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TESTING CHARACTERISTICS OF CONSUMER PRODUCTS

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HEARING

BEFORE THE

CONSUMER SUBCOMMITTEE

OF THE

COMMITTEE ON COMMERCE

UNITED STATES SENATE

NINETY-FIRST CONGRESS

SECOND SESSION

ON

S. 3286

TO ASSIST CONSUMERS IN EVALUATING PRODUCTS BY
PROMOTING DEVELOPMENT OF ADEQUATE AND RELIABLE
METHODS FOR TESTING CHARACTERISTICS OF CONSUMER
PRODUCTS

MARCH 5, 1970

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TESTING CHARACTERISTICS OF CONSUMER PRODUCTS

THURSDAY, MARCH 5, 1970

U.S. SENATE,
COMMITTEE ON COMMERCE,
SUBCOMMITTEE FOR CONSUMERS,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10:10 a.m., in room 457, Old Senate Office Building, Hon. Frank E. Moss (chairman of the subcommittee) presiding.

Present: Senator Moss.

OPENING STATEMENT BY THE CHAIRMAN

Senator Moss. The subcommittee will come to order.

We are pleased to be here this morning. Today the Consumer Subcommittee of the Senate Commerce Committee begins its initial hearings on the Consumer Product Testing Act, a bill introduced by Senator Magnuson at the request of the administration. The stated purpose of this bill is "to assist consumers in obtaining reliable and useful information regarding consumer products."

(The bill and agency comments follow:)

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

(1)

91ST CONGRESS
1ST SESSION

S. 3286

IN THE SENATE OF THE UNITED STATES

DECEMBER 20, 1969

Mr. MAGNUSON (for himself, Mr. GRIFFIN, Mr. PEARSON, Mr. PROUTY, and Mr. SCOTT) (by request) introduced the following bill; which was read twice and referred to the Committee on Commerce

A BILL

To assist consumers in evaluating products by promoting development of adequate and reliable methods for testing characteristics of consumer products.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That this Act may be cited as the "Consumer Product Test-
4 ing Act of 1969."

5 SECTION 1. (a) For purposes of this Act, the term
6 "consumer product" shall mean a type of article of personal
7 property, without reference to brand name or source, cus-
8 tomarily sold for family or household use, consumption, or
9 enjoyment.

10 (b) For purposes of this Act, the term "testing method"

1 shall mean a test method or procedure by which particular
2 characteristics of a consumer product may be clearly
3 evaluated.

4 (c) The term "agency" means an executive agency as
5 defined in section 105 of title 5, United States Code, but does
6 not include the General Accounting Office, and the term "re-
7 sponsible officer" refers to the head of an agency designated
8 pursuant to section 2 or the officer designated by the head of
9 such agency to perform the functions under this Act.

10 SEC. 2. (a) It is the purpose of this Act to assist con-
11 sumers in obtaining reliable and meaningful information
12 regarding consumer products by promoting the development
13 and use of methods for testing objective characteristics of
14 such products.

15 (b) The Director of the Office of Consumer Affairs (the
16 "Director") shall, after consultation with the Director of the
17 Office of Science and Technology and giving due regard to
18 the statutory missions and capabilities of the several agen-
19 cies, designate the appropriate agency responsible for the
20 performance of the functions set forth in section 3 with re-
21 spect to any consumer product or class of consumer products.

22 (c) When the Director determines that, with respect
23 to a consumer product or class of products, the interests of
24 consumers would be furthered by the development or ap-
25 proval of testing methods, he may request the responsible

1 officer of the appropriate agency to implement the procedures
2 set forth in section 3 with respect to such class or to one or
3 more products within such class.

4 (d) In determining to which products priority of con-
5 sideration should be given under section 3, the Director shall
6 give due consideration to the requests of other officers of the
7 executive branch, consumers, and manufacturers of such prod-
8 ucts; to the technical complexity, numbers, and importance of
9 such products to consumers; and to such other factors as he
10 may deem relevant.

11 SEC. 3. With respect to each consumer product or class
12 of products as to which a request has been made of him
13 under section 2 (c), each responsible officer shall:

14 (a) Identify which testing methods have been
15 adopted, or from time to time are being considered for
16 adoption, by private standard-making organizations or
17 independent testing laboratories for such product or
18 class;

19 (b) Evaluate whether the testing methods described
20 in subsection (a) relate to those characteristics of such
21 products or class, including performance, content, and
22 durability, which should and can be tested to provide
23 pertinent information to consumers;

24 (c) Evaluate whether the methods specified by such
25 private organizations or laboratories for testing the char-

1 acteristics described in subsection (b) are adequate, and
2 if so approve the same;

3 (d) Confer and consult with such private organiza-
4 tions and laboratories, and with other interested parties
5 with respect to the activities referred to in subsection
6 (a), (b), and (c);

7 (e) After appropriate opportunity for comment by
8 interested persons, cause to be published in the Federal
9 Register the results of his evaluation carried out under
10 subsections (b) and (c);

11 (f) Develop adequate testing methods if he finds
12 that no testing method or inadequate testing methods
13 exist with respect to a product or class of products, and
14 that expeditious development of adequate testing meth-
15 ods through such qualified private organizations or
16 laboratories is not feasible; and cause to be published in
17 the Federal Register such testing methods as he may
18 develop;

19 (g) Prescribe by order or regulation the information
20 to be included in any advertisement or other public state-
21 ment by a manufacturer, distributor, or other seller
22 which is to the effect that a consumer product has been
23 tested in accordance with methods approved or devel-
24 oped pursuant to this section in order to make such
25 statement not false or misleading.

1 SEC. 4. (a) It shall be unlawful for any person, with
2 intent to induce or to encourage the purchase or consumption
3 of any consumer product, (1) to falsely represent that such
4 product has been tested in accordance with testing methods
5 approved or developed pursuant to section 3; (2) to make
6 any false or misleading statement or to omit to state any
7 material fact necessary to make any statement not misleading
8 with respect to the test results on any consumer product
9 represented as having been tested in accordance with such
10 methods; (3) to make any statement regarding a consumer
11 product which does not comply with an applicable order or
12 regulation issued pursuant to section 3 (g) ; or (4) to falsely
13 represent or imply that any officer, agency, or instrumentality
14 of the United States has endorsed, certified, or approved such
15 consumer product or the accuracy of any test performed on
16 such product.

17 (b) The district courts of the United States shall have
18 jurisdiction over suits by the Attorney General to prevent
19 and restrain violations of subsection (a) and over suits by
20 persons injured by such violations for damages and equitable
21 relief without regard to the amount in controversy. A suit
22 under this subsection may be brought in the district court of
23 any district in which the defendant resides or is found.

