which seems progressively to magnify the challenge to "live and be well."

By direction of the Commission.

A handwritten signature in dark ink, appearing to read "Arnold B. Elkind". The signature is fluid and cursive, with the first name being the most prominent.

Arnold B. Elkind, Chairman

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**PROPOSED CONSUMER PRODUCT SAFETY ACT**



# SUMMARY OF FINDINGS AND RECOMMENDATIONS

# PERSPECTIVE ON PRODUCT SAFETY

## SUMMARY FINDINGS

This Commission has now, within the resources and time allotted, carried out the direction of the President and the Congress to "conduct a comprehensive study and investigation of the scope and adequacy of measures now employed to protect consumers against unreasonable risks of injuries which may be caused by hazardous household products."

Congress requested our answers to several critical questions:

- (1) What is the measure of exposure of American consumers to unreasonable product hazards?
- (2) Which specific categories of products were found to present such hazards?
- (3) To what extent does self-regulation by industry afford adequate protection against such hazards?
- (4) To what extent do Federal, State, local authorities, and
- (5) to what extent does the common law protect the consumer against such hazards?

Our answers to these questions in summary are as follows:

---

\*We use the term "consumer products" (instead of "household products" as referred to in our enabling law) because that term best describes our statutory mandate and most products which are not now subject to adequate Federal safety regulation. Consumer products include all retail products used by consumers in or around the household, except foods, drugs, cosmetics, motor vehicles, insecticides, firearms, cigarettes, radiological hazards, and certain flammable fabrics.

## Measure of Exposure

Americans—20 million of them—are injured each year in the home as a result of incidents connected with consumer products.\* Of the total, 110,000 are permanently disabled and 30,000 are killed. A significant number could have been spared if more attention had been paid to hazard reduction. The annual cost to the Nation of product-related injuries may exceed \$5.5 billion.

The exposure of consumers to unreasonable consumer product hazards is excessive by any standard of measurement.

## Unreasonable Hazards

Within the following categories of products, we found a number of makes, models, or types harboring unreasonable hazards to the American consumer: architectural glass, color television sets, fireworks, floor furnaces, glass bottles, high-rise bicycles, hot-water vaporizers, household chemicals, infant furniture, ladders, power tools, protective headgear, rotary lawnmowers, toys, unvented gas heaters, and wringer washers. Not all products in each category are unreasonably hazardous. Still other categories which may harbor unreasonable hazards were not investigated in sufficient depth by

us to warrant a specific finding that unreasonable hazards exist.

### Self-Recognition

As related to product safety, self-regulation by trade associations and standards groups, drawing upon the resources of professional associations and independent testing laboratories, is legally unenforceable and patently inadequate.

Competitive forces may require management to subordinate safety factors to cost considerations, styling, and other marketing imperatives.

There is a dearth of factors motivating producers toward safety. Only a few of the largest manufacturers have coherent, articulated safety engineering programs. Manufacturers' efforts to obtain data on injuries and on the costs and benefits of design changes that will reduce unreasonable hazards can be charitably described as sketchy and sporadic.

Industry activities to develop safety standards can provide an important forum for marshaling the technical competence necessary for this work, but their voluntary nature inherently inhibits the development of optimal standards.

The consensus principle, which is at the heart of all voluntary standards making, is not effective for elevating safety standards. It permits the least responsible segment of an industry to retard progress in reducing hazards.

The measure of voluntary consumer protection provided by the certification programs of independent laboratories is substantial, but is theoretically flawed by the laboratory's economic dependence on the goodwill of the manufacturer even if the laboratory is nonprofit.

The protection afforded by various seals of approval is no better than the technical competence, product-testing protocols, and independence of the certifier. When an industry association awards the seal, or when it is awarded in return for paid advertising, the seal may convey a deceptive implication of third-party independence. Consumers appear to attribute to such endorsements a significance beyond their specific meaning.

### Protection by Law

#### Federal Law

Consumers assume that the Federal Government exercises broad regulatory authority in the interest of their safety. And yet the short answer to this question is that Federal authority to curb hazards in consumer products is virtually nonexistent.

Federal product safety legislation consists of a series of isolated acts treating specific hazards in narrow

product categories. No Government agency possesses general authority to ban products which harbor unreasonable risks or to require that consumer products conform to minimum safety standards.

Such limited Federal authority as does exist is scattered among many agencies. Jurisdiction over a single category of products may be shared by as many as four different departments or agencies. Moreover, where it exists, Federal product safety regulation is burdened by unnecessary procedural obstacles, circumscribed investigative powers, inadequate and ill-fitting sanctions, bureaucratic lassitude, timid administration, bargain-basement budgets, distorted priorities, and misdirected technical resources.

Nevertheless, where there is adequate authority and administrative support, Federal safety standards programs have demonstrated a capacity for substantially upgrading industry safety practices.

The Federal Government operates no injury data center charged with responsibility for the systematic collection, evaluation, and dissemination of data related to product safety. It has no early-warning system to alert responsible officials in business and Government of suspected areas of latent product risk. Data on the number and nature of injuries from consumer products remain far from satisfactory, despite several revealing probes in the data collection field conducted by us.

Federal law now provides no machinery to enjoin a manufacturer from marketing consumer products that are unreasonably dangerous. There is no way to compel the recall of such products for repair or replacement.

No Federal law provides meaningful criminal penalties for manufacturers who knowingly or willfully market consumer products that create an unreasonable danger to life and health.

No Federal agency has authority to order studies or hearings to determine the presence of an unreasonable hazard in most consumer products; to order the development of standards or to issue regulations to reduce the hazard; to enforce such orders; to evaluate safety standards, tests, and standards-making procedures; to monitor compliance with safety standards; to accredit independent laboratories to check compliance; to require that information on product safety be collected and freely exchanged; to support voluntary or State programs to reduce product hazards; or to conduct programs of training and research in product safety.

#### State and Local Law

Our studies of State and local laws show a hodgepodge of tragedy-inspired responses to challenges that cannot be met by restricted geographical entities. Local prohibitions against sale of hazardous items cannot be enforced against the retailer across the city

line. Manufacturers of hazardous products can make and ship out items that cannot be sold at retail in their own community. Without central leadership, States and municipalities are unable to chart broad spectrum product safety programs. Balkanized jurisdiction plagues some manufacturers with diverse manufacturing specifications that interfere with distribution of their products.

### Common Law

The common law has not been primarily concerned with prospective enforcement of product safety but with postinjury remedies. There are no reports of consumers successfully restraining the marketing of potentially hazardous products. The costs of such litigation would be beyond the means of citizens or concerned groups.

In the absence of the contingent fee, the injured consumer most often would be unable to seek compensation for damages caused by product-related injuries. He must first be aware of his legal right to sue the producers of the defective product and, second, he must have sustained sufficient damage so that an attorney will find in his cause the promise of an adequate fee. Then, after intolerable delays, the consumer finally has a day in court in which he may be faced with overcoming an array of practical and legal hurdles.

Despite its humanitarian adaptations to meet the challenge of product-caused injuries, the common law puts no reliable restraint upon product hazards.

### Conclusion

Because of the inadequacy of existing controls on product hazards, we find a need for a major Federal role in the development and execution of methods to protect the American consumer.

### PATHS TO SAFETY

In formulating our recommendations, we elected not to choose between describing general policies, on the one hand, and prescribing specific action, on the other. Since we do not presume to anticipate the wishes of Congress, we determined to state both our general policies and their specific implications. The proposed Consumer Product Safety Act which we respectfully submit with this report is the concrete expression of our recommendations.

### Injury Factors

There are those who believe that safety, like charity, begins at home in the behavior of the family—steady ladders, storing knives, supervising children. Others believe that safety begins with the home itself, the environment where hazardous products find their uses—good lighting, well-insulated wiring, slipproof bath-

tubs and rugs, latched cabinets for medicine and household chemicals. A third view is that safety begins in the factory and involves design, construction, hazard analysis, and quality control.

None of these views is wholly right or wrong. The classical concept of epidemiology counts all three factors: host, environment, and agent. Close examination of the three uncovers many subsidiary factors: hosts of different capacities and habits; differing social, political, and psychological as well as physical environments; and agents acting in combination, additively, or serially.

With due regard for the multiple factors affecting household safety, sound strategy for a safety program is to seek the weak link in a chain of events leading to injury and to break the chain at that point.

After considering the many forces contributing to the toll of injuries in and around the American home, we have concluded that the greatest promise for reducing risks resides in energizing the manufacturer's ingenuity.

We do not mean that manufacturers by themselves can do all that is needed to achieve an optimal safety record. We mean that with Government stimulation they can accomplish more for safety with less effort and expense than any other body—more than educators, the courts, regulatory agencies, or individual consumers.

Manufacturers have it in their power to design, build, and market products in ways that will reduce if not eliminate most unreasonable and unnecessary hazards. Manufacturers are best able to take the longest strides to safety in the least time. The capacity of individual manufacturers to devise safety programs, without undue extra cost, has been demonstrated repeatedly in the course of our short history: in safety glass, double-insulated power tools, baffles on rotary mowers, noncombustible TV transformers, and releases on wringer washers.

### Energy Factors

We do not imagine that, even without regard to cost, safety programs on the manufacturer's level can eliminate all household hazards. A society which uses energy in the volume and variety of forms prevalent in ours is certain to see traces of that energy go astray. Instead of doing the work intended, the energy can damage property and person. In whatever form—chemical, mechanical, thermal, electrical, nuclear, acoustic—energy which is misdirected cuts, strangles, burns, bruises, fractures, suffocates, poisons, shocks, and ruptures.

### Behavioral Factors

Danger is a regrettable but unavoidable facet of life. Many persons who like to fly, surf, dive, or speed

are proud of their ability to cope with it. Usually, they are keenly conscious of the hazards and take pains to control them.

But everyone, at one time or another, suffers from complacency, a certainty that everything is under control, that injuries happen only to the other fellow. Then, in that moment of carefree confidence, disaster strikes. The mower goes over a grade, slips out of control, and the blades chop at the feet. Many, with utmost care, commit themselves to handling dangerous instruments which, for lack of experience, knowledge, or skill, they cannot manage. An ineradicable minority is careless; they will wear a flammable garment near an open fire; use a power saw without a guard; work a lathe without safety glasses.

### Environmental Factors

In addition to such behavioral factors, a hazardous environment aggravates the frequency and severity of injuries. Some environmental hazards are sporadic: power surges, extremes of temperature or humidity. The worst hazards are common and chronic.

The majority of American homes contain potential electrical fire and shock hazards: worn or defective wiring, overloaded circuits, or an absence of grounding. Injuries result from dim lighting, uneven floors, irregular steps, slippery surfaces, obstacles, steep inclines, poor drainage, or faulty ventilation. Broken glass and rusty cans litter yards and alleys. Much of a child's play amounts to running a gantlet of environmental hazards.

### Manufacturers' Responsibility

Prospects for measurable reform of human behavior are distant. Similarly, there is little hope for an early improvement of the home environment. The limited power of conventional educational methods has been described by our witnesses.

Consequently, while continuing to educate and seeking even better ways, there seems little choice but to concentrate on reducing unreasonable hazards by encouraging additional care in the design and manufacture of products.

The law has tended in recent years to place full responsibility for injuries attributable to defective products upon the manufacturer.

But beyond his liability for damages, a producer owes society-at-large the duty to assure that unnecessary risks of injury are eliminated. He is in the best position to know what are the safest designs, materials, construction methods, and modes of use. Before anyone else, he must explore the boundaries of potential danger from the use of his product. He must be in a position to advise the buyer competently how to use and how to maintain and repair the product.

Technical problems of assuring the quality of a product can be difficult to manage, particularly when demands are high and labor in short supply. When the will to make a product safe is weak, protection for the consumer is even weaker. Among many manufacturers, fortunately, the will to reduce hazards is not weak, but it may be frustrated by competitive forces.

### The Government Role

Paradoxically, the processes of Government share the onus for our lagging product safety efforts. Rightly or wrongly, antitrust considerations are broadly construed to outlaw agreements by competitors to expunge particular hazards from the marketplace. While exemption from the antitrust laws would create more problems than it would solve, the sincere efforts of many producers to achieve uniform optimum safety for their products can be frustrated without positive governmental involvement.

For the following reasons, we conclude that the Federal Government, both to protect consumers and to strengthen manufacturers' efforts, should enact comprehensive legal measures to reduce hazards:

- In the absence of compulsion to reduce risks in consumer products, manufacturers who cut corners on safety have an unfair competitive advantage over responsible manufacturers.
- Manufacturers have advised us that they seek Government aid in gathering data which will help to explain injuries and their causes and to suggest priorities for preventing injuries.
- Potentially, the cost of meeting safety requirements may require sellers to raise prices above a desirable level or may impose an unwarranted and unacceptable design on a product; accordingly, Government must participate, in behalf of the consumer, in making the quasi-political decision of determining how much risk to safety the public should tolerate under the circumstances.
- Voluntary safety standards decided upon by an industry may unfairly penalize some manufacturers, small businessmen particularly, to the advantage of others.
- Although safety standards must be written with the assistance of technical personnel who know most about the product, Government can best determine impartially whether a safety standard is sufficient.

- When some manufacturers ignore safety standards, only Government can assure compliance. To implement compliance, only Government can require that authorized laboratories certify that products meet safety requirements. Government can assure that programs to inspect products and report injuries will be effectively financed. Government should enjoin actions which carelessly put the consumer in jeopardy. And, when voluntary safety standards are absent or insufficient, Government should insist that industry devise a sufficient standard or develop and issue its own.
- Extensive authority to issue regulations and develop mandatory safety standards should be granted to the CPSC to anticipate or reduce unreasonable hazards in a wide range of consumer products<sup>12</sup>.