24 (c) Any person who knowingly violates any provision
25 of subsection (a) of this section shall, in the case of a natural

1 person, be punished by imprisonment for not more than one
2 year or by a fine of not more than \$5,000, or both, or in any
3 other case, be punished by a fine of not more than \$50,000.

4 (d) No publisher, radio broadcast licensee, or agency
5 or medium for the dissemination of advertising, except the
6 manufacturer, packer, distributor, or seller of the commodity
7 to which the violation relates, shall be liable under subsection
8 (c) or liable for damages under subsection (b) by reason of
9 the dissemination of any advertisement or statement in viola-
10 tion of this section, unless he has refused, on the request of
11 the Attorney General, to furnish the Attorney General the
12 name and post office address of the person who caused him to
13 disseminate such advertisement.

14 (e) The provisions of section 13 (b) of the Act of Sep-
15 tember 26, 1914, as amended (15 U.S.C. 53 (b)), shall
16 apply to the grant of equitable relief under this section.

17 SEC. 5. In carrying out responsibilities conferred upon
18 him under this Act each responsible officer may:

19 (a) To the extent necessary, acquire or establish
20 additional facilities and purchase additional equipment
21 for the purpose of carrying out such responsibilities.

22 (b) Request any Federal agency to supply (on a
23 reimbursable basis if appropriate) such statistics, data,
24 testing methods, progress reports, and other information
25 as he deems necessary to carry out such responsibilities.

- 1 (c) Subject to such general guidelines as may be
- 2 promulgated by the Director, issue, amend, and revoke
- 3 such rules and regulations as he deems appropriate to
- 4 carry out such responsibilities.

5 SEC. 6. Nothing in this Act shall supersede any other
6 law relating to consumer products or any rule or regulation
7 promulgated thereunder.

8 SEC. 7. There is hereby authorized to be appropriated to
9 each agency whose officers carry out functions under this Act
10 such sums as may be necessary.

EXECUTIVE OFFICE OF THE PRESIDENT,
OFFICE OF SCIENCE AND TECHNOLOGY,
Washington, D.C., March 4, 1970.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
U.S. Senate, Washington, D.C.

DEAR SENATOR MAGNUSON: This office supports S. 3286 "Consumer Product Testing Act of 1969" as now written, which would implement, in part, the President's Consumer Message of October 30, 1969. The present emphasis is to have the appropriate government agencies evaluate the reliability and utility of testing methods used by other agencies, private or government, when called upon to do so. This seems like a reasonable involvement. What is not appropriate is routine product testing in competition with private testing laboratories.

Sincerely yours,

LEE A. DuBRIDGE,
Director.

OFFICE OF THE DEPUTY ATTORNEY GENERAL,
Washington, D.C., May 5, 1970.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
U.S. Senate,
Washington, D.C.

DEAR SENATOR: This is in response to your request for the views of the Department of Justice on S. 3286, a bill "To assist consumers in evaluating products by promoting development of adequate and reliable methods for testing characteristics of consumer products."

Denominated the Consumer Product Testing Act of 1969, this bill is part of the Administration's consumer legislative package, which also includes the Consumer Protection Act (S. 3201) and the Consumer Representation Act (S. 3240).

The purpose of S. 3286 is to fulfill the need expressed by the President for more reliable and meaningful information concerning consumer products. The availability of such information is currently hampered by the fact that product endorsements often bear little similarity to one another and are not based upon uniform criteria. As the President stated in his October 30 Consumer Message:

Some of these endorsements have meaning but others do not. It would be most helpful, I believe, if the testing procedures on which these endorsements were based were evaluated by government experts. Manufacturers whose products had been tested under government-evaluated testing standards would be allowed to advertise the fact. If no testing standard existed or if the standard in use was found to be inadequate, then the appropriate agency would be authorized to develop a new one.

S. 3286 would utilize various federal agencies (to be designated by the Director of the Office of Consumer Affairs after consultation with the Office of Science and Technology) to approve or develop testing methods to be employed in the evaluation of consumer products by private industry.

The Administration approach differs from those bills which would give the Federal government the direct responsibility for testing products (see, e.g., S. 860). The Department of Justice believes that the approach found in S. 3286 is to be preferred, for it takes into account the efforts of more than 1000 private testing laboratories and would not entail the enormous expansion of facilities that would be necessary if testing became the business of the Federal government. We believe that the development of approved testing methods is the surest and most practical way to see that the American consumer receives the type of information he needs in exercising his decision in the market place.

Accordingly, the Department of Justice recommends enactment of this legislation.

The Bureau of the Budget has advised that enactment of this legislation would be in accord with the Program of the President.

Sincerely,

RICHARD G. KLEINDIENST,
Deputy Attorney General.

Senator Moss. The objective of "informing" American consumers is laudable. If advertisements, promotional material, and information at the point of sale concentrated on providing the consumer with

reliable and useful information, the American consumer would be informed. And informed American consumers could protect themselves in the marketplace and promote the fair and efficient functioning of the free market system.

How many of us, in making our own purchases, have not cried out for someone to give us the straight story on how a particular product will serve our needs or what the claims of the seller really mean?

The interrelationship of S. 3286 and the Magnuson-Moss Consumer Products Guaranty Act (S. 3074) is apparent. S. 3074 attempts to communicate to the consumer the information he needs to know which manufacturers or retailers really stand fully behind their products when they issue a WARRANTY or GUARANTY. S. 3286 attempts to give the consumer information that allows him to judge the conflicting advertising claims about the relative performance of products on the market and receive other pertinent information. After all, how can the consumer really tell if brand X television has the brightest picture or gives the best face colors? And how does the consumer get the information he requires in order to tailor a purchase to his particular needs? How many sellers tell him the dimensions of the product he is purchasing or explain the installation prerequisites?

This initial hearing on the administration's consumer products testing bill is being held in order to allow the administration a chance to explain how the bill will get reliable and meaningful information into the outstretched hands of the consumer. It is my hope that this hearing will offer a constructive setting for industry and consumer input in later hearings which will enable the Senate Commerce Committee to report an extremely valuable bill to the Senate floor for its consideration and action.

We are most pleased to have again before us Mrs. Virginia Knauer. Her dedication to the American consumer constantly reaffirms the President's good fortune in having selected her to be his advisor on consumer affairs.

It is also a pleasure to welcome here today Dr. Myron Tribus, Assistant Secretary for Science and Technology in the Department of Commerce and Dr. Lewis M. Branscomb, Director of the National Bureau of Standards.

We will receive remarks from these three witnesses and any others that happen to be here with them and then we will proceed with some questioning perhaps based on the information.

Let me say again what a great pleasure it is to have Mrs. Knauer once again before this subcommittee. We have looked forward to her appearances and enjoyed working very closely with her in this important consumer field. Mrs. Knauer.

STATEMENT OF VIRGINIA H. KNAUER, SPECIAL ASSISTANT TO THE PRESIDENT FOR CONSUMER AFFAIRS

Mrs. KNAUER. Thank you very much, Mr. Chairman. May I say I am always most pleased to appear before this subcommittee. I hold your overriding interest in consumers in high regard, Senator, as I do your sense of workable legislation.

I am pleased today to join with Dr. Tribus and Dr. Branscomb in supporting S. 3286—the administration's Consumer Product Testing Act. As you know, S. 3286 calls for the Director of the Office of

Consumer Affairs to initiate the governmental action which the bill provides to assist consumers. We, of course, think it is materially important that the Director of the Office of Consumer Affairs has the responsibility to determine whether the consumers' interests would be furthered by the development or approval of testing methods for a particular class or product within a class. After consultation with the Director of the Office of Science and Technology, the Director of Consumer Affairs will determine which of the various Federal agencies should be assigned general responsibility, and request their action to implement test evaluation and development procedures.

Dr. Tribus and Dr. Branscomb will discuss the details of the proposed legislation and answer your questions you may ask. I wish to stress the extent of consumer problems in this area and the need for a remedy such as S. 3286 provides.

The Consumer Product Testing Act was recommended by President Nixon in his October consumer message. We believe it is important to bear in mind that it is but one part of that far-reaching consumer protection package. Viewed in its entirety, the administration consumer program establishes a broad framework for effective consumer representation, protection, and information.

The Consumer Representation Act proposes establishment of my office by statute and gives it greater responsibility to serve consumers. We believe creation of a statutory Office of Consumer Affairs within the Executive Office of the President will give that office maximum prestige, visibility, ability to function as the effective catalyst and coordinator which it must be, and the greatest opportunity to assure that the consumers' interests are represented in major policy decisions.

Additionally, the Consumer Representation Act proposes establishment of a new Division of Consumer Protection in the Department of Justice to act as a consumer advocate before Federal regulatory agencies in judicial proceedings and in Government councils.

Yet another vital component of the administration package is the Consumer Protection Act, which materially protects consumers by expanding the jurisdiction and powers of the Federal Trade Commission, making certain well-defined activities practices by sellers of goods and services violations of Federal law enforced by the new Consumer Protection Division in the Department of Justice, and creating a Federal right of action for consumer recovery of damages suffered by reason of such violations.

From the consumer information aspect, we believe a great deal more can be done which this administration is eager to do.

The Consumer Product Testing Act, which you are considering today, seeks to provide the consumer with adequate and trustworthy information about the product he is considering in the marketplace. The specific purpose of the Consumer Product Testing Act is to assist consumers in the evaluation of products by promoting development of adequate and reliable methods for testing characteristics of consumer products and to encourage manufacturers to disclose that information.

We are of the view—and I am sure you are in agreement—that to provide the individual consumer with accurate information by which he himself can make an intelligent choice among products and services is to serve the ultimate goal of consumer protection in a free enterprise system—self protection through adequate and meaningful information.

As late as the beginning of this century, someone living in America could largely take care of himself. Products were simple, and an individual could form his own value judgments. He could repair almost everything he used—his wagon, his plow, his lamp. When he failed to find a product to fit his need, he either improvised or did without.

Today, in our modern society, man is almost solely dependent on products created or manufactured by others. Moreover, he must trust the technology of others because the products and systems of today are so complex that he cannot properly judge them for himself. In our modern system of life, many complex items such as washing machines, stoves, and refrigerators are necessities without which there occur serious inconvenience, hazards or economic hardships.

For example, in an earlier day, a choice of fibers was between cotton or wool. Now his choice is between the natural fibers and the myriad artificial fibers competing for the consumer's dollar. As to these, the consumer is entitled to know what such terms as "wash and wear," "drip dry" and "permanent press" really mean when he is making a selection of materials. Guides are needed to help the consumer make rational choices among the myriad products and systems available in the marketplace.

I dare say it is easy enough for such sophisticated consumers as all of us here feel we are to be confused. That state of confusion is greatly compounded for the unsophisticated and those with little education.

Also, without meaningful information about the product he is purchasing, the consumer is an easy victim for unscrupulous or careless manufacturers or distributors.

Aware of his own inability to judge products based on his own general knowledge, the consumer increasingly seeks out some meaningful criteria by which he can judge. Evidence of the degree to which producers seek to assure the consumer of scientific support for product claims is readily apparent. Turn on the television, read a newspaper or magazine, scan products in the stores, and you see numerous statements as:

"Independent laboratory tests prove . . . " or

"Tested and approved by . . . " or

"Conforms to standard Number so and so."

Today there are more than 1,000 testing laboratories in this country. There are approximately 350 private organizations developing and publishing test methods and standards.

Faced with the flood of claims as to product performance, plus the number of testing laboratories and organizations developing and publishing test methods, the consumer logically wonders: "Was the information available developed by reliable test methods? Is all the information which is of relevance in my decision available to me?"

We recognize, of course, that much that is useful to the consumer has been and is being done. But as will be described by Dr. Tribus and Dr. Branscomb, there are many areas where relevant information of interest to consumers is either not made available, or where the information has not been developed by test methods which are adequate, meaningful, and technically sound.

What we face today, then, is how to assure the consumer as much meaningful information available to him as possible, and how to assure that the very type of information the consumer has come to

respect and to seek—the scientific test—is something he can and will continue to respect, can rely on, and can find really helpful.

As President Nixon indicated in his consumer message, the administration consumer program envisions making more broadly available to consumers the expertise that lies within the Government, based on experience in the development of test methods. The administration does not foresee the governmental agencies themselves becoming consumer test laboratories, indirectly testing commercial products.

The administration believes—and I think correctly—that a workable solution is for the Government to encourage and, if necessary, to take the initiative to achieve an accurate understanding of what the words used to describe the performances mean, as well as to encourage a situation in which manufacturers and test laboratories will, on their own initiative adopt meaningful test methods coupled with meaningful language for the consumer. The manufacturer, in this advertising or on his labels, could use a statement that the performance claimed is based on an accepted test method. Once existing test methods have been evaluated as adequate, or adequate testing methods developed, under this bill my office can be counted on to get the word to consumers. We can be sure other information sources will get them the word, too. Then we are confident consumers will pressure for disclosure on labels and in ads that performance claims are based on an accepted test method. Consumers would then not be faced with the quandary of confidence in what lies behind the test.