### Independent Federal Authority

Statutory regulatory programs buried in agencies with broad and diverse missions have, with few exceptions, rarely fulfilled their mission. The specific experience of safety programs relating to hazardous substances, pesticides, and flammable fabrics is discussed later in some detail.

The reasons for their weaknesses include lack of adequate funding and staffing because of competition with other deserving programs within an agency; lack of vigor in enforcing the law caused by an absence of authority and independence in some Federal administrators; and a low priority assigned to programs of low visibility.

Of course, not all Federal safety programs which are part of larger agencies exhibit these symptoms. The broad-based Federal Trade Commission displayed admirable vigor in proceeding against health hazards of cigarettes. The Federal Highway Administration of the Department of Transportation, though lightly staffed and funded, is working effectively to reduce the toll of injuries from automobile accidents.

Notwithstanding these efforts, when a Federal agency must take up substantial and controversial issues of consumer safety and economics, we believe it needs independent status.

Independence can be furthered by appointment of commissioners on a nonpartisan basis, for staggered fixed terms subject to removal only for cause, and by designation of a permanent chairman to serve an entire term in that capacity.

Another reason for our recommendation of an independent Commission stems from our own experience over the past 2 years. Elsewhere in this report, we describe some of the significant safety innovations which have been adopted by industry after issues were raised by this Commission. As a result of our hearings and public exposure, industry took important steps for safety.

Visibility has aided us in communicating public needs to business. We believe that a highly visible Consumer Product Safety Commission will have the potential to deal firmly and at arm's length with the industries it must regulate in behalf of the public.

The high visibility of a vigorous independent commission would also be a constant reminder of the Federal presence and would itself stimulate voluntary

### CRITICAL QUESTIONS

Having concluded that remedial action was essential to reduce product hazards to consumers, we faced certain critical questions:

- (1) Should Federal authority be extended to new programs to reduce unreasonable hazards in consumer products and, if so, what form should such authority take?
- (2) In view of the frustrations and disappointments characterizing some Federal efforts in behalf of the consumer, what could be done to strengthen such efforts and bolster the position of the consumer in the sometimes intricate regulatory processes?
- (3) What role should mandatory safety standards play in reducing product hazards?

We approached these questions without prejudice. In framing judgments, we relied on our own hearings and inquiries as well as the literature of administrative law and Government regulation. On the whole, our approach was pragmatic. We looked at what had been done and at a variety of critiques and proposals as indications of what might be done<sup>1-9</sup>. And we concluded, with virtual unanimity, that—

- Broad responsibility for the safety of consumer products should be vested in a conspicuously independent Federal regulatory agency, a Consumer Product Safety Commission (CPSC), appointed by the President and confirmed by the Senate<sup>10</sup>.
- There should be one official appointed by the President as a Consumer Safety Advocate to the Commission's staff, whose primary responsibility is to serve as the consumer's spokesman before the CPSC on all issues within its jurisdiction<sup>11</sup>.

Note.—Figures in superscript indicate references in Appendix II.

improvement of safety practices. The issues before the CPSC should be publicly aired; they are less likely to be smothered in the competition of Federal agencies for public notice. Similarly, CPSC's needs for staff and funds will receive more public attention and consideration by the Congress and by the Bureau of the Budget than those of a section of a branch of a division of a bureau of a service of an office of a department.

Finally, in developing acceptable safety standards for consumer products, it is important that manufacturers confront Government officials who, like themselves, are in command of resources and authority and able to make firm commitments and decisions.

The preference of at least some in the business community for an independent agency over one of the existing agencies in the product safety area was indicated in an informal poll of more than 50 industry officials taken by Underwriters' Laboratories in August 1969. The poll listed 14 proposed governmental safety functions; the group preferred that an independent agency—about which they knew nothing—administer 12, in preference to the Department of Health, Education, and Welfare and the Commerce Department's National Bureau of Standards<sup>13</sup>.

### A Consumer Advocate

Contrary to the common concept that "we are all consumers" and the simple assumption that a public agency always defends the public interest, in reality most if not all public decisions represent a compromise among contending factions.

Recognition of the consumer's need for representation in Government decisionmaking was the motivating force in the creation of the President's Special Assistant for Consumer Affairs in 1963 and for the continuance of that function in the President's Committee on Consumer Interests.

On day-to-day matters of product safety, however, the consumer has no official champion. The assumption that Federal officials represent the general public interest breaks down when, in a bargaining situation, no one bargains for the consumer. Frequently, instead of serving the consumer, the Federal agency merely provides the forum where the consumer is an affected but helpless bystander.

We believe that the highly complex issues which will face the Consumer Product Safety Commission require a specialized Consumer Safety Advocate to make the voice of the consumer heard. When the agency serves as an arbiter, seeking to reconcile contending interests, the Advocate will defend the consumer. By institutionalizing a focus of consumer representation, it may no longer be said that "everybody's business is nobody's business."

The relationship between the President's Special Assistant for Consumer Affairs and the Consumer Safety Advocate of the Commission can be expected to be complementary. The role of the Advocate will, however, be quite different from that of the proposed Consumer Protection Division in the Department of Justice, which has a potential for filing suits to enjoin deceptive practices and intervening in agency proceedings.

In the past, the legal doctrine that participants in adversary proceedings must have a direct economic interest has deprived consumers of "standing" before courts and agencies. This "standing" doctrine, admitting only parties with substantial economic interest, has been broadened recently by several court decisions<sup>14</sup>.

A Consumer Safety Advocate in Commission proceedings will assure consumers of the representation now authorized by the courts and supplement the efforts of nongovernmental advocates, if granted authority and staff sufficient to draw upon the technical resources of other Federal agencies.

We do not propose that he have any jurisdictional authority over the Commission or other Federal regulatory agencies. We propose that, through him, the consumer will be assured the same rights as any other interested group: access to information and the resources for asserting and defending his rights. There is clear justification for an office which will defend public interests against bureaucratic excess or private indifference.

### Mandatory Standards

In the absence of unreasonable risks, Federal action is unnecessary. Government should avoid needless intervention in private enterprise and the expense of developing redundant standards. At the same time, the existence of Federal authority to set mandatory safety standards may well stimulate improvements in, and compliance with, adequate voluntary standards. We have designed proposed standard-setting provisions to operate only when an identified product hazard is found and then only after a reasonable opportunity has been given to private individuals and consumer and industry groups to develop a draft standard for submission to the CPSC<sup>15</sup>.

When the Commission determines that a product presents an identified hazard to life or health, the task of framing safety standards must be performed promptly but with sure-handed judgment. Because informal rule-making is best suited for the determination of the kinds of issues in the development of standards and to prevent obstruction, the informal procedure rather than a formal hearing is preferable, with judicial review for all interested persons.

In any event, the Commission must be selective, limiting its development and updating of safety standards to categories of consumer goods which contain an unreasonable risk or the threat thereof.

When the need for action is apparent, the writing of safety standards must not drag on for months. A standard must be completed as quickly as governmental and private resources permit. We have provided in the proposed system that the Commission may make an interim product safety standard effective immediately where it finds an imminent risk to safety<sup>16</sup>.

In the event that private sources fail to frame a needed and adequate standard, the CPSC must have its own technical resources and authority to tap personnel and facilities of the Federal Government and private sources to develop mandatory safety standards. Safety standards cannot be deferred until all makers of a product are satisfied; dissatisfied manufacturers will be able to appeal what they consider unjustifiably stringent standards to the CPSC or, ultimately, to the courts.

## DIGEST OF RECOMMENDATIONS

It is not the number or kinds of injuries but the fact of injury—the chronic disability, the mental anguish, the burden of medical costs, and the economic waste—that demands remedial action to reduce unreasonable product hazards by the most direct and efficient means.

By way of remedy, our recommendations, stated in full at the conclusion of this report, provide:

1. That the Congress of the United States enact an omnibus Consumer Product Safety Act committing the authority and resources of the Federal government to the elimination of unreasonable product hazards.

2. That an independent Consumer Product Safety Commission be established as a Federal agency concerned exclusively with the safety of consumer products.

3. That the Consumer Product Safety Commission be directed to secure voluntary cooperation of consumers and industry in advancing its programs and that, when necessary to protect consumers from unreasonable risks of death or injury, the Commission be empowered to—

- Develop and set mandatory consumer product safety standards;
- Enforce compliance with consumer product safety standards through a broad range of civil and criminal sanctions;

- Enjoin distribution or sale of consumer products which violate Federal safety standards or which are unreasonably hazardous.

- Require notice to consumers of substantially defective products, and recall of products which violate consumer product safety standards or which are unreasonably dangerous.

- Make reasonable inspections of manufacturing facilities to implement compliance with safety standards and regulations; and

- Conduct public hearings and subpoena witnesses and documents.

4. That the Consumer Product Safety Commission be given the further responsibility to—

- Establish an Injury Information Clearinghouse to collect and analyze data on deaths and injuries associated with consumer products;

- Disseminate information to the public about hazardous consumer products and practicable means of reducing hazards; and

- Cooperate with and assist States and localities in programs germane to consumer product safety.

5. That a Consumer Safety Advocate to the Commission be appointed by the President, with specific responsibility to represent consumer interests before the Commission.

6. That the Consumer Product Safety Commission, in cooperation with the Secretary of Commerce, be authorized to accredit private testing laboratories which are qualified to test and certify compliance with specific product safety standards, and that the Commission be empowered to require independent testing of consumer products which may present an unreasonable risk.

7. That the Federal Trade Commission promulgate trade regulation rules for those who certify or endorse the safety of consumer products.

8. That Federal agencies provide industry and standards-setting groups with relevant technological information which may be utilized to reduce

product hazards and that, where proprietary, such information be ruled in the public domain with provision for adequate compensation.

9. That upon enactment of a comprehensive Consumer Product Safety Act a method be developed to permit Federal technical experts other than those with responsibility for evaluating the adequacy of industry standards and testing programs to participate in voluntary safety standard activities.

10. That the Consumer Product Safety Commission be authorized and afforded funds for the construction and operation of a facility suitable for research, development of test methods, and analysis of consumer products for safety considerations.

11. That existing programs of the Small Business Administration be expanded to authorize low interest loans to assist small businesses in meeting requirements of product safety standards.

12. That the Federal Government, through its purchasing and insuring agents, look to established safety standards and, wherever practicable, new

safety designs in selecting products for use, and that Federal agencies publicize acquired information about hazards in consumer products.

13. That injured consumers be permitted to file claims for treble damages in the District Courts of the United States against manufacturers who intentionally violate Federal safety standards; that Federal class action procedures be made applicable; and that the principles of strict tort liability be adopted by State and Federal courts to assure fair compensation for injury to consumers in suits at common law.

14. That consumer products for import into the United States be denied entry if they violate Federal safety standards and that export of consumer products which do not meet Federal safety standards be prohibited unless waiver is obtained from a responsible official of the country of destination.

15. That the United States support the development of international consumer product safety standards, and assure fair representation of consumer interests in such proceedings.

#### **SAFETY STARTS WITH PRODUCT**

... any meaningful and long-lasting resolution of problems associated with products safety must... start with the product itself. The most basic priority would be to attempt to resolve such problems at the product level before entry into the marketplace whenever this is possible.

**HOWARD H. BELL** PRESIDENT, AMERICAN ADVERTISING FEDERATION

# RECOMMENDATIONS

# A CHARTER FOR CONSUMER SAFETY

In formulating its recommendations, the Commission has followed certain basic guidelines, namely:

- Consumers have a right to safe products. When a manufacturer offers a product, the offer implies a warranty that the item is not unreasonably hazardous.
- Protection against unreasonably hazardous consumer products should begin at the design stage, before they are on the market.
- In assessing unreasonable hazards, the slight injury or the near-miss may be as important as a calamity. It is not necessary to wait for an epidemic of injuries as proof of a hazard: expert technical judgment can often predict the risk.
- Product safety is a joint responsibility of private enterprise, public agencies, and the consumer; none, acting alone, can control unreasonable hazards.
- The Government role in product safety is initially to motivate businessmen to reduce product hazards while assuring fair treatment of competing interests; secondarily, it is to promulgate and enforce safety regulations where voluntary efforts fail. At all times the Government should acquire, analyze, and release significant product safety information.
- The forces of competition and the profit motive are neither inherently conducive to, nor inimical to consumer protection: with Government sup-

port, these forces can be channeled to assure compliance with safety standards to reduce unreasonable hazards.

- The public is entitled to a predominant voice in decisions affecting its safety, specifically in the development of product safety standards.
- Development of safety standards and regulation of product hazards serve all interests best if proceedings are open and on record, highly visible to everyone concerned.
- Investment in product safety will yield a generous return on the capital required, possibly in an expanded market for consumer products and certainly in the preservation of health and life.

## A FEDERAL PRESENCE

**WE RECOMMEND that, through the enactment of a Consumer Product Safety Act and establishment of an independent Consumer Product Safety Commission, the authority and resources of Government be committed to eliminate unreasonable hazards found in and around the American home.**

The cost to society of injuries from consumer products—amounting to several billion dollars a year in time lost, disability, patient care, and physical or mental distress—is awesome. Industry efforts, the common law, and existing Federal programs are inadequate to protect the public. State, local, and voluntary agencies lack

authority to issue uniform regulations and mandatory standards nationwide, and have few resources to gather and distribute basic information about product hazards.

Even the best-intentioned programs of industry advocates of safety fall afoul of the forces of competition. When safe design must compete with eye appeal, pushbutton convenience, and low production costs, safety may be compromised.

The responsible business community would be helped in improving safety by the active participation of the Federal Government. The mechanism industry has set up to develop voluntary safety standards has been at best erratic. At the same time, as an agent of Government, we have often received full cooperation from manufacturers in response to our mildest inquiries.

The Federal role is to encourage movement and active concern with respect to safety, to promulgate and oversee compliance with safety standards, and to regulate those who unreasonably violate their duty to produce safe products—all this without upsetting the creative and innovative forces of the free enterprise system.