As I indicated earlier, Dr. Tribus and Dr. Branscomb are prepared to discuss the details of the administration proposal and to answer your questions. I would stress that the administration is eager to help the consumer. We believe the proposal before you today will do that. Thank you.

May I present Dr. Myron Tribus, Assistant Secretary of Commerce for Science and Technology.

Senator Moss. Dr. Tribus, we will be very glad to hear you. And I compliment you, Mrs. Knauer, for your very fine statement and your stressing that the administration is eager to help consumers is certainly borne out with the administration you are performing in your office.

STATEMENT OF DR. MYRON TRIBUS, ASSISTANT SECRETARY FOR SCIENCE AND TECHNOLOGY, DEPARTMENT OF COMMERCE; ACCOMPANIED BY DR. LEWIS M. BRANSCOMB, DIRECTOR, NATIONAL BUREAU OF STANDARDS, DEPARTMENT OF COMMERCE; ROBERT B. ELLERT, ASSISTANT GENERAL COUNSEL, DEPARTMENT OF COMMERCE; AND MALCOLM W. JENSEN, DEPUTY DIRECTOR, INSTITUTE FOR APPLIED TECHNOLOGY, NATIONAL BUREAU OF STANDARDS

Dr. TRIBUS. Mr. Chairman and members of the committee:

I am pleased to be here to urge the enactment of S. 3286, a bill, "To assist consumers in evaluating products by promoting development of adequate and reliable methods for testing characteristics of consumer products."

This bill is part of the administration's consumer program which was outlined in the President's consumer message of October 30, last year. In this message the President stated:

No matter how alert and resourceful a purchaser may be, he is relatively helpless unless he has adequate, trustworthy information about the product he is considering and knows what to make of that information. The fullest product description is useless if a consumer lacks the understanding or the will to utilize it.

* * * I recommend that Congress authorize the Federal Government to review the standards for evaluation which are used by private testing laboratories and to publish its findings as to their adequacy, working through appropriate scientific agencies such as the National Bureau of Standards. Laboratories presently issue quality endorsements, of one kind or another, for a wide variety of products. Some of these endorsements have meaning, but others do not. It would be most helpful, I believe, if the testing procedures on which these endorsements were based were evaluated by government experts. Manufacturers whose products had been tested under government-evaluated testing standards would be allowed to advertise the fact. If no testing standard existed or if the standard in use was found to be inadequate, then the appropriate agency would be authorized to develop a new one.

S. 3286 is designed to implement the policy that informed consumers are essential to the fair and efficient functioning of a free market economy and to develop on a voluntary basis another meaningful link in the chain of communication between the consumer and the producer.

In its essence, this bill authorizes the approval or development of test methods for consumer products. It anticipates that those characteristics of a product that can be objectively measured and relate to its intended use, such as performance, content and durability, will be identified and, when tested according to a prescribed method, will be given numerical values so that a prospective purchaser will be provided with a basis for value comparison.

I now propose to outline the provisions of this bill, comment on the need for the bill, and discuss how the Department of Commerce envisions that the bill will operate.

OUTLINE OF PROVISIONS OF S. 3286

The Consumer Product Testing Act would establish a voluntary testing method program for consumer products. The problems associated with mandatory safety standards are not covered by the bill and will be assessed in light of the forthcoming report of the National Commission on Product Safety. The overall responsibility and direction for the program would be in the Office of Consumer Affairs, but the actual identification, evaluation, determination, approval, or development of the test methods for a particular consumer product would be assigned by that office to a designated Federal agency with recognized expertise in a given product area.

This bill would authorize a manufacturer, a distributor, or other seller of a consumer product, where the product has been tested in accordance with methods approved or developed under the program, to advertise that the consumer product has in fact been tested in accordance with methods approved or developed pursuant to the bill.

The bill would make it unlawful: (1) to falsely represent that a product has been tested in accordance with approved or developed standards; (2) to make a false or misleading statement or omission with respect to test results obtained on a product represented as having been tested in accordance with approved methods; (3) to make statements not in compliance with any applicable regulation or order

issued pursuant to section 3(g); or (4) to imply or represent any governmental approval of either a product or the accuracy of a test method.

The Federal district courts would have jurisdiction to hear cases brought by either the Attorney General or private parties for violations of the provisions of the bill. Criminal penalties are also provided for natural persons who knowingly violate the bill. Members of the advertising media are exempted from civil damage and criminal penalties, unless they refuse to divulge the name and address of the person causing the publication of material violative of the bill to the Attorney General upon request.

This bill contains the following procedural steps to achieve its purpose:

1. The Director of the Office of Consumer Affairs, after consultation with the Director of the Office of Science and Technology, determines which Federal agency should be assigned general responsibility under the bill for particular consumer products or classes of products. For example: Household batteries might be referred to the National Bureau of Standards.

2. The Director determines whether the interests of consumers would be furthered by the development or approval of test methods for a particular class or product within such a class. For example: Of the hundreds of types of batteries manufactured only four or five might represent a sufficient market to justify consumer standards.

3. If the Director determines in the affirmative, he may request the appropriate responsible official in the Federal agency to implement the identification, evaluation, and development procedures set forth below. (In instances where there are numerous classes of products concerned, the Director, after consideration of the requests of executive branch officials, consumers, and manufacturers, and other relevant factors, for example, technical complexity of product, also determines which products should be given priority consideration.)

4. The official in the Federal agency identifies the test methods which have been adopted or are being considered for adoption by private standards-making organizations or independent testing laboratories for a particular product or class of products. For example, there already exist standards for determining shelf life, charge capacity, maximum current and proper rating for some batteries.

5. The official evaluates whether the identified test methods relate to characteristics which should and can be tested to provide pertinent information to consumers, for example, performance, content and durability.

6. The official determines whether the test methods are adequate and, if they are adequate, they are approved.

7. The official consults with the private organizations and laboratories and with interested parties, and, after appropriate comment from these groups, publishes the results of his evaluation in the Federal Register.

8. If the official determines that there is no existing or adequate test method with respect to a product or class of products, and that the development of adequate test methods through private organizations or laboratories is not feasible, he develops adequate testing methods and has them published in the Federal Register.

9. The official prescribes by order or regulation the pertinent information to be included in an advertisement or public statement by a manufacturer, distributor or other seller, to the effect that the consumer product has been tested in accordance with approved or developed methods in order that such statement will not be false or misleading. This might include, for example, the information properly displayed on the battery itself.