The proposed Commission should have an independent status, concerned exclusively with the safety of consumer products. If it is subordinated to a larger agency administering other equally comprehensive programs the emphasis with safety standards is certain to suffer. Protection of the public interest will be strengthened if the agency has authority to make its own final decision, free of restriction by a parent agency, and if its funds are sufficient and its activities highly visible.

## STANDARDS OF SAFETY

**WE RECOMMEND** that the Commission be invested with authority to develop and set mandatory consumer product safety standards where industry's own efforts are not sufficient to protect consumers from unreasonable risks of death or injury.

Consumers are best protected when manufacturers build into their products safeguards against all predictable forms of abuse or misuse. Toward this end, safety standards, effectively enforced, are one of the important means for reducing unreasonable hazards in consumer products.

When industry markets products which are not unreasonably hazardous, there is no need for Federal intervention. On the other hand, when unreasonable hazardous products are marketed due to neglect of safety factors, to the inadequacy of voluntary standards, or to the failure of some few manufacturers to meet voluntary standards, then Federal action is required.

When there is sufficient motivation, our studies have shown that, in many instances, adequate safety standards can be developed promptly. Properly structured standards need not restrict the variety of product models available to the consumer nor limit the manufacturer's freedom to compete by technological innovation.

New or innovative products using untried materials or designs may expose consumers to unfamiliar hazards. While innovation is essential to our market system, manufacturers should test products for safety in advance of marketing. To strike a balance between minimizing risk and assuring freedom of invention, the proposed Consumer Product Safety Act authorizes promulgation of generic standards and procedures for new or innovative products.

## PROCEDURAL FLEXIBILITY

**WE RECOMMEND** that, in addition to authority to promulgate consumer product safety standards, the Commission be empowered to seek a court order to enjoin the marketing of specific products of individual manufacturers which create an unreasonable risk to the safety of the public.

When public safety is threatened, Government officials should have flexibility to deal with the delinquencies of individual manufacturers or entire industries. The need for regulatory action may concern a single region or the entire nation. Some injuries may be few but lethal, others minor but numerous. Some violations may be familiar and chronic, others novel and intermittent. Affording Government officials alternative approaches—either through standard setting for an industry or judicial proceedings directed at a particular company—is necessary in such circumstances.

By instituting a judicial proceeding for an injunction to prevent the marketing of a hazardous product, the Commission should be able to protect the public without disturbing the entire production of one manufacturer or of an entire industry. Such proceedings may be particularly useful in the case of new products presenting foreseeable risks or in the case of noncompliance by single manufacturers with an otherwise adequate voluntary standards program.

## ENFORCEMENT & COMPLIANCE

**WE RECOMMEND** that the Consumer Product Safety Commission be given the authority to employ a range of methods to secure compliance with its various safety measures, and that it be provided with authority to use such sanctions as are necessary and appropriate to the type of violation and degree of hazard.

Most manufacturers welcome safety measures that are fairly applied, uniformly enforced, and impose no undue burden. They wish to uphold a reputation for responsible manufacturing practice. The bare possibility of publicity may prompt them to remove an unreasonable hazard. Nevertheless, a few are indifferent to publicity and apathetic about product hazards. Most protect themselves by incorporation or insurance against personal liability or loss.

Even though lives may be endangered, no legislation effectively exposes a manufacturing firm, or its responsible officers personally, to civil or criminal penalties for intentional failure to correct an unreasonable hazard in the products studied. No Federal law of broad scope provides for recall of dangerous household products or for an injunction of sales when circumstances warrant. The mere existence of authority to impose such sanctions should make their use rare.

## INVESTIGATIONS

**WE RECOMMEND** that the Commission be empowered to conduct public hearings and otherwise obtain data or expert opinion about consumer products; to require witnesses to testify or provide pertinent documents; and to deputize its employees or State or local officials to conduct reasonable inspections and investigations related to the reduction of product hazards.

One of the most direct and economical techniques of developing information is to schedule hearings and call witnesses with expert knowledge or firsthand experience. The record of investigative hearings conducted by congressional committees and by the Commission itself is replete with disclosures providing public knowledge about issues which otherwise would remain obscure and neglected.

Inspection of premises is a reasonable method of securing compliance with responsible manufacturing practices that affect public safety.

## CONSUMER SAFETY ADVOCATE

**WE RECOMMEND** that the President appoint a Consumer Safety Advocate to the Commission staff with specific responsibility to represent consumer interests before the Commission. The Advocate would take up consumer complaints against the Commission, evaluate implications for consumers in present or proposed standards or rules, suggest the need for new standards or rules, issue public statements, and take issue with actions of, or inaction by the Commission.

Consumers need a Federal official with sufficient powers and resources to act exclusively as spokesman and representative regarding unreasonably hazardous products. No private consumer organization has the technical and legal expertise, and funds, or the time to devote to this critical task.

Although it is widely assumed that a public agency invariably defends the public interest, most agency decisions represent a compromise among contending factions. When such a contest develops, the weakest voice is often that of the unorganized and unrepresented consumer.

Modern legal doctrine affirms that representatives of consumers have standing as interested parties in adversary proceedings. A Consumer Safety Advocate attached to the Commission is needed to make such representation effective and to assure that consumers enjoy access to public information and the resources for asserting and defending consumer interests.

Quite as private enterprise requires counsel to represent its interests in dealings with agencies of Government, the public requires an Advocate who will defend consumer safety against exploitation, excess, or neglect.

## PRODUCT SAFETY INFORMATION

**WE RECOMMEND** creation of an Injury Information Clearinghouse within the Consumer Product Safety Commission with responsibility to collect and analyze data on product injuries and to assure widespread distribution of information about defective products, the degree of hazard, and the nature of proposed remedies.

Information relative to consumer product safety can be useful to manufacturers, consumers, and Government alike. This information can tell which hazards warrant remedial actions, such as design change, consumer education, industry standards, or Government regulations. It can help to set priorities for action and to evaluate the relative efficacy of various methods of preventing injury.

With a long-range duty to develop and direct the evolution of a set of allied information systems capable of detecting risks, appraising them, and lending support to prevention of injuries associated with consumer products, an information center will provide baselines for data on product hazards as an initial duty.

Manufacturers will benefit from the technical advice to be furnished through the center by Government scientists and engineers. Injury information will help define areas where safety standards are needed and will furnish guidelines for product instructions and warnings.

The consumer will benefit from information about selecting, using, and maintaining consumer products with minimal risk. Rarely do consumers seek safety information; usually they are unaware of risks which are not well publicized. As the Clearinghouse may also provide access to records of standard-setting committees and negotiations between Government agencies and industry, it will encourage open records and fair consumer representation in such proceedings.

The Government will benefit internally because the Center will facilitate exchange of information among more than 30 Federal agencies which now conduct more than 200 programs bearing on product safety. In fact, the entire economy can be expected to gain from improvements in design and reduction of risks to the extent that useful information is relayed to manufacturers and consumers.

We stress, however, that correction of undue risks need not await the gathering and interpretation of the last fact: remediable hazards can be corrected as soon as the risks and the economic solutions are reasonably well identified. Information is properly a guide and supplement, not a substitute for regulatory action.

## TESTING LABORATORIES

**WE RECOMMEND** that the Consumer Product Safety Commission, in cooperation with the Secretary of Commerce acting through the National Bureau of Standards, be authorized to accredit private laboratories which are qualified to test and certify compliance with specific product safety standards. We further recommend that the Commission be empowered to require independent testing of consumer products which present an unreasonable risk.

Within the Federal Government, the National Bureau of Standards has the capability for appraising the personnel, equipment, experience, and professional quality of independent testing laboratories, many of which have resources to evaluate new products and to review the safety of those being marketed.

Both Government and industry can utilize competent, objective studies from qualified private laboratories. They represent an independent source to analyze product hazards and insure compliance with safety standards and regulations, while avoiding the inherent conflicts of interest within voluntary programs of self-certification.

## CERTIFICATION & ADVERTISING

**WE RECOMMEND** that the authority of the Federal Trade Commission be rigorously applied and, if neces-

sary, expanded to apply to any certification program which misleads or deceives the consumer as to the meaning of a certification. We further recommend that the powers of the Federal Trade Commission be applied, where appropriate, to the advertising of consumer products to assure disclosure of substantial hazards.

Independent testing laboratories which certify conformity with industry and Government safety standards for consumer products may desire to use a mark or seal to that effect. When certification is brought to the buyer's attention by a seal or other means, its limits should be made clear.

Manufacturers should not be permitted to gain an unfair competitive advantage by claiming or implying that such certifications or seals mean their products are endorsed by the Federal Government.

Although the Federal Trade Commission presently has broad authority to issue trade rules and regulations to insure truth in certification, these rules should specify in detail what testing programs are required to justify use of a certifying seal. Seals which deceive the consumer, whether the deception is deliberate or inadvertent, should be proscribed.

Additionally, exercise by the FTC of authority over commercial advertising of products to assure disclosure of substantial hazards can be expected to better inform consumers of the risks of use. When mandatory consumer product safety standards are in existence, advertising should, as a general policy, be reviewed by the FTC. There is clear precedent for an oversight Federal role in this context.

## AID TO SMALL BUSINESS

**WE RECOMMEND** that existing programs of the Small Business Administration be expanded to authorize granting long-term, low-interest loans to assist small businesses in meeting requirements of product safety standards.

The 80 percent of manufacturers who produce 20 percent of consumer products may not be as well equipped as their larger competitors to afford the technology and assure the quality control essential to reducing undue risks in consumer products. Small businesses may face the added handicap of substantial expense to meet safety requirements imposed by Federal law or to comply with voluntary industry safety standards.

The Small Business Act should be amended to expand the existing concept of "product disaster" loans, to make available such loans to small businesses faced with competitive disadvantage caused by engineering,

testing, retooling, or related expenditures necessitated by safety improvements.

## **TECHNICAL AID BY GOVERNMENT**

**WE RECOMMEND**, upon enactment of a comprehensive Consumer Product Safety Act, that a method be developed whereby technical experts from any Federal agency, other than those with responsibility for evaluating the adequacy of industry standards and testing programs, would be authorized to participate in voluntary safety standards activities.

Often nongovernmental programs for the development of safety standards are deprived of counsel from consumers, who do not have the time, financial resources, or technical expertise to contribute. Many Government employees do have the necessary expert technical knowledge. But participation could impair their objectivity where their duties involve investigating or evaluating the adequacy of standards so developed. Loss of that objectivity would, in turn, deprive the Federal Government of its only means of independently determining appropriate public safety levels.

However, if the Congress chooses to enact a comprehensive Consumer Product Safety Act, centralizing independence and responsibility for consumer safety in an agency such as we recommend and if Federal employees with responsibility for investigating or evaluating private standards and programs do not participate in such advisory programs, continuing objectivity could be assured.

When the occasion warrants a contribution of the time and competence of Federal personnel, their participation might then give consumers a more effective voice in private safety programs. An Executive order authorizing such participation would resolve the doubts of agency heads who refrain from supporting private safety programs to avoid possible conflicts of interests.

## **APPLIED RESEARCH**

**WE RECOMMEND** that the Consumer Product Safety Commission include a laboratory facility to conduct safety research, to cooperate with other Federal agencies in supporting safety research, and to develop technical information for use by manufacturers and standard-making groups.

A laboratory facility is essential if staff scientists and engineers are to keep current with developments in science and technology, through the process of con-

ducting their own research in product safety. The laboratory will also serve as a resource for exchanging technical information.

Many manufacturers, lacking resources for wide-scale research and development, cannot incorporate in products what they do not have or know. Federal support of developmental research and distribution of technical safety information can be expected to upgrade the general level of safety in consumer products, to foster vigorous competition, and to give every possible assistance to small producers.

Information, including trade secrets, essential to alleviating undue risks should be ruled in the public domain for this purpose, subject to fair compensation. When manufacturers lack such information, safety standards may unduly burden them. When standards committees are without such data, the product of their efforts is necessarily incomplete.

## **FEDERAL PURCHASES**

**WE RECOMMEND** that the Federal Government, through its purchasing and insuring agents, utilize its market influence by looking to established safety standards and, wherever practicable, new safety designs in selecting products for use, and that Federal agencies provide both manufacturers and consumers with acquired information about hazards in consumer products.

Federal purchases of consumer products by the General Services Administration alone exceed one-half billion dollars annually. Federal purchasing and insuring agents may overlook established safety considerations for consumer products, to the consequent distress of Federal employees and expense of taxpayers. With the establishment of a Federal authority to develop safety standards for consumer products, it will be even more important that they be observed in Federal purchasing.

Furthermore, Federal purchasing power could appropriately be used to stimulate the design and production of products which exceed minimum safety standards. The Consumer Product Safety Commission can recommend products suitable for such purchase in its annual reports to Congress.

Contracts for Federal offices and hospitals, federally insured and dependents' housing, should similarly be revised to observe Federal safety standards applicable to materials and fixtures.

Purchasing agents acquire information or have access to data which guide specifications for bids from manufacturers. Agencies could alert consumers to products which they know fail to meet safety standards. Release of such information can be expected to stimulate manufacturers to eliminate publicized hazards.

## PRIVATE ACTIONS BY CONSUMERS

**WE RECOMMEND** that injured consumers be permitted to file claims for treble damages, as well as class actions, in the district courts of the United States against manufacturers who knowingly or willfully violate Federal consumer product safety standards.

Under the antitrust laws and related Federal procedures, claimants may file either individual or class suits in behalf of all parties injured by illegal restraints of trade. The principle applies with equal force and logic to persons injured through a manufacturer's intentional disregard of a Federal product safety standard. Inadvertent error would not give rise to treble damage relief.

At present, because of the high cost of marshaling technical evidence, it is not practical for consumers to press claims against a manufacturer unless the damages are substantial. The use of class actions can be expected to improve this situation, at least where intentional conduct caused the injury. Similarly, some manufacturers may find it less expensive to defend damage claims, even those with merit, than to arrange for the prospective elimination of the source of injury. Allowing injured consumers to sue for three times their damages should tend to ameliorate this condition.

Even the prospect of class suits and treble damages is likely to encourage manufacturers to market products that are not unreasonably dangerous to life and health. Such statutory redress will add powerful private support to public safety programs.

## FAIR COMPENSATION FOR INJURY

**WE RECOMMEND** that the doctrine of strict tort liability be applied uniformly in State and Federal courts to enable a consumer injured by a product in defective condition to obtain fair compensation, and that State legislatures modify obsolete statutory provisions which unduly impinge on the consumer's right of redress for injury.

Modern technology and mass marketing have superseded the economy that molded legal conventions a century ago. These conventions, which still bind many court decisions and legal codes, were formed when young industry needed protection against harassment. Today, however, the consumer is relatively defenseless against defective products while the manufacturer is better able to correct defects and defend against claims of injury.

Widespread adoption of the theory of strict tort liability, as set forth by the Restatement (Second) Torts and expanded by judicial interpretation, would avoid for the consumer some of the traditionally troublesome aspects of the law, such as contributory negligence, due care, and privity. His burden of proof is eased somewhat: he must show that his injuries resulted from a product which was defective when it left the seller's control. The defect may be in the design, the construction, or the inadequacy of accompanying warnings and instructions.

Other inequities affecting a consumer's right to redress are perpetuated by specific legislative enactments in the States regarding jurisdiction, ceilings on recovery, small claims actions, and certain other matters. The Uniform Commercial Code, adopted by 49 States, incorporates several outdated rules pertaining to privity, disclaimers, requirements of notice to the manufacturer, and statutes of limitations.

Since recovery by the consumer of fair compensation should not be made to depend on formal differences in the theory under which a suit is brought, these legislative provisions should be made consistent with strict tort liability.

## STATE AND LOCAL PARTICIPATION

**WE RECOMMEND** that the Consumer Product Safety Commission have authority to support States and localities in product safety activities or projects in surveillance, injury reporting, hazard reduction, research, and training.

In the belief that responsibility is borne best when shared, that authority is most respected when decentralized, and that participation is most enthusiastic when broad-based, we hope to see States and localities develop qualified personnel and agencies to assist in reducing product risks. The quantity of consumer products and their diversity are beyond the ability of a single national authority to comprehend: it is far better to have supplementary authorities concerned with product safety, provided their standards of performance and safety are consistent with Federal efforts and requirements.

As States and municipalities traditionally have served to adapt national programs to unusual local conditions, they have also been a source of original and innovative techniques and ideas in legislation and public administration. They provide an indispensable channel and source for the feedback of information about product safety and the effect of safety regulations.

Given guidance and financial support, States, counties, and municipalities offer a Federal agency an ideal laboratory for testing methods and policies as well as a critical supplementary force to check for compliance with consumer product safety standards.

## FEDERAL PREEMPTION

**WE RECOMMEND** that a mandatory Federal safety standard for a consumer product preempt any State or local standard, with appropriate provision for exemption where clear and compelling conditions in the State make it necessary.

States seldom impose safety standards for consumer products. Where requirements apply to product safety, these vary considerably. For this reason, many manufacturers cannot produce for a national market except by designing different models for individual States. Ultimately, consumers pay the wasteful cost of several models being produced where one would do.

With a provision for exemption of State regulations that do not unduly burden interstate commerce, national safety standards for unreasonably hazardous consumer products can be expected to enhance protection for the public and conserve time, money, effort, and resources. At the same time, the possibility of exemptions will leave States free to develop innovative safety methods and to satisfy unusual local needs.

## IMPORTED PRODUCTS

**WE RECOMMEND** that consumer products imported for sale into the United States be denied entry if they violate Federal consumer product safety standards or regulations or are deemed to be unreasonably hazardous. As a condition of entry for imported products, foreign manufacturers should designate a responsible agent in this country and should be amenable to inspection on the same basis as domestic manufacturers.

The voluntary safety standards of responsible American manufacturers may not be observed consistently by manufacturers of imported products. Control of imported products should be at port of entry, where inspections can be more effectively conducted than at

retail establishments. To preclude injury to American buyers of foreign goods, imports should comply with appropriate Federal safety standards and be subject to approval by an accredited laboratory on the same terms as domestic goods, where ordered by the Consumer Product Safety Commission.

Consumers who suffer physical harm from imported goods frequently are without recourse against the manufacturers. Accordingly, importers must have a designated financial agent in the United States to respond in damages for injuries associated with defective products they bring into the country.

## WORLD RESPONSIBILITY

**WE RECOMMEND** that the Government of the United States close the gap in legislative authority which now exists between this Nation and other industrial countries of the world and resolve to eliminate the needless waste of life and other valued resources caused by unsafe consumer products. We further recommend that this Nation lend support to international safety standards development and that it prohibit the export of hazardous products to other countries.

Many industrial nations with which we compete—Japan, the United Kingdom, Canada, West Germany, and Sweden—are committed by legislation to national product safety programs more comprehensive than that of the United States.

Private international safety standards, long neglected, are important to American consumers. Such standards could improve the safety of imports, prevent unfair international competition, and influence domestic safety standards. Government support is warranted provided Federal authorities oversee the protection of consumer interests and observance of fair procedures.

Federal consumer product safety standards should apply to exports as well as to products for domestic sale. To indicate our concern for, and to promote the well-being of consumers in all nations with which we deal, the export of goods that do not meet such standards should be prohibited unless waiver is obtained from a responsible official of the country of destination. In good conscience, we must extend to all the protection we expect at home.

## STATEMENT OF COMMISSIONER HUGH L. RAY

During its two-year life, the Commission, under the direction of Chairman Elkind, has had every possible opportunity for free and open discussion to state our individual viewpoints on any issue. As a result we reached substantial agreement on many issues which has resulted in a constructive report which is productive and should provide a broad basis for discussion and the development of a program for better product safety. We are all agreed that there is a real need for the development of safer products. The immediate question is the best approach to achieve that objective.

I would like to outline briefly some of my views for the consideration of those who may wish to follow this work with appropriate action.

The report reflects that consumers are exposed to excessive risks in the home, and that these risks are primarily the fault of manufacturers and can be substantially reduced by a new program of writing safety standards. I feel that there are additional facets to the problem.

Of the over twenty million injuries that occur each year in the home, we found that such items as stairs, floors, windows, doors and outside structures rate high in regard to accident involvement. . . .

The National Health Survey indicates falls account for about one third of all accidents. . . .

Sport and recreation equipment are involved in over four million injuries to youngsters. . . .

Knives commonly used in the home are a major cause of accidents.

It is important that we do not mislead by implying that a large part of household accidents can be eliminated by writing new programs for product safety standards.

It is my considered opinion that government presence is necessary for development of safer consumer products, but not for the primary reasons generated in our report. Government presence is necessary for these specific purposes:

1. Injury data collection . . . with the broad objective of estimation, surveillance, and investigation.
2. Use of the data collected to establish goals and trigger appropriate action.
3. Federal preemption to unify the variant State, local and utility standards and codes which burden the national character of the marketplace.
4. To assure national international standards activity.

I am also convinced, as a result of our discussions with industry representatives, that government presence is generally desired.

The report at one point states that the greatest promise for reducing risks resides in energizing the manufacturers' ingenuity; I agree. Yet, the report does not offer or spell out the incentives that will energize the private sector. Incentives that will stimulate the development of safer products by industry need not necessarily take the form of material rewards.

The first order of business should be to obtain the basic information necessary to properly evaluate the total injury problem. This is part of our recommendations and should precede all others since it can provide tangible incentives to industry.

Throughout our study, we found that complete or detailed information relating to frequency of injury, cost of injury, and especially information relating to the basic cause of injury is seldom available.

We have generated good information during the course of our work that can lead to a data system that will help develop the precise evidence necessary to explain the cause and effect relationships involved in consumer product oriented injuries.

In general, injury control problems are considerably more complex than reported.

Injuries can occur because products are designed to poor standards.

Injuries can occur when products are designed to good standards but are poorly made.

Injuries can occur when products are designed to good standards and are well made if they are poorly maintained or serviced.

Injuries can occur if products are designed to good standards, are carefully made, and properly serviced if they are improperly used.

While studying injury problems, it is difficult to maintain perspective when the tragedy of a terrible personal injury is revealed. The facts, however, are simply that we do not know enough about the basic causes of household injuries. We must know more.

The primary uses of accurate information as to injury causation are: (a) to inform product developers of the hazards that are inherent in existing methods of product development, and by this identification establish goals for the creative response that they can then make. (b) to inform consumers of the hazards involved in the use of products so they can make more effective choices and safer usage of products. (c) to trigger the development of standards where adequate response is not made on an individual basis to eliminate identified hazards, and (d) to permit prompt resolution of emergency situations involving hazardous products which only the government can do. All of these are proper functions of government which will provide flexibility and incentive to industry.

When standards are required better standards will result if the best talents in government and industry are used.

For a good number of years competent and dedicated technical people have been developing consumer product safety standards on a voluntary basis. Working through various technical societies and standards making organizations, they have done a remarkable job of decreasing household injuries.

As an illustration, Americans, 200 million of them, are exposed to *billions* of electrical systems—from switches to toasters—*every day*. Yet electrical accidents, directly related to products made to poor standards are almost non-existent.

These are some fundamental weaknesses that can be eliminated by government presence. If there has been a weakness in the voluntary system, historically, it is that voluntary standards development must properly

take place under the restraint of the antitrust laws. Government presence is required in the public interest. The presence of government working with standards making groups should lead to broader participation by industry and more effective results. If a fully cooperative mechanism were in being (a Consumer Product Safety Commission) the technical resources of the government could be oriented more strongly to assist private voluntary standards development, and at the same time there would be greater incentive for the private sector to contribute resources for the development of information for standards that the government might promulgate.

Access to the national marketplace unfettered by the parochial limitations of State and local regulations is undoubtedly one of the major incentives that can be provided for the development of safe products. We recommend this through the exercise of the Federal government's power of preemption. Since many of the injuries, however, relate to structures and materials it would appear that this power should extend further than to standards made mandatory by government regulation.

Most international safety standards are developed by private, non-governmental international organizations with the American National Standards Institute responsible for representing the U.S. interest. Nevertheless, the Federal government has a major concern in assuring that internationally developed safety standards are favorable to U.S. trade policy as well as other aspects. The incentives to a particular industry to provide adequate U.S. representation seldom match the interests of the nation as a whole. It seems clear that the Federal government must be increasingly concerned with assuring that U.S. interests are adequately represented.

In summary the conclusion of the Commission that there is a need for Federal presence in the area of product safety is sound, but I believe that the proposals I suggest are desirable in realizing our objectives.

The acceptability and use of a voluntary standard depends upon its intrinsic merit and upon the trust in the organization promulgating the standard which rests in the organization's objectivity and freedom from the pressures of special interests.

At the same time confidence in Government standards, whether mandatory or for procurement or procedural purposes, depends upon trust in the competence of those promulgating the standards and their freedom from political bias. These essential trusts can be enhanced on both sides if there is knowledge that the standards from each sector evolve through effective cooperation with the other.

## STATEMENT OF COMMISSIONER SIDNEY MARGOLIUS

While I appreciate that Mr. Ray agrees safer products are needed, he repeats several misapprehensions that need clarification to avoid confusion over ways to improve safety.

He implies that better standards would not do much to eliminate accidents due to falls, recreation equipment, even knives. But expert witnesses testified that much recreation equipment can be made safer (bikes, football helmets, etc.). So can ladders, and much of the household fixtures involved in many falls (better grip, more durability, etc.). Even some knives are safer than others.

As for producer incentives, the realistic need is for an effective mechanism for setting better standards,

encouragement and more expertise, which this Report's recommendations would help supply.

Working alone, standards groups have not done "a remarkable job" or there would not be 20 million injuries a year involving products. These groups need help, and public stimulus and participation. Nor should we accept the statement that "electrical accidents directly related to products made to poor standards are almost nonexistent." Not only accidents but even deaths were cited by witnesses and investigators as attributable to design and production defects, or inadequate quality control. These problems have been known for years. Solutions should not wait upon still further accumulation of statistics.



**PROPOSED  
CONSUMER  
PRODUCT  
SAFETY ACT**

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1 other manner pecuniarily interested in such a firm, association, or corporation,  
2 or a substantial supplier thereof, shall enter upon the duties of or hold the  
3 office of Commissioner. Commissioners shall not engage in any other business,  
4 vocation, or employment.

5 (d) No vacancy in the Commission shall impair the right of the remaining  
6 Commissioners to exercise all the powers of the Commission. Three  
7 members of the Commission shall constitute a quorum for the transaction of  
8 business. The Commission shall have an official seal of which judicial notice  
9 shall be taken. The Commission shall annually elect a Vice Chairman to act in  
10 the absence or in case of the disability of the Chairman or in case of a vacancy  
11 in the office of the Chairman.

12 (e) The Commission shall maintain a principal office and such field  
13 offices as it deems necessary and may meet and exercise any or all of  
14 its powers at any other place. The Commission may, by one or more of its  
15 members or by such agents or agency as it may designate, prosecute any  
16 inquiry necessary to its function anywhere in the United States. A Commis-  
17 sioner who participates in such an inquiry shall not be disqualified from  
18 subsequently participating in a decision of the Commission in the same matter.