NEED FOR S. 3286

Studies conducted by the National Bureau of Standards have identified situations that show the need for S. 3286. Although these studies will be discussed in detail by Dr. Branscomb in his testimony, I would like at this time to summarize the results.

1. There are substantial classes of consumer products for which there are no published test methods respecting characteristics such as performance, content, and durability.

2. Many published testing methods do not provide meaningful information to the consumer as to the characteristics of the product covered.

3. Generally no agency of the Government has the specific responsibility or the authority to evaluate technically existing test methods or to pinpoint areas where the interests of the consumer would be furthered by the development of new or improved testing methods. For example, despite the obvious current need for personal and property protection devices, such as burglar alarms and other warning devices, and the many millions of dollars being spent on them, there has been and is practically no effort to develop test methods to determine the effectiveness or efficiency of such devices.

OPERATION OF S. 3286

I would like now to comment on the operation of some of the key provisions of this bill.

S. 3286 defines a "testing method" as a procedure by which particular characteristics of a consumer product may be clearly evaluated. The Department considers that a testing method will normally define both a quality and a quantity in connection with consumer products. The quality called color fastness for example, would be defined through test procedures, probably in terms of the percentage change in reflectivity or the variation in hue of the material under specified circumstances. This objective measure would be used to define when that property called color fastness has been lost. The testing method would also establish the circumstances under which the longevity, or the life of the product before it loses color fastness, will be determined. Thus the test method might describe how to wash the fabric in a standard way or define a standard exposure to light.

It would not, however, call for a certain duration of exposure or a certain number of washings. Thus, a manufacturer could say that its shirt, shirt A, could be washed 50 times under the testing method and retain the specified color fastness but that its competitor's shirt, shirt B, could only be washed 25 times under the testing method and retain the specified color fastness. The testing method would define clearly the test procedure that is to be used to support the claim that the product has a particular life.

The proposed bill in section 3 prescribes a series of steps to be taken by an agency when requested by the Director of the Office of Consumer Affairs to develop or approve testing methods relating to a consumer product or class of products.

I would like to comment on the degree of public participation that is envisioned in the implementation of section 3. It is contemplated that the Office of Consumer Affairs would assure that all agencies having responsibilities under section 3 would have the same procedures for establishing test methods. It is our opinion that these procedures should provide for public notice and for informal hearings as set out in section 553, title 5 of the United States Code, formerly the Administrative Procedure Act. I believe that by following these procedures all interested parties in the private sector, including the consumer and industry, would be able to make a meaningful contribution to a "test method" developed under S. 3286.

As I mentioned earlier, safety is not a primary purpose in the development of testing methods under this bill. This proposed legislation is to complement safety legislation that either already exists or that will be passed in the future. For example, fabrics are now examined for flammability under the provisions of the Flammable Fabrics Act but they would also be subject to a testing method under this act as to the qualities other than flammability about which a consumer would want to know, such as strength, durability, and the color fastness.

Naturally, any testing method concerned with the performance of a product will touch upon the hazardous characteristics that might be present in the uses of a product or class of products because this possibility of a hazard relates to the product's performance. To that extent the testing methods either approved or developed under this bill will consider hazards of use as well as other performance characteristics.

Finally, I would like to turn to section 3(g) of the bill which requires the appropriate agency to prescribe the information that is to be included in any advertisements mentioning that the product advertised has been tested in accordance with the test method either approved or developed by the Government. We envision that the prime criteria for the information to be prescribed would be—will such information be meaningful to the consumer?

How the information will be presented and what information would be included depends on the nature of the product being tested and would require a specific determination in each case. It should be noted that the criminal penalties in section 4 of the bill would prevent anyone from advertising that a product has been tested in accordance with an approved test method unless they also include the additional information prescribed for advertisements.

For the reasons I have touched upon here today I would urge the passage of S. 3286. This bill, if passed, would provide another link in the chain of communication between the consumer and the producer.

At this time I would like to introduce Dr. Lewis Branscomb, Director of the National Bureau of Standards, who will discuss the National Bureau of Standards survey upon which the need for this bill is based. He will also give you an example of the hypothetical development of a testing method under this bill.

Senator Moss. Thank you Dr. Tribus for your statement.

We look forward to hearing now from Dr. Lewis Branscomb.

Dr. BRANSCOMB. My name is Lewis Branscomb. I am Director of the National Bureau of Standards. It is a privilege for me to appear with Mrs. Knauer and Dr. Tribus and discuss the proposed Consumer Product Testing Act.

Dr. Tribus has described the bill and the procedures contained therein. One of the steps in the development and publication of an approved test method is the identification of existing methods. In order to be of maximum assistance to the committee in its deliberations, we have studied the published voluntary standards for consumer products to determine which of these include test methods, and we have looked at some of the methods to evaluate their completeness and their apparent technical effectiveness. For this study we have utilized the facilities of our Standards Library in which we have collected and indexed some 19,000 standards issued by more than 300 organizations.

We have been able to identify at least 15 private organizations that publish testing methods for consumer products. (Many other organizations test consumer products, but do not publish test methods.) At least three Government agencies publish purchase specifications in which test methods may be included.

When private and public entities of other English-speaking nations and international organizations are included, it is found that more than 25 bodies publish more than 1,000 test methods for consumer products, but that less than 400 of perhaps some 10,000 products (or product classes) are covered.

Unfortunately, even these may be of little real value to consumers. There presently is no Government-sponsored program to determine whether published test methods address themselves to essential functional characteristics or that they are technically appropriate. Moreover, there is no such system for identifying voids.

Examples of consumer products that represent sizable annual sales by industry and for which there are no published test methods to determine performance are electric shavers and hair dryers. Yet it is obvious that both items are selected to perform specific functions.

Even the existence of a test method provides no real assurance that a product tested will be properly evaluated as to its performance. The adequacy of a test method is a function of its ability to provide satisfactory measurements for all significant characteristics of the product and also the degree that the method reflects the state of the art of testing techniques. Repeatability of results is one accepted criterion in judging the usefulness of a test method.

The household refrigerator provides an interesting case to evaluate the adequacy of existing test methods for a product that has wide consumer use. The American National Standards Institute has published two voluntary standards for household refrigerators. These are similar in content to a standard issued by the Association of Home Appliance Manufacturers and contain test methods for net refrigerated volume, net shelf area, operating performance, power consumption, and icemaking.

The International Standardization Organization, in a recommendation for household refrigerators, goes a bit further and includes durability of doors and fittings, door sealing, mechanical strength of shelves, absence of odor in construction materials, and thermal insulation.