19 (f) The Commission shall prepare and submit to the President for  
20 transmittal to the Congress on or before October 1 of each year a  
21 comprehensive report on the administration of this Act for the preceding fiscal  
22 year. Such report shall include:

23 (1) A thorough appraisal, including statistical analyses, estimates,  
24 and long-term projections, of the incidence of injury and effects to the  
25 population resulting from consumer products, with a breakdown, insofar  
26 as practicable, among the various sources of such injury;

27 (2) A list of consumer product safety standards in effect in such  
28 year, with identification of standards newly added during such year;

29 (3) An evaluation of the degree of observance of consumer product  
30 safety standards, including a list of enforcement actions, court decisions,  
31 and compromises of alleged violations, by location and company name;

32 (4) A summary of outstanding problems confronting the adminis-  
33 tration of this Act in order of priority;

34 (5) An analysis and evaluation of consumer product safety research  
35 activities completed and in progress as a result of government and/or  
36 private sponsorship and technological progress achieved during such year;

1 (6) A list, with a brief statement of the issues, of completed or  
2 pending judicial actions under this Act;

3 (7) The extent to which technical information was disseminated to  
4 the scientific and commercial communities and consumer information was  
5 made available to the public;

6 (8) The extent of cooperation between Commission officials and  
7 representatives of industry and other interested parties in the implementa-  
8 tion of this Act, including a log or summary of meetings held between  
9 Commission officials and representatives of industry and other interested  
10 parties; and

11 (9) An appraisal of significant actions of state and local govern-  
12 ments relating to the responsibilities of the Commission.

13 (g) The report required by subsection (f) shall contain such recommen-  
14 dations for additional legislation as the Commission deems necessary  
15 to promote cooperation among the several states in the improvement of  
16 consumer product safety and to strengthen national consumer safety efforts.

17 (h) The Commission shall appoint an Executive Director, a General  
18 Counsel, a Director of Engineering Sciences, a Director of Epidemiology,  
19 a Director of Information, and such other officers and employees as are  
20 necessary in the execution of its functions. Commission employees, other than  
21 those specifically enumerated in the preceding sentence, shall be subject to the  
22 provisions of Title 5, United States Code, governing appointments in the  
23 competitive service.

24  
25  
26 *Consumer Safety Advocate*

27  
28 *Section 4.*—There shall be an independent safety advocate to the  
29 Commission, appointed by the President, with the advice and consent of the  
30 Senate, for a term of 7 years. The independent safety advocate shall be known  
31 as the Consumer Safety Advocate, shall represent the interests of consumers  
32 before the Commission, and shall have the following additional authority and  
33 responsibility:

34 (a) To receive and act upon complaints from the public, Congress,  
35 or the Executive agencies regarding actions or inactions by the  
36 Commission;

1 (b) To evaluate, where appropriate, proposed or existing standards,  
 2 proposed orders and regulations, hazards and potential hazards, and to  
 3 hire and contract for such personnel which will enable such evaluation;

4 (c) To obtain information from the Commission concerning any  
 5 proposed, pending, or completed standard, regulation or other proceeding;

6 (d) To appear before the Commission, at his discretion, in any  
 7 proceeding as a party, or witness;

8 (e) To recommend modification of any proposed regulation, order  
 9 or standard;

10 (f) To request the development of a regulation or standard by the  
 11 Commission;

12 (g) To request commencement of other proceedings by the  
 13 Commission;

14 (h) To appeal to any appropriate court of the United States any  
 15 order, regulation, or standard issued by the Commission;

16 (i) To issue public statements with respect to any matter within his  
 17 responsibilities under subsections (a) through (h).

18  
 19  
 20 *Injury Information Clearinghouse*

21  
 22 *Section 5(a).*—The Commission shall establish and operate an Injury  
 23 Information Clearinghouse to collect, investigate, analyze, and disseminate  
 24 information relating to the causes and prevention of product-related injuries to  
 25 consumers. The Commission may, under the provisions of Section 31 utilize  
 26 the facilities and personnel of state and local governments to collect,  
 27 investigate, analyze, and disseminate such data.

28 (b) The Commission, in cooperation with appropriate federal agencies,  
 29 shall conduct additional continuing studies and investigations of deaths,  
 30 injuries, diseases, other health impairments, and economic losses resulting  
 31 from accidents involving consumer products as it deems necessary.

32 (c) Independently or in cooperation with appropriate public and private  
 33 agencies, the Commission is authorized to:

34 (1) Conduct research and investigation into the safety of consumer  
 35 products;

36 (2) Conduct studies on improvement of consumer products;

1           (3) Test consumer products and develop product safety test  
2 methods and testing devices;

3           (4) Offer training in product safety investigation and test methods;  
4 and

5           (5) Assist public and private organizations, administratively and  
6 technically, in the development of safety standards and test methods.

7           (d) The Commission is authorized to carry out the functions described in  
8 this section by making grants or entering into contracts for the conduct  
9 of such functions with governmental entities, private organizations or  
10 individuals.

11          (e) The Commission shall employ personnel of scientific and technical  
12 competence adequate to implement the provisions of this Act.

13          (f) Whenever the federal contribution for any information, research, or  
14 development activity authorized by this Act is more than minimal, the  
15 Commission shall include in any contract, grant, or other arrangement for  
16 such research or development activity, or in rules or regulations applicable to  
17 such information function, provisions effective to insure that all information,  
18 uses, processes, patents, and other developments resulting from that activity  
19 will be made freely and fully available to the general public. Nothing herein  
20 shall be construed to deprive the owner of any background patent of any right  
21 which he may have thereunder.

22          (g) The Commission is authorized to plan, design, construct and operate  
23 a facility or facilities suitable for research, development and testing of  
24 consumer products pursuant to the purposes of this Act.

25

26

27

#### *Commission Priorities*

28

29          Section 6.—The Commission shall annually evaluate information obtained  
30 by it for the purpose of establishing an order of priorities for its informational,  
31 educational, and regulatory activities. After such evaluation the Commission  
32 shall publish in the *Federal Register* a list of the categories of consumer  
33 products which it believes warrant primary attention, with the reasons therefor.  
34 The Commission may from time to time add to, delete from, or modify such  
35 list of priorities. The failure to include any category of products in such list of  
36 priorities shall not preclude Commission action with respect thereto.

*Consumer Product Safety Standards*

1  
2  
3        *Section 7.*—The Commission shall have authority to promulgate consumer  
4 product safety standards or other regulations for consumer product safety  
5 including:

6            (a) Any requirement as to performance, composition, contents,  
7 design, construction, finish, packaging, or otherwise relating to any  
8 consumer product or any component part thereof, as is reasonably  
9 necessary to prevent or reduce risk of death or personal injury.

10           (b) Any requirement that any consumer product or any component  
11 part thereof be marked with or accompanied by clear and adequate  
12 warnings or instructions, or form of warnings or instructions, as is  
13 reasonably necessary to prevent or reduce risk of death or personal injury.

14  
15  
16        *Consumer Product Safety Standards—Proceedings by Commission*

17  
18        *Section 8(a).*—Whenever the Commission finds that a consumer product  
19 safety standard or other regulation authorized by Section 7 is necessary to  
20 prevent or reduce risk of death or personal injury to the public from an  
21 identified product hazard, the Commission shall commence a proceeding for  
22 the development of such a standard or regulation.

23           (b) A proceeding for the development of such a standard or regulation  
24 shall be commenced by the publication of a notice in the *Federal*  
25 *Register*.

26        The notice shall state:

27           (1) The nature of an identified product hazard found by the  
28 Commission;

29           (2) That the Commission has determined a consumer product  
30 safety standard or regulation is necessary to prevent or reduce  
31 unreasonable risk of death or personal injury to the public from such  
32 hazard; and

33           (3) That any person or organization which is competent and willing  
34 to develop a proposed standard or regulation to prevent or reduce such  
35 hazard is invited to advise the Commission within 30 days of the date of  
36 such notice.

1 (c) If, within such period, a person or organization offers to develop  
2 such a proposed standard or regulation and the Commission determines that  
3 such person or organization:

4 (1) Is technically competent to undertake such a project; and

5 (2) If an organization operates pursuant to fair procedures,  
6 including: (i) reasonable notice to and adequate participation by all  
7 interested parties including consumers, (ii) due process to all participants,  
8 (iii) maintenance of adequate records of deliberations which are available  
9 to the public, (iv) a requirement that all dissenting views on proposed  
10 standards be recorded and furnished to the Commission, and (v) such  
11 other procedures as the Commission deems necessary,

12 —the Commission shall suspend its proceeding for the development of a  
13 consumer product safety standard for not more than 180 days and authorize  
14 such person or organization to develop a proposed standard or regulation. The  
15 Commission, for good cause shown, may extend such suspension for such  
16 additional period as it finds in the public interest and shall publish its reasons  
17 for such determination. During such suspension the Commission may authorize  
18 its staff to develop proposals for a standard or regulation, or contract with  
19 third parties for such development.

20 (d) If, within such period, a proposed consumer product safety standard  
21 or regulation is developed by such person or organization, the Commis-  
22 sion shall resume its proceeding and shall take such proposed standard  
23 or regulation into consideration, along with the views of its staff, prior to  
24 publishing a proposed consumer product safety standard or regulation in the  
25 *Federal Register*. A consumer product safety standard or regulation shall  
26 thereafter be published within 60 days of submission of such proposed  
27 standard unless the Commission, for good cause shown, finds an extension of  
28 such period is in the public interest and publishes its reasons for such  
29 determination. Such standard or regulation shall include a finding that the  
30 Commission determines it is reasonably necessary to prevent or reduce  
31 unreasonable risk of death or personal injury to the public from the hazard  
32 described.

33 (e) If no person or organization offers and is authorized by the  
34 Commission to develop such a proposed consumer product safety standard  
35 or regulation, the Commission shall publish a consumer product safety  
36 standard or regulation within 180 days of the publication of the notice

1 commencing the proceeding unless the Commission, for good cause shown,  
2 finds an extension of such period is in the public interest and publishes its  
3 reasons for such determination. Such standard or regulation shall include a  
4 finding that the Commission determines it is reasonably necessary to prevent or  
5 reduce unreasonable risk of death or personal injury to the public from the  
6 hazard described.

7 (f) Each consumer product safety standard or regulation shall specify  
8 the date such standard or regulation is to take effect not exceeding 90  
9 days from the date issued, unless the Commission finds, for good cause  
10 shown, that a later effective date is in the public interest and publishes its  
11 reasons for such finding.

12 (g) The Commission may by order amend or revoke any consumer  
13 product safety standard or regulation established under this section. Such  
14 order shall specify the date on which such amendment or revocation is to  
15 take effect which shall not exceed 90 days from the date the order is issued  
16 unless the Commission finds for good cause shown that a later effective date is  
17 in the public interest and publishes its reasons for such finding. Where an  
18 amendment involves a material change in a standard or regulation subsections  
19 (a) - (e) of this section shall apply.

20 (h) In issuing a consumer product safety standard pursuant to this  
21 section, (1) the Commission shall not issue any standard unless there is  
22 an expression in the standard itself of the hazard which the standard is  
23 designed to prevent or reduce; (2) shall whenever possible promulgate  
24 performance standards; and (3) shall consider relevant available product data  
25 including the results of research, development, testing, and investigation  
26 activities conducted generally and pursuant to this Act.

27 (i) Section 553 of Title 5, United States Code, shall apply to all  
28 proceedings for the purpose of establishing, amending, or revoking a consumer  
29 product safety standard or other regulation pursuant to this Act.

30

31

32 *Consumer Product Safety Standards—Imminent Hazards*

33

34 *Section 9.*—Whenever the Commission makes the findings specified in  
35 Section 8(a) and, in addition, at any time finds (1) that such identified product  
36 hazard presents an imminent risk to public health or safety and (2) the

1 consumer product in question is already being distributed, or is about to be  
2 distributed in interstate commerce, the Commission may issue an interim  
3 consumer product safety standard or regulation and make such standard or  
4 regulation effective immediately or within such time as the Commission deems  
5 necessary in the public interest. The Commission shall specify such findings in a  
6 *Federal Register* notice promulgating such interim standard or regulation, and  
7 such findings shall be subject to judicial review pursuant to Section 28. In any  
8 such review proceeding an interim standard or regulation of the Commission  
9 shall be sustained unless the party asserting its invalidity establishes by clear  
10 and convincing proof that it is arbitrary. In the event the Commission issues an  
11 interim consumer product safety standard or other regulation, it shall  
12 commence and complete a proceeding under Section 8 with reasonable  
13 promptness.

14

15

16 *Consumer Product Safety Standards—Petition by Interested Party*

17

18 *Section 10(a).*—Any consumer or other interested party may petition the  
19 Commission to commence a proceeding for the issuance, amendment, or  
20 revocation of a consumer product safety standard or other regulation.

21 (b) Such petition shall be filed in the principal office of the Commission  
22 and shall set forth:

23 (1) Facts which it is claimed establish the existence of an identified  
24 product hazard;

25 (2) Facts which it is claimed establish that a consumer product  
26 safety standard or other regulation or an amendment or revocation  
27 thereof is necessary; and

28 (3) The terms of any such consumer product safety standard or  
29 other regulation or amendment thereof which it is claimed should be  
30 issued by the Commission.

31 (c) The Commission may, in its discretion, hold a public hearing or may  
32 conduct such investigation or proceeding as it deems appropriate in order to  
33 determine whether or not such petition should be granted.

34 (d) If the Commission grants such petition, it shall promptly commence  
35 an appropriate proceeding for the issuance of a consumer product safety  
36 standard, or other regulation or, pursuant to Section 14, declare such

1 product a banned hazardous product or take such other action as it deems  
2 appropriate. If the Commission denies such petition it shall publish its reasons  
3 for such denial.

4

5

6

### *New Products*

7

8 *Section 11(a).*—The Commission shall have authority to promulgate  
9 standards and procedures for the purpose of insuring that new consumer  
10 products are adequately designed and tested to minimize unreasonable risk of  
11 death or personal injury to the public.

12 (b) For purposes of this section, a “new consumer product” is a  
13 consumer product which incorporates a design, material, or form of energy  
14 exchange which (1) has not previously been used substantially in con-  
15 sumer products and (2) as to which there exists a lack of information  
16 adequate to determine the safety of such product in use by consumers.

17

18

19

### *Suits by Commission*

20

21 *Section 12(a).*—Whenever the Commission shall have reason to believe that  
22 a make, model, or type of consumer product incorporating an identified  
23 product hazard is being marketed or is about to be marketed, it is authorized to  
24 commence an action for temporary and permanent injunctive relief with  
25 respect to such consumer product in an appropriate federal district court.

26 (b) Such a proceeding by the Commission shall be commenced by the  
27 filing of a complaint setting forth the facts which establish that the market-  
28 ing of such consumer product presents or may present an unreasonable  
29 risk of death or personal injury to the public and the nature of injunctive relief  
30 which the Commission believes is necessary with respect thereto.

31 (c) The district courts of the United States shall have jurisdiction over  
32 such actions commenced by the Commission.

33 (d) The Commission may commence such actions in any district court in  
34 the United States in a district where any act, omission, or transaction  
35 constituting the alleged violation occurred, or is threatened, or in such court  
36 for the district wherein the defendant is found or transacts business. In such

1 cases, process may be served in any other district in which the defendant is an  
 2 inhabitant or wherever the defendant may be found.

3  
 4  
 5 *Injunctive Relief*  
 6

7 *Section 13(a).*—If the court determines that the risk is unreasonable and  
 8 the Commission is entitled to relief pursuant to Section 12 hereof, it may (i)  
 9 enter an appropriate order enjoining the marketing of such consumer product,  
 10 and (ii) enter an appropriate order directing the defendant or defendants to  
 11 establish such procedures with respect to such consumer product as are  
 12 necessary to avoid unreasonable risk of death or personal injury to the public in  
 13 the future.

14 (b) Those procedures which may be the subject of an affirmative order  
 15 of the court pursuant to this section may include:

16 (i) collection and retention of information on the identity of  
 17 purchasers and claims of injury or hazards;

18 (ii) collection and retention of information on product  
 19 performance and servicing, to the extent it relates to safety;

20 (iii) procedures for adequate product design and performance;

21 (iv) procedures for adequate conduct of testing and inspection;

22 (v) inclusion of necessary warnings and instructions with consumer  
 23 products; and

24 (vi) procedures for adequate quality control.  
 25  
 26

27 *Banned Hazardous Products*  
 28

29 *Section 14(a).*—Whenever the Commission finds:

30 (1) That a consumer product incorporating an identified product  
 31 hazard is being marketed, or is about to be marketed, and such consumer  
 32 product presents an unreasonable risk of death or personal injury to the  
 33 public; and

34 (2) Notwithstanding any cautionary labeling, regulation, or safety  
 35 standard as is or may be required under this Act, the degree or nature of  
 36 the hazard involved in the use of the consumer product is such that

1 protection of the public health and safety can be adequately served only  
2 by keeping such product out of the channels of interstate commerce  
3

4 —the Commission may, by regulation pursuant to Section 553 of Title 5,  
5 United States Code, declare such product a banned hazardous product.

6 (b) If, before or during a proceeding pursuant to subparagraph (a) of this  
7 section, the Commission finds that because of an identified product haz-  
8 ard, distribution of a consumer product affecting interstate commerce  
9 presents an imminent hazard to the public health, and by order published in  
10 the *Federal Register* it gives notice of such finding, such consumer product  
11 shall be deemed to be a banned hazardous product for the purposes of this Act  
12 until the proceeding has been completed. If not yet initiated when such an  
13 order is published, such a proceeding shall be commenced and completed with  
14 reasonable promptness.

15 (c) Orders pursuant to this section shall be subject to judicial review  
16 pursuant to Section 28. In any such review proceeding an order pursuant  
17 to subsection (b) shall be sustained unless the party asserting its invalidity  
18 establishes by clear and convincing proof that the order is arbitrary.  
19  
20

21 *Product Safety Advisory Council*  
22

23 *Section 15(a).*—The Commission shall establish a Product Safety Advisory  
24 Council which it may consult before prescribing a consumer product safety  
25 standard or other regulation. The Council shall be appointed by the  
26 Commission and shall be composed of fifteen members, each of whom shall be  
27 qualified by training and experience in one or more of the fields applicable to  
28 the safety of products within the jurisdiction of the Commission. The Council  
29 shall be constituted as follows:

30 (1) Five members shall be selected from governmental agencies  
31 including federal, state, and local governments;

32 (2) Five members shall be selected from consumer product  
33 industries including at least one representative of small business;

34 (3) Five members shall be selected from among consumer organiza-  
35 tions, community organizations, and recognized consumer leaders.  
36

1 (b) The Council may propose product safety standards or other  
2 regulations to the Commission for its consideration and may function  
3 through subcommittees of its members. All proceedings of the Council  
4 shall be public, and a record of each proceeding shall be available for public  
5 inspection.

6 (c) Members of the Council who are not officers or employees of the  
7 United States and members of any ad hoc advisory committees created  
8 pursuant to subsection (d) shall, while attending meetings or conferences  
9 of the Council or while otherwise engaged in the business of the Council,  
10 be entitled to receive compensation at a rate fixed by the Commission,  
11 not exceeding \$100 per diem, including travel time, and while away from their  
12 homes or regular places of business they may be allowed travel expenses,  
13 including per diem in lieu of subsistence, as authorized by Section 5703 of  
14 Title 5, United States Code. Payments under this subsection shall not render  
15 members of the Council officers or employees of the United States for any  
16 purpose.

17 (d) The Commission is authorized to establish, in addition to the  
18 aforesaid Product Safety Advisory Council, such ad hoc advisory com-  
19 mittees as it deems necessary to advise it with respect to any safety  
20 standard or other regulation considered by it under this Act. Where practicable,  
21 such ad hoc committees shall be composed of representatives of differing  
22 interests in the same proportions specified in subsection (a) hereof. Such ad  
23 hoc committees shall terminate upon termination of the proceeding with  
24 respect to such standard or regulation. All proceedings shall be public, and a  
25 record of each proceeding shall be available for public inspection.

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28 *Notification of Defects; Repair or Replacement of Hazardous Products*

29

30 *Section 16(a).*—Every manufacturer of consumer products who discovers  
31 or acquires information tending to show that:

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(1) A consumer product produced, assembled or imported by him  
contains a defect which creates a substantial risk of personal injury to the  
public; or

(2) A consumer product produced, assembled or imported by him  
on or after the effective date of an applicable standard or regulation

1 prescribed pursuant to Sections 8, 9, or 14 fails to comply with such  
2 standard or regulation,

3 —shall immediately notify the Commission of such defect or failure to  
4 comply if such product has left the place of manufacture and shall, except as  
5 authorized by paragraph (c), with reasonable promptness furnish notification  
6 of such defect or failure to comply to the persons specified in subsection (d) of  
7 this section.

8 (b) The Commission is authorized to promulgate regulations defining  
9 “defect which creates a substantial risk of personal injury to the public”  
10 pursuant to this section.

11 (c) If, in the opinion of such manufacturer the defect or failure to  
12 comply (i) is not such as to create a substantial risk of personal injury,  
13 or (ii) a special limited form of notice is appropriate, or (iii) the  
14 Commission and not the manufacturer should furnish and pay for the  
15 notification specified, he may, at the time of giving notice to the Commission  
16 of such defect or failure to comply, apply to the Commission for a partial or  
17 complete exemption from the requirement of notice specified in sub-  
18 section (d). If such application states grounds for such exemption, the  
19 Commission may afford such manufacturer an opportunity to present his views  
20 in support of the application, the burden of proof being on the manufacturer.  
21 Where the Commission determines it is in the public interest it may publish  
22 notice of such application in the *Federal Register* and afford interested parties,  
23 including consumers, an opportunity to comment thereon. If, after such  
24 presentation, the Commission for good cause shown finds (1) that such defect  
25 or failure to comply is not such as to create a substantial risk of injury and (2)  
26 that exemption would be in the public interest, it may exempt such  
27 manufacturer from the requirement of notice to the persons specified in  
28 subsection (d) of this section or from the requirements of repair, refund, or  
29 replacement imposed by subsection (h) of this section, provided, that it shall  
30 publish its reasons for such findings in the *Federal Register*. If, after such  
31 presentation the Commission, for good cause shown, finds that a special limited  
32 form of notice is appropriate or that it is in the public interest that the  
33 Commission furnish the notification specified, it may grant such partial or  
34 complete exemption from subsection (d) and shall publish its reasons for such  
35 finding in the *Federal Register*.

1           (d) The notification, other than to the Commission, required by  
2 subparagraph (a) of this section shall be accomplished:

3           (1) by certified mail to the first purchaser of such product for  
4 purposes other than resale and to any subsequent transferee of such  
5 product where known to the manufacturer, and

6           (2) by certified mail or other more expeditious means to the dealers  
7 or distributors of such manufacturer to whom such product was delivered.

8           (e) The notification required by subparagraph (a) of this section shall  
9 contain a clear description of such defect or failure to comply, an eval-  
10 uation of the hazard reasonably related thereto, and a statement of the  
11 measures to be taken to correct such defect. In the case of a notification to a  
12 person referred to in subsection (d)(1) of this section, the notification shall also  
13 advise the person of his rights under subsection (h) of this section.

14           (f) Every manufacturer of consumer products shall furnish to the  
15 Commission a true copy of all notices, bulletins, and other communica-  
16 tions to dealers or distributors of such manufacturer or to purchasers,  
17 or subsequent transferees, of consumer products of such manufacturer  
18 regarding any such defect in such product or any failure to comply with  
19 a standard, regulation, or order applicable to such product. The Commis-  
20 sion shall disclose to the public so much of the information contained  
21 in such notices or other information in its possession as it deems will assist in  
22 carrying out the purposes of this Act, but it shall not disclose any information  
23 which contains or relates to a trade secret unless it determines that it is  
24 necessary to carry out the purposes of this Act.

25           (g) If through testing, inspection, investigation, research or examination  
26 of reports carried out pursuant to this Act the Commission determines that any  
27 consumer product:

28           (1) fails to comply with an applicable standard or regulation  
29 prescribed pursuant to Section 8, 9 or 14; or

30           (2) contains a defect which creates a substantial risk of personal  
31 injury to the public,

32  
33 and if the Commission determines that notification or other remedies provided  
34 under this section are appropriate, it shall notify the manufacturer of the  
35 product of such defect or failure to comply. The notice shall contain the  
36 findings of the Commission and shall include a synopsis of the information

1 upon which the findings are based. Unless the Commission determines that  
2 delay will unreasonably harm the public health and safety, it shall afford such  
3 manufacturer an opportunity to present his views to establish that there is no  
4 failure of compliance or that the alleged defect does not exist or does not  
5 create a substantial risk of personal injury. Where the Commission determines it  
6 is in the public interest, it may publish notice of such proceeding in the *Federal*  
7 *Register* and afford interested parties, including consumers, an opportunity to  
8 comment thereon. If after such presentation by the manufacturer the  
9 Commission determines that such product does not comply with an applicable  
10 standard or regulation, or that it contains a defect which creates a substantial  
11 risk of personal injury, the Commission may direct the manufacturer to furnish  
12 the notification specified in subsection (e) of this section to the persons  
13 specified in subparagraph (d) of this section. The Commission may in its  
14 discretion use the sanctions provided by Sections 25, 26, or 27 of this Act with  
15 or without utilizing the procedures specified in this section.

16 (h) If any consumer product is found under subparagraph (a) or (g) to  
17 fail to comply with an applicable standard or regulation or to have a de-  
18 fect which creates a substantial risk of personal injury, and the notification  
19 specified in subsection (e) is required to be furnished on account of such failure  
20 or defect, the manufacturer of such product shall,

21 (1) without charge, bring such product into conformity with such  
22 standard or regulation, or remedy such defect and provide reimbursement  
23 for any expenses, including transportation expenses incurred in connec-  
24 tion with having such product brought into conformity or having such  
25 defect remedied, or

26 (2) replace such product with a like or equivalent product which  
27 complies with each applicable standard, regulation or order under this Act  
28 and which has no defect relating to the safety of its use, or

29 (3) refund the purchase price of such product upon tender of the  
30 product by the owner.

31

32 The manufacturer shall take the action required by this subsection in such  
33 manner and with respect to such persons as the Commission shall by order  
34 prescribe.

1 *Product Certification and Labeling*

2

3 *Section 17(a).*—Every manufacturer of a product subject to a consumer  
4 product safety standard or regulation issued under Sections 8 or 9 shall furnish  
5 to the distributor or dealer at the time of delivery of such product a  
6 certification that such product conforms to all applicable safety standards and  
7 shall specify such standards. Such certification shall be based on a test of such  
8 specific product set forth in such standard or regulation or upon a reasonable  
9 testing program and shall state the name of the manufacturer and date and  
10 place of manufacture.

11 (b) The Commission may by rule or regulation prescribe reasonable tests  
12 or testing programs for consumer products pursuant to this section.

13 (c) The Commission may by rule or regulation require the use and  
14 prescribe the form and content of labels which, where practicable, may be  
15 required by the Commission to be permanently affixed to any consumer  
16 product and which shall furnish to the extent practicable the information  
17 specified in this section.

18 (d) The Commission may order that any product subject to a consumer  
19 product safety standard or regulation pursuant to Section 8 shall be subject  
20 to a reasonable testing program operated by an independent third-party  
21 qualified to perform such program and that an appropriate mark so certifying  
22 appear on the product. Where a product is subject to such an order, the  
23 certification under subparagraph (a) of this section shall so state and shall state  
24 the name of the party operating such testing program. The Commission may,  
25 by regulation, prescribe procedures for such programs and requirements with  
26 respect to reporting of compliance with applicable regulations and standards by  
27 independent third-parties conducting such certification programs.