Unfortunately, manufacturers rarely tell the consumer how their products perform under many of these tests. And beyond this, there are other refrigerator performance characteristics of concern to consumers. Some of these for which there appear to be no published test methods are space necessary for installation, including clearance for ventilation and door opening, durability of materials other than doors and fittings, expected useful life, noise levels; and frost-free or no-defrost operation, as appropriate.

Television receivers offer another example of inadequate test methods. These are by far the largest appliance items included in the Consumer Price Index—accounting for 0.67 percent, that is two-thirds of 1 percent, of the total in terms of dollars at retail—with refrigerators, at 0.28 percent, being second.

Although there are both United States and British methods for testing TV sets, neither provides measurements to cover characteristics understandable by and of direct concern to consumers. For example, the general concept of picture quality and certain of the technical functions that contribute to it are recognized, but there is no method for testing picture quality that would be useful as an overall performance index. Even some of the technical functions are only defined in terms of subjective evaluation, and there is no provision for testing the durability or maintainability of receivers for the consumer market.

That adequate test methods for consumer products can be developed and published is proven by those in existence for light bulbs, dry cells, and portable home fire extinguishers. The test methods for light bulbs provide for numerical determinations of the four principal performance characteristics for lamps, whether incandescent or fluorescent—light output, color of light, durability or life expectancy, and power consumption.

For dry cells, previously referred to briefly by Dr. Tribus, the tests are designed to measure performance under such intermittent use as may be anticipated in specific service situations and both when fresh and after 6 months of storage.

In the case of fire extinguishers, there are hydrostatic tests and tests for horizontal range of stream, rate of discharge, and identification of extinguishing material.

Perhaps it would be informative to run through quickly an explanation of the operation of this proposed legislation using the household refrigerator as an example.

Let us assume that the Director of the Office of Consumer Affairs has determined, under subsections (c) and (d) of section 2 that "the interests of consumers would be furthered by the development or approval of testing methods" for refrigerators, and assume further that, under subsection (b) of section 2, the Director has requested the National Bureau of Standards to develop or approve test methods for this particular household product.

Our first job would be to communicate with consumer representatives and with distributors, manufacturers, and repair and maintenance personnel in order to identify those design and performance characteristics that relate to the functional use of the product and that may be measurable. Concurrently we would gather existing test methods and evaluate them technically to determine whether singly

or in combination they do indeed apply reliable techniques, are practicable, and provide repeatable results.

The evaluation would then be published in the Federal Register. Private standardization organizations would be invited to proceed with the development of adequate test methods if they could demonstrate the technical capability to do so and they could do so in an expeditious manner.

If private development of the test methods is deemed to be not feasible, and if the necessary resources and facilities are available to the National Bureau of Standards, we would proceed with the work in our own laboratories.

Once the test methods are developed, they would be published in the Federal Register along with information as to what is to be included in any advertisement or other public statement in which any reference is made to the test of the product advertised under the approved test method.

The use of, or reference to, an approved test method by a manufacturer or distributor is entirely voluntary. The aim of this bill is to provide a mechanism through which helpful quantitative information can be provided prospective purchasers, under prescribed procedures, in order that references to design and performance may disclose the technical basis on which such references rest, and may facilitate rational value judgments in the marketplace.

It should be noted also that, under section 4(a) 2 of the bill, it would be unlawful to "omit to state any material fact necessary to make any statement not misleading with respect to the test results on any consumer product represented as having been tested in accordance with such (approved or developed test) methods."

Thus, orders or regulations issued pursuant to section 3(g) would prescribe the information on test results to be given to prospective purchasers where reference to the test method has been made in an advertisement. It is important that we avoid the possible misinterpretation that this bill would permit a producer or distributor to advertise that his product had been tested according to approved test methods without including in the advertisement the information deemed by the assigned agency to be important to consumers.

Thank you, Mr. Chairman.

Senator Moss. Thank you, Dr. Branscomb, for your statement.

All three of these statements are most helpful. Perhaps we have a few questions that might help to clarify what is proposed in this bill.

It seems to me in this bill you depend on the voluntary action of industry, once test methods have been established, to get essential consumer information into the hands of the consumers.

Do you think that industry will come forth voluntarily and offer this information to the consumer? I might direct it to Mrs. Knauer and she can hand it off to one of the panel members if she wants.

Mrs. KNAUER. Yes, I think industry will. I think so.

Senator Moss. You think the inducement to be able to advertise a product as having met certain test standards is enough to bring industry in?

Mrs. KNAUER. I think so. As I indicated in my testimony, once existing test methods have been evaluated as adequate, or adequate testing methods have been developed under this bill, my office certainly can be counted on to get word out to consumers. Other infor-

mation sources will help, too. Then I am confident consumers will pressure for disclosure on labels and in advertising that the performance claims made are based on accepted testing methods.

I would like Dr. Tribus and Dr. Branscomb to take this up.

Senator Moss. Yes, I would be happy to have comment from any of you.

Dr. TRIBUS. I agree with Mrs. Knauer. Her office has an important effect here. Additionally, I think the competitive forces in our economy will be such that a manufacturer who has a product that is superior, and for which he probably is charging a little bit more, will want to be able to say in an authoritative manner that it is indeed superior. I think we can anticipate that other manufacturers will follow suit or feel compelled to follow suit by virtue of what the leader does.

Dr. BRANSCOMB. I believe that the test methods approved or developed in this manner will have a high degree of public credibility and that private organizations like Consumers Union, which have the capability to perform tests, may find it advantageous to use these tests in their evaluation and then to publish the results.

I think that may very well be the vehicle that starts the ball rolling with manufacturers choosing to use the same test methods to validate their own product claims.

Senator Moss. I take it you believe that the only real problem with the various claims now being made in advertising, is we don't know what standard is being applied, and this bill would cause those who wish to compete in the marketplace and get wider sale of the product and to continue to make these claims, to have to relate their claims to a definite standard or they would be in violation of the law? Is that correct?

Mrs. KNAUER. That is basically correct, Mr. Chairman.

Dr. TRIBUS. That is generally correct. There is nothing in the bill that prohibits a man from saying what his product will do, and then remaining silent as to the basis for his statement. We are not forcing people, but if he said it was tested in accordance with the U.S. approved method, then there are other things he must say.

I think consumers will soon learn to read behind the ballyhoo. At least we hope so.

Senator Moss. That would be largely the job of Mrs. Knauer's office in educating the consumers to look to the claim related against the standard that has been approved by the Federal Government under this act and that once the consumer looked for that, then competition to sell the product would compel the manufacturers to use that testing.