28 (e) The Commission may, with the advice of the Secretary of Com-  
29 merce, designate parties who are qualified to operate such independent third-  
30 party certification programs.

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*Inspection and Record Keeping*

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35 *Section 18(a).*—The Commission is authorized to conduct such inspection  
36 and investigation as may be necessary to implement this Act and regulations

1 and standards prescribed pursuant hereto. It shall furnish the Attorney General  
2 and, when appropriate, the Secretary of the Treasury, any information  
3 obtained indicating noncompliance (except noncompliance with Sec. 19(b) of  
4 this Act) for appropriate enforcement action.

5 (b) For purposes of implementation of orders, regulations, or standards  
6 promulgated under this Act, officers or employees duly designated by  
7 the Commission, upon presenting appropriate credentials and a written  
8 notice from the Commission to the owner, operator, or agent in charge, are  
9 authorized:

10 (1) To enter, at reasonable times, any factory, warehouse, or  
11 establishment in which consumer products or component parts thereof are  
12 manufactured, assembled, or held for introduction into interstate com-  
13 merce or are held for sale after such introduction; and

14 (2) To inspect, at reasonable times and in a reasonable manner  
15 those areas of such factory, warehouse or establishment where such  
16 products are produced or stored and which may relate to the safety of  
17 such products. Each such inspection shall be commenced and completed  
18 with reasonable promptness.

19 (c) Every manufacturer of consumer products or component parts  
20 thereof shall establish and maintain such records, make such reports, and  
21 provide such information as the Commission may reasonably by regulation  
22 require. Establishment and maintenance of records of purchasers of products,  
23 product design, testing, quality control, defects and claims for five (5) years,  
24 shall not be deemed unreasonable. Upon request of an officer or employee duly  
25 designated by the Commission, every such manufacturer shall permit the  
26 inspection of appropriate books, records, and papers relevant to determining  
27 whether such manufacturer has acted or is acting in compliance with this Act  
28 and regulations and standards prescribed pursuant hereto.

29 (d) The Commission or its representatives shall not disclose any  
30 information reported to, or otherwise obtained by it pursuant to this  
31 section which contains or relates to a trade secret unless it determines that it is  
32 necessary to carry out the purposes of this Act. Such information may be  
33 disclosed to other officers or employees of the United States concerned with  
34 carrying out this Act or, when relevant in any administrative or judicial  
35 proceeding under this Act. Nothing in this section shall authorize the

1 withholding of information by the Commission or by any officer or employee  
2 under his control from the duly authorized Committees of Congress.

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*Additional Powers of Commission*

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7 *Section 19(a).*—The Commission, or any two members thereof as  
8 authorized by the Commission, may conduct hearings anywhere in the United  
9 States or otherwise secure data and expressions of opinion pertinent to the  
10 safety of consumer products. The Commission shall publish notice of any  
11 proposed hearing in the *Federal Register* and shall afford a reasonable  
12 opportunity for interested persons to present relevant testimony and data.

13 (b) The Commission shall also have the power:

14 (1) To require, by special or general orders, corporations, business  
15 firms, and individuals to submit in writing such reports and answers to  
16 questions as the Commission may prescribe; such submission shall be  
17 made within such reasonable period and under oath or otherwise as the  
18 Commission may determine;

19 (2) To administer oaths;

20 (3) To require by subpoena the attendance and testimony of  
21 witnesses and the production of all documentary evidence relating to the  
22 execution of its duties;

23 (4) In the case of disobedience to a subpoena or order issued under  
24 this subsection, to invoke the aid of any district court of the United States  
25 in requiring compliance with such subpoena or order;

26 (5) In any proceeding or investigation to order testimony to be  
27 taken by deposition before any person who is designated by the  
28 Commission and has the power to administer oaths and, in such instances,  
29 to compel testimony and the production of evidence in the same manner  
30 as authorized under paragraphs (3) and (4) of this subsection; and

31 (6) To pay witnesses the same fees and mileage as are paid in like  
32 circumstances in the courts of the United States.

33 (c) Any district court in the United States within the jurisdiction of  
34 which any inquiry is carried on may, upon petition by counsel for the  
35 Commission, in case of refusal to obey a subpoena or order of the Com-  
36 mission issued under subsection (b) of this section, issue an order requiring

1 compliance therewith; and any failure to obey the order of the court may be  
2 punished by the court as a contempt thereof.

3 (d) When the Commission finds that publication of any information  
4 obtained by it is in the public interest and would not give an unfair com-  
5 petitive advantage to any person, it is authorized to publish such infor-  
6 mation in the form and manner deemed best adapted for public use, except  
7 that data and information which relates to a trade secret, shall be held  
8 confidential and shall not be disclosed, unless the Commission determines that  
9 it is necessary to carry out the purposes of this Act.

10 (e) Every manufacturer of consumer products or component parts  
11 thereof shall provide to the Commission such performance and technical  
12 data related to performance and safety as may be required to carry out  
13 the purposes of the Act. The Commission is authorized to require the  
14 manufacturer to give such notification of such performance and technical data  
15 at the time of original purchase to prospective purchasers and to the first  
16 purchaser of such product, for purposes other than resale, as it determines  
17 necessary to carry out the purposes of this Act.

18 (f) The Commission is authorized to obtain without charge from any  
19 manufacturer of consumer products written authorization to distributors  
20 and retailers to obtain a reasonable number of such products for purposes  
21 of determining compliance of such products with the provisions of this Act.

22 (g) The Commission is authorized to enter into contracts with govern-  
23 mental entities, private organizations or individuals for the conduct of activities  
24 authorized by this Act.

25 (h) The Commission is authorized to establish such policies, criteria, and  
26 procedures and to prescribe such rules and regulations as it deems necessary  
27 to administration of this Act and its functions hereunder. Unless other-  
28 wise specified the provisions of Title 5, United States Code, Section 553  
29 shall apply to such proceeding.

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#### *Cooperation With Federal Agencies*

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34 *Section 20.*—The Commission is authorized to obtain from any federal  
35 department or agency such statistics, data, program reports, and other materials  
36 as it may deem necessary to carry out its functions under this Act. Each such

1 department or agency is authorized to cooperate with the Commission and, to  
2 the extent permitted by law, to furnish such materials to it. The Commission  
3 and the heads of other departments and agencies engaged in administering  
4 programs related to product safety shall, to the maximum extent practicable,  
5 cooperate and consult in order to insure fully coordinated efforts.

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### *Imported Products*

10 *Section 21(a).*—Any consumer product offered for importation into the  
11 United States which fails to comply with an applicable standard or regulation  
12 prescribed under this Act, which is not accompanied by a certification in the  
13 form prescribed by Section 17, or which contains a defect which creates an  
14 unreasonable risk of personal injury to the public shall be refused admission to  
15 the United States.

16 (b) The Secretary of the Treasury shall obtain without charge and deliver  
17 to the Commission, upon the latter's request, a reasonable number of  
18 samples of consumer products being offered for import. The owner or  
19 consignee of such product may have a hearing before the Commission with  
20 respect to admission of such imports into the United States. If it appears from  
21 examination of such samples or otherwise that a product fails to comply with  
22 the provisions of this Act, unless subsection (c) of this section applies and is  
23 complied with,

24 (1) such product shall be refused admission, and

25 (2) the Secretary of the Treasury shall cause destruction of such  
26 product unless it is exported, under regulations prescribed by the  
27 Secretary of the Treasury, within 90 days after notice to the importer or  
28 consignee.

29 (c) If it appears to the Commission that any consumer product refused  
30 admission pursuant to subsection (a) of this section can be brought into  
31 compliance with applicable regulations, standards, or orders, final deter-  
32 mination as to the admission of such product may be deferred, and the  
33 Commission may permit the applicant to perform such operations to bring such  
34 product into conformity. The Commission may by regulation prescribe the  
35 means of compliance with this subsection, including execution of a sufficient

1 bond for payment of damages and expenses incurred with respect to the  
2 imported product.

3 (d) It shall be the duty of every manufacturer offering a consumer  
4 product for importation to the United States to designate in writing an  
5 agent upon whom service of all administrative and judicial process may be  
6 made and to file such designation with the Commission. Such designation shall  
7 be public and may from time to time be changed by like writing similarly filed.  
8 Service of all administrative and judicial processes, notices, orders, decisions,  
9 and requirements may be made upon said manufacturer by service upon such  
10 designated agent with like effect as if made personally upon said manufacturer.  
11 In default of such designation, the Commission or any court of the United  
12 States may effect service of process upon such manufacturer by posting such  
13 process, notice, order, requirement, or decision in the office of the Executive  
14 Director of the Commission.

15 (e) No consumer product shall be imported into the United States unless  
16 the manufacturer of such product complies with the inspection and record  
17 keeping requirements of this Act and the Commission's regulations with  
18 respect thereto.

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### *Exported Products*

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23 *Section 22.*—Regulations, orders, and standards issued by the Commission  
24 under this Act shall apply to consumer products intended for export unless the  
25 manufacturer of any consumer product subject thereto obtains and files with  
26 the Commission a certification by the responsible official of the country to  
27 which export is intended stating that the safety provisions of such regulations,  
28 orders, or standards are waived.

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### *Antitrust Laws*

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33 *Section 23.*—Nothing contained in this Act shall be deemed to exempt  
34 from the antitrust laws of the United States any conduct that would otherwise  
35 be unlawful under such laws.

*Prohibited Acts*

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3 *Section 24(a).*—It shall be unlawful for any person to:

4 (1) Manufacture for sale, sell, offer for sale, assemble, introduce or  
5 deliver for introduction in interstate commerce, or import into the United  
6 States any consumer product which is not in conformity with an  
7 applicable regulation or standard prescribed pursuant to this Act, if such  
8 product was manufactured after the effective date of such regulation or  
9 standard;

10 (2) Manufacture for sale, sell, offer for sale, assemble, introduce or  
11 deliver for introduction in interstate commerce, or import into the United  
12 States any consumer product which has been declared a banned hazardous  
13 product by the Commission;

14 (3) Fail or refuse to permit access to or copying of records, or fail  
15 or refuse to make reports or provide information, or fail or refuse to  
16 permit entry or inspection, as required under this Act;

17 (4) Fail to furnish a notification of any defect as required by  
18 Section 16, unless exempted from the requirements of that section by  
19 order of the Commission;

20 (5) Fail to comply with the requirements of Section 16(h) with  
21 respect to repair, replacement, or refund of certain consumer products;

22 (6) Fail to furnish a certificate required by Section 17 or issue a  
23 false certificate if such person in the exercise of due care has reason to  
24 know that such certificate is false or misleading in any material respect.

25 (b) Paragraphs (1) and (2) of Section (a) shall not apply to any person  
26 who, prior to the first purchase of such consumer product, holds a cer-  
27 tificate issued by the manufacturer or importer of such consumer products  
28 to the effect that such consumer product conforms to all applicable federal  
29 regulations and safety standards, unless such person knows that such consumer  
30 product does not conform.

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33 *Civil Penalties*

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35 *Section 25(a).*—Any person who violates Section 24 of this Act shall be  
36 subject to a civil penalty not to exceed \$2,000 for each such violation. A

1 violation of Section 24(a)(1), (2), (4), (5) and (6) shall constitute a separate  
2 violation with respect to each consumer product involved, except that the  
3 maximum civil penalty shall not exceed \$500,000 for any related series of  
4 violations. A violation of Section 24(a)(3) shall constitute a separate violation  
5 with respect to each failure or refusal to allow or perform an act required  
6 thereby. If such violation is a continuing one, each day of such violation shall  
7 constitute a separate offense, except that the maximum civil penalty shall not  
8 exceed \$500,000 for any related series of violations.

9 (b) Any such civil penalty may be compromised by the Commission. In  
10 determining the amount of such penalty or whether it should be remitted  
11 or mitigated and in what amount, the appropriateness of such penalty  
12 to the size of the business of the person charged and the gravity of the violation  
13 shall be considered. The amount of such penalty when finally determined, or  
14 the amount agreed on compromise, may be deducted from any sums owing by  
15 the United States to the person charged.

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#### 18 *Criminal Penalties*

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20 *Section 26.*—Any person who knowingly or willfully violates Section 24  
21 of this Act shall be guilty of a misdemeanor and upon conviction thereof shall  
22 be fined not more than \$50,000 or be imprisoned not more than 180 days or  
23 both, in the discretion of the court, provided that nothing herein shall limit  
24 other provisions of this Act.

25 Whenever any corporation knowingly or willfully violates Section 24 of  
26 this Act, any individual director, officer, or agent of such corporation who  
27 knowingly or willfully authorized, ordered, or performed any of the acts or  
28 practices constituting in whole or in part such violation shall be subject to such  
29 penalties, in addition to the corporation.

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#### *Enforcement*

34 *Section 27(a).*—The district courts of the United States shall have  
35 jurisdiction to enforce the provisions of Section 24 of this Act. Such actions  
36 may be brought in any district court of the United States for a district wherein  
37 any act, omission or transaction constituting the violation occurred, or in such  
38 court for the district wherein the defendant is found or transacts business. In

1 such cases process may be served in any other district in which the defendant is  
2 an inhabitant or wherever the defendant may be found.

3 (b) The district courts of the United States shall have jurisdiction, for  
4 cause shown, to restrain violations of Section 24, except when such prod-  
5 ucts are disposed of by returning them to the distributor or manufacturer  
6 from whom they were obtained.

7 (c) Any consumer product that fails to conform to an applicable  
8 consumer product safety standard or regulation or which has been de-  
9 clared a banned hazardous product pursuant to Section 14 of this Act, when  
10 introduced into or while in interstate commerce or while held for sale after  
11 shipment in interstate commerce shall be liable to be proceeded against on libel  
12 of information and condemned in any district court of the United States within  
13 the jurisdiction of which such consumer product is found. Proceedings in cases  
14 instituted under the authority of this section shall conform as nearly as possible  
15 to proceedings in rem in admiralty. Whenever such proceedings involving  
16 identical consumer products are pending in two or more jurisdictions they shall  
17 be consolidated for trial by order of any such court upon application  
18 seasonably made by any party in interest upon notice to all other parties in  
19 interest.