Mrs. KNAUER. We think it will, Mr. Chairman.

Senator Moss. Suppose that you decided on a testing method, say for refrigerators, that incorporates all of the relevant consumer information enumerated in the test—would all of that information be required to be placed in an advertisement for the refrigerators that claim to test their products in accordance with Government approved tests?

Dr. BRANSCOMB. The regulations would specify how much of that information had to be so stated. Criterion for determining the minimum amount of permissible information would be based on both the importance of that information to the consumer and the necessity for describing all of those aspects of performance that may be traded off against one another in the design of the refrigerator.

For example, it may be possible for the manufacturer to invest in high performance of one attribute at the sacrifice of performance of some other attribute. Under those circumstances, clearly the regulation would have to require that both attributes be stated, otherwise a misleading result might occur.

Senator Moss. In other words, that would be the withholding of some information, if he claimed the test had proven a certain attribute and didn't mention the other one.

Dr. BRANSCOMB. That is right, sir. For example, if the claim is made that the refrigerator reaches low temperatures very quickly and has a high capability to cool things inside, and there were no requirement that the manufacturer also state the amount of power required to run that refrigerator, he might elect to promote the product on the basis of its very high cooling performance without revealing that it also was very expensive to operate.

These two factors which work against each other would both need to be stated so the housewife could balance the cost of operating the refrigerator against its performance.

Senator Moss. So you answer would be that he would have to set down the performances against all of the characteristics that have been tested and in the regulation stated that they were suitable for a refrigerator?

Dr. BRANSCOMB. Yes, sir.

Dr. TRIBUS. We have considered the possibility that sometimes the amount of information required is fairly lengthy. In these cases it might be spelled out in the regulation that it would be proper to say, for example, that a refrigerator had been tested and the information will be found on the refrigerator, so that in a spot television announcement it would not be required to recite everything. This technique might be deemed proper provided there were some way of guaranteeing that there would indeed be the delivery of the pertinent information at the point of sale.

This would be a matter to be spelled out in each case. In some cases the amount of information needed by the consumer is so little it could be required to be stated any time the law were involved. But in other cases it might be more complex. In each case it would be up to the agency working out the standard to state what was proper and fair.

I would also like to point out that these determinations will certainly be made in cooperation with industry. Our experience in the Department of Commerce has been that when we decide to go forward on something like this program we can count on the people in industry helping us to define what is a fair and equitable way of handling it.

Mrs. KNAUER. Senator, may I also suggest that this more lengthy information might be included on a telltag type hangtag to provide such product information at the point of sale. The smaller appliances would have it probably attached as a telltag. I think, traditionally the refrigerator has detailed product information pasted right on the door. But, when the housewife is making her final choice—right there on the floor of the store—a telltag containing product test results would be relevant. She may forget what is in the ad, but she will compare that at the last minute.

Senator Moss. What monitoring system would be used to be sure that this law was complied with? Suppose there was an advertisement, a spot advertisement, which says this refrigerator meets all of the testing criteria that are set forth on the door of the refrigerator?

Dr. TRIBUS. Mr. Chairman, I brought with me Mr. Robert Ellert, who is Assistant General Counsel in the Department of Commerce and I would like to ask him to respond to that.

Senator Moss. We will be glad to have you respond, Mr. Ellert.

Mr. ELLERT. Mr. Chairman, we anticipate the monitoring system would be primarily through the Department of Justice who would be responsible for the law enforcement of this bill under section 4. This also could be complemented by the efforts of the Federal Trade Commission in regard to unfair trade practices under section 5 of their act.

Senator Moss. In determining what standards of tests there would be, would there be any way to get the input of the consumer in there, as to what he thinks ought to be tested, or would this come solely from the Government level?

Mrs. KNAUER. Mr. Chairman, under the bill the initiative would be in our office which represents consumers and which consults with consumers and consumer organizations regularly. I think we would also use consumer complaints as an important criteria.

We see a volume of complaints and I think these might help determine our criteria for choosing one product or product line for testing. I also think an important priority would be the technological complexity of a product; in other words the degree to which a consumer would not have the ability to evaluate a product. I feel another important criteria would be the importance of the product of his consumer dollar its purchase represented. For example, products such as televisions and refrigerators represent sizable expenditures. As Dr. Branscomb said, I think these would create priorities for us.

I would certainly think that in the hearings we talked about, consumers themselves and their representatives would be encouraged through proper notice in the Consumer Register to come in and discuss these before the final testing procedure was approved.

Senator Moss. This leads to another area where there might be a gap. As was testified, there are already many consumer testing programs that are carried on by various manufacturers. Suppose that some of these continue and the action of the government has not yet filled in in those areas. How can the consumer differentiate from the type of testing that is referred to in the advertising?

Mrs. KNAUER. We anticipate that manufacturers using a Government-approved testing method would include this fact in their advertising. I suppose there might even be consideration given to a Government seal of some sort which would appear on the product to indicate it had been tested under the Government-approved testing procedures.

Dr. TRIBUS. I think there would probably be some identifying mark such as we now have for USDA-inspected meats for example.

Dr. BRANSCOMB. I think we would want to make sure there was a clear statement that the performance claims were based on Government-approved test methods. It is important that we not do that in

such a way as to give anybody the impression that the Government is guaranteeing the quality or level of performance of a product. That is a decision concerning the suitability of performance should be made by the customer on the basis of an informed judgment relating to his particular needs.

Senator Moss. Dr. Tribus, in your testimony you stated that a manufacturer would be able to state that shirt A could be washed 50 times under the testing method and retain the specified color fastness, and its competitor's shirt, B, could only be washed 25 times under the testing method and retain the specified color fastness. Would this bill really give the manufacturer authority to make a statement like that?

Dr. TRIBUS. Well, first of all the manufacturers now do this. They run comparison ads when they feel particularly strong. What we are concerned with is that if such advertising is run, that it really ought to be run using test procedures that are meaningful. In other words, the bill doesn't give manufacturers any rights they don't have already. What the bill tries to do is to make sure when these public comparisons are made they are offered in a way that is really informative.

Senator Moss. I am trying to think of what the liability might be on the part of a manufacturer that so advertised in the event that the shirt B people could show some error in what he stated. What would his liability for product libel be?

Dr. TRIBUS. If the test method is proper, if the test method is unambiguous, if it is repeatable, as Dr. Branscomb indicated it should be, then we are talking about a property of a manufactured item.

There are problems, of course. Manufactured items often have great variability. Maybe somebody tests a device one time, or goes to a competitor's store and buys a sample of them that aren't up to standard. All circumstances would have to be explained.