#### 20 21 22 *Judicial Review*

23  
24 *Section 28(a).*—In a case of actual controversy over the validity of any  
25 Commission order

26 (1) Issuing, amending, or revoking a consumer product safety  
27 standard or regulation pursuant to Section 8 or 9, or

28 (2) Declaring a product to be a banned hazardous product under  
29 Section 14, or

30 (3) Granting or denying an exemption under Section 16, or

31 (4) Issuing, amending, or revoking any other final regulation or  
32 order under this Act,

33  
34 any person who will be adversely affected by such regulation or order,  
35 including any consumer or group of consumers, may at any time prior to the  
36 60th day after such order is issued file a petition with the United States Court  
37 of Appeals for the circuit wherein such person resides or has his principal place  
38 of business for judicial review of such order. A copy of the petition shall be

1 forthwith transmitted by the clerk of the court to the Commission. The  
2 Commission thereupon shall file in the court the record of the proceedings  
3 upon which it based its order, as provided in Section 2112 of Title 23 of the  
4 United States Code.

5 (b) If the petitioner applies to the court for leave to adduce additional  
6 evidence and shows to the satisfaction of the court that such additional  
7 evidence is material and that there were reasonable grounds for the fail-  
8 ure to adduce such evidence in the proceeding before the Commission, the  
9 court may order such additional evidence (and evidence in rebuttal thereof) to  
10 be taken before the Commission, or to be adduced upon a hearing, in such  
11 manner and upon such terms and conditions as to the court may seem proper.  
12 The Commission may modify its findings as to the facts, or make new findings  
13 by reason of the additional evidence so taken and shall file such modified or  
14 new findings, and its recommendation, if any, for the modification or setting  
15 aside of its original order, with the return of such additional evidence.

16 (c) Upon the filing of the petition referred to in subsection (a) of this  
17 section, the court shall have the jurisdiction to review the order in ac-  
18 cordance with Sections 701-706 of Title 5 of the United States Code and to  
19 grant appropriate relief as provided in such sections.

20 (d) The judgment of the court affirming or setting aside, in whole or in  
21 part, any such order of the Commission shall be final, subject to review  
22 by the Supreme Court of the United States upon certiorari or certification as  
23 provided in Section 1254 of Title 28 of the United States Code.

24 (e) The remedies provided for in this section shall be in addition to and  
25 not in substitution for any other remedies provided by law.

26 (f) A certified copy of the transcript of the record and proceedings  
27 under this section shall be furnished by the Commission to any interested  
28 party at his request, upon payment of the costs thereof, and shall be ad-  
29 missible in any civil, criminal, exclusion of imports or other proceeding  
30 arising under or in respect of this title, irrespective of whether proceedings with  
31 respect to the order have previously been initiated or become final under  
32 subsection (a). The Commission may by regulation provide for furnishing such  
33 transcripts without charge to interested persons unable to pay costs therefor,  
34 where in the public interest.

*Private Remedies*

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3        *Section 29(a).*—Compliance with consumer product safety standards,  
4 regulations, or orders under this Act shall not relieve any person from liability  
5 at common law or under state law to any other person.

6        (b) Evidence that an entire finished product complies with regula-  
7 tions or standards issued by the Commission shall be inadmissible in any  
8 private litigation except an action to recover treble damages pursuant to  
9 Section 30.

10        (c) The failure of the Commission to take any action or commence a  
11 proceeding with respect to the safety of a consumer product shall not  
12 be admissible in evidence in litigation at common law or under state law  
13 relating to such consumer product.

14        (d) Accident and investigation reports made under this Act by any  
15 officer, employee, or agent of the Commission shall be available for use  
16 in any civil, criminal or other judicial proceeding arising out of such ac-  
17 cident. Any such officer, employee, or agent may be required to testify in  
18 such proceedings as to the facts developed in such investigations. Any such  
19 report shall be made available to the public in a manner which need not  
20 identify injured persons. All reports on research projects, demonstration  
21 projects, and other related activities shall be public information.

*Suits for Treble Damages by Persons Injured*

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26        *Section 30.*—Any person who shall be injured by reason of any knowing  
27 or willful violation of a consumer product safety standard, regulation, or order  
28 issued by the Commission may sue therefor in any district court of the United  
29 States in the district in which the defendant resides or is found or has an agent,  
30 without respect to the amount in controversy, and shall recover threefold the  
31 damages sustained, and the cost of suit, including a reasonable attorney's fee.

*Federal-State Cooperation*

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36        *Section 31(a).*—The Commission shall promote federal-state cooperation  
37 for the purpose of reducing or eliminating unreasonable risk of injury to the

1 public from identified product hazards. In implementing such program the  
2 Commission may:

3 (i) Accept from any state or local authorities engaged in activities  
4 relating to health, safety, or consumer protection assistance in such  
5 functions as injury data collection, investigation, and educational pro-  
6 grams, as well as other assistance in the administration and enforcement of  
7 this Act which it may request and which such states or localities may be  
8 able and willing to provide and, if so agreed, may pay in advance or  
9 otherwise for the reasonable cost of such assistance, and

10 (ii) Commission any qualified officer or employee of any state or  
11 local agency as an officer of the Commission for the purpose of  
12 conducting examinations, investigations, and inspections.

13 (b) In determining whether such proposed state and local programs are  
14 appropriate in implementing the purposes of this Act the Commission shall give  
15 favorable consideration to programs which establish separate state and local  
16 agencies to consolidate functions relating to product safety and other consumer  
17 protection activities.

#### 18 19 20 *Effect on State Standards* 21

22 *Section 32(a).*—Whenever a consumer product safety standard or regula-  
23 tion established under this Act is in effect, no state or political subdivision of a  
24 state shall have any authority either to establish or to continue in effect any  
25 safety standard or regulation applicable to the same aspect of performance of  
26 such consumer product which is not identical to the federal standard.

27 (b) Nothing in this section shall be construed to prevent the Federal  
28 government or the government of any state or political subdivision thereof  
29 from establishing a safety requirement applicable to a consumer product  
30 for its own use if such requirement imposes a higher standard of perform-  
31 ance than that required to comply with the otherwise applicable federal  
32 standard.

33 (c) The Commission may, upon application of a state or political  
34 subdivision thereof, exempt such application from the provisions of sub-  
35 section (a) where a proposed standard or regulation (1) imposes a higher  
36 level of performance than the federal standard, (2) is required by compelling  
37 local conditions, and (3) does not unduly burden interstate commerce.

*Definitions*

1  
2  
3       Section 33(a).—"Commission" means the Consumer Product Safety  
4 Commission.

5       (b) "Consumer product" means any product, or component part, which  
6 affects interstate commerce and is customarily produced or distributed  
7 for sale (i) to a consumer for use in or around a household or residence,  
8 or (ii) for the personal use, consumption, or enjoyment of a consumer.  
9 Such term does not include hazards associated with such products to  
10 the extent such hazards are subject to duly promulgated regulations under the  
11 National Traffic and Motor Vehicle Safety Act of 1966 (15 U.S.C. 1381 et  
12 seq.), the Flammable Fabrics Act (15 U.S.C. 1191 et seq.), the Food, Drug and  
13 Cosmetic Act (21 U.S.C. 301 et seq.), the Federal Cigarette Labeling and  
14 Advertising Act (15 U.S.C. 1331 et seq.), the Federal Insecticide, Fungicide,  
15 and Rodenticide Act (7 U.S.C. 135 et seq.) and the Radiation Control for  
16 Health and Safety Act (42 U.S.C. 262 et seq.).

17       (c) "Identified product hazard" means a hazard associated with a  
18 consumer product which presents or may present an unreasonable risk  
19 of death or personal injury to the public and which the Commission  
20 describes in a regulation, standard, order, or complaint issued pursuant to this  
21 Act. The Commission may, in determining whether a hazard is an "identified  
22 product hazard," consider, among other factors frequency or potential  
23 frequency of injury, severity or potential severity of injury, number of  
24 products in use, potential for hazard reduction, awareness of hazard by  
25 consumers, increase of hazard with age of product, and hazard to nonusers, if it  
26 deems such factors applicable to its determination.

27       (d) "Consumer product safety standard" means a minimum safety  
28 standard relating to a consumer product, promulgated by the Commis-  
29 sion pursuant to Sections 8 or 9 of this Act for the purpose of prevent-  
30 ing or reducing risk of death or personal injury from an identified product  
31 hazard. A consumer product safety standard establishes the minimum  
32 acceptable safety level for a consumer product. Compliance with a consumer  
33 product safety standard may or may not be evidence of adequate care to avoid  
34 death or personal injury caused by a specific consumer product.

35       (e) "Manufacturer" means any person that manufactures or assembles  
36 consumer products or imports or distributes consumer products manufactured  
37 or assembled elsewhere.

1 (f) "Person" means an individual, partnership, corporation, association,  
2 or any other form of business enterprise.

3 (g) "State" includes a state of the United States, the District of  
4 Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, and  
5 Guam.

6 (h) "Interstate commerce" means commerce between any place in a  
7 state and any place in another state, or between places in the same state  
8 through another state.

9 (i) "Importation" includes reimportation of consumer products manu-  
10 factured or processed, in whole or in part, in the United States.

11 (j) Use of the singular includes the plural wherever appropriate.  
12  
13

#### 14 *Interpretation and Separability*

15  
16 *Section 34.*—The provisions of this Act shall be held to be in addition to  
17 and not in substitution for or limitation of the provisions of any other law. If  
18 any provision of this Act or the application thereof to any person or  
19 circumstances is held invalid, the remainder of the Act and the application of  
20 such provision to any other person or circumstances shall not be affected  
21 thereby.  
22  
23

#### 24 *Authorization of Appropriations*

25  
26 *Section 35.*—There are hereby authorized to be appropriated for the  
27 purpose of carrying out the provisions of this Act the following sums:

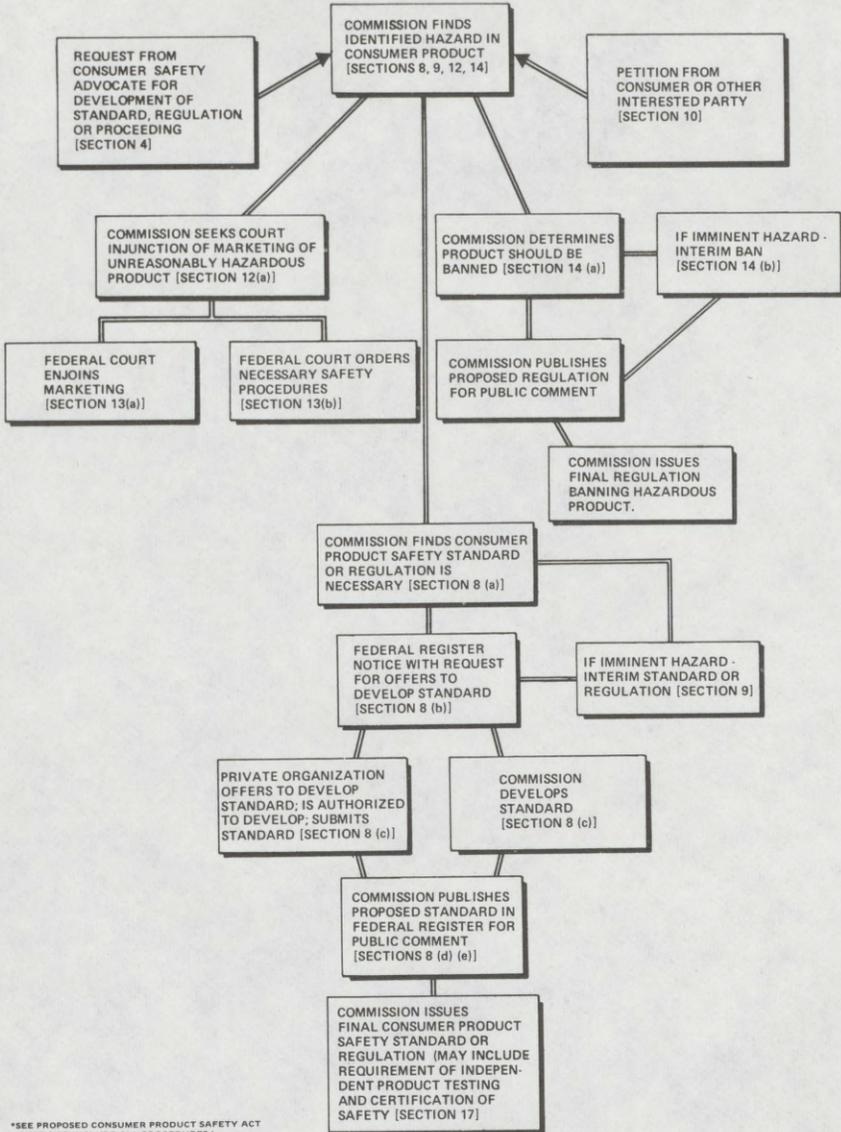
28 \$5,000,000 for the fiscal year ending June 30, 1971;  
29 \$7,500,000 for the fiscal year ending June 30, 1972; and  
30 \$10,000,000 for the fiscal year ending June 30, 1973.

31 The foregoing sums do not apply to facilities to be constructed pursuant to  
32 Section 5 (g) of this Act.  
33

#### 34 *Effective Date*

35 *Section 36.*—This Act shall take effect on the 60th day following the date  
36 of its enactment.  
37  
38

PROPOSED OPERATING PROCEDURES CONSUMER PRODUCT SAFETY COMMISSION



\*SEE PROPOSED CONSUMER PRODUCT SAFETY ACT (DOES NOT INCLUDE ALL PROCEDURES.)