I would like Mr. Ellert to comment on the legal ramifications here.

Senator Moss. Yes, Mr. Ellert.

Mr. ELLERT. As I understand the question, Mr. Chairman, you want to know the liability of the manufacturer of shirt A if he claims that he used the testing procedure for washing shirts prescribed by the agency concerned and his competitor establishes that he did not follow this testing method. Under these circumstances the manufacturer of shirt A would have violated section 4(a)(1) if it was established that he had represented that he had tested the product when in fact he had not. If he had tested the shirt in accordance with the testing methods but his statements as to the results of such testing were false or misleading then he violates section 4(a)(2) of the bill.

Further, if he represents that the Government certified or approved the accuracy of any test performed on the shirt this would be a violation of section 4(a)(4).

Senator Moss. Does the bill provide for a system of compliance testing by the agency that has approved the test method?

Dr. TRIBUS. I am not sure what you mean by compliance testing.

Senator Moss. Well, requiring testing by a manufacturer of a product?

Dr. TRIBUS. No, sir. Only if he wishes to advertise under the provisions of this bill. There is no requirement that a manufacturer who doesn't want to participate in this program has to do so, no pressure except public pressure, from customers.

Senator MOSS. I was thinking I guess more in terms of having been tested at one time and then a period of time has gone by, is there a requirement for retesting at any periodic time for instance, to catch any variations or changes that may have come about in the product?

Mr. BRANSCOMB. It is my understanding that under this bill the manufacturer would be responsible for making an accurate and non-misleading statement in his advertising if he chooses to do so. It is his responsibility to see to it his product does in fact perform as claimed. The bill does not place upon the Government the burden of engaging in compliance testing. It leaves the problem of how the manufacturer is to insure he is honestly complying with the law up to the manufacturer, with the Federal Trade Commission available for enforcement.

Senator MOSS. Should his competitor be able to get a shirt, for instance, that bore this advertisement on it, and the shirt did not conform, the responsibility would be on the competitor to make a claim it did not comply; is that correct?

Dr. TRIBUS. Yes, sir; that is correct, sir.

Senator MOSS. What if the testing laboratory is responsible for the misstatement? Can any sanctions be imposed on the laboratory or should there be by any such sanctions?

Mr. ELLERT. The bill—I think you correctly brought up a point—does not provide for criminal sanction under section 4 on the laboratory for doing a false test. Now, there would probably be an existing remedy under the FTC Act which, however, would be fairly lengthy in accomplishing. But the main liability is put under section 4 on the person who knowingly violates any provision of subsection (a). It is unlikely but the laboratories directly would be included, sir.

Senator MOSS. So unless he did it knowingly there would not be any liability on the seller and there would not be any liability on the laboratory, and no penalty imposed there?

Mr. ELLERT. Yes, I think that is the practical answer under the provisions of this bill as we have it now. That is true, sir.

Senator MOSS. So if there was a genuine mistake, the competitor who lost business by reason of utilizing this advertising might be the one that bore the brunt of that, is that right?

Mr. ELLERT. If you are talking about if a laboratory told a manufacturer that they had conducted a test as prescribed by the testing method, when in fact they had not—

Senator MOSS. Or if they had done it in an erroneous manner.

Mr. ELLERT. Right. Yes, your statement is true, sir.

Senator MOSS. Well, since A, shirtmaker A is provided the ability to advertise his product in this way, shirtmaker B really doesn't have very much voluntariness as to whether he wants to participate or not, does he? He is pretty much compelled to go in there, too, isn't he?

Mrs. KNAUER. I would think, Mr. Chairman, that shirtmaker B would tend to upgrade his product so that it would have this color fastness beyond the 25 washings.

Dr. TRIBUS. Mr. Chairman, I think that you have brought out a point here that really ought to be remedied. I would like to propose that members of your staff and my staff work together to propose a way of taking this into account. I think you have identified a weakness in the bill as it now appears.

Senator Moss. Thank you. We want to examine that very carefully. It does bother me somewhat. We will look at that very carefully and be happy to work with your staff people in trying to fill in what seems to be a gap there.

In your testimony the characteristics of performance, content and durability are given as pertinent consumer characteristics. What do you mean by these terms? What is a performance characteristic? How is that distinguishable from content and durability? And would you characterize a claim related to performance?

Dr. BRANSCOMB. Performance refers to the way the product does the job that the customer expects from it. In the case of a deep freeze, for example, the ability to produce and maintain a suitable freezing temperature would be an important performance characteristic.

Content refers to description—a factual description of what the consumer is receiving, what is the article or the combination of things that he is getting for his money.

Durability refers to the ability of that device to maintain its performance during the course of its life in normal use. I think it also includes by implication the expected life of the product, the kind of maintenance it will require, and how heavy an expense that is likely to entail.

Senator Moss. Would the development of measures of performance facilitate in any way the promulgation of safety standards?

Dr. BRANSCOMB. They are not unrelated to hazard in use. For example, if the shelves in a refrigerator are not strong enough to hold 5 quarts of milk, and they break, a person might get hurt. But the level of performance is not related directly to the question of whether or not the whole product as it is manufactured is unreasonably hazardous for people to be near or have in their homes. That is a separate question which I believe needs different treatment.

Dr. TRIBUS. Clearly the carrying capacity of a boat is related to safety. Many performance characteristics of a consumer item will have safety implications and certainly the clarification of the performance contributes to the safe use of the product.

Of course the matter of safety is a separate issue, and while it is included peripherally or by implication in this bill, the matter of safety will be taken up in legislation later on after we have heard from the National Product Safety Commission.

Senator Moss. What about flammability? There was reference made to quality other than flammability, but isn't this a pertinent performance standard?

Dr. TRIBUS. Yes, it is; but we anticipate these items having to do with safety will be spelled out in other legislation. But I can see where from time to time there will be a characteristic which is both a performance item and a safety item and it will therefore be included under this bill too.

Senator Moss. Do I understand you to say that safety is a performance item, but you simply want to treat it differently because of another added factor?

Dr. TRIBUS. Well, this bill is concerned with voluntary procedures, while important matters of safety usually end up being treated in mandatory procedures. Of course if something is done voluntarily, it obviously may comply with the requirements of mandatory legislation.

Senator Moss. The two are interwoven, though, aren't they?

Dr. TRIBUS. Yes.

Senator Moss. You have voluntary performance standards and they measure against safety standards that may be mandatory.

Do you think this bill creates a bias in favor of big business, that the small businessman has limited testing facilities and is placed at a disadvantage?

Mrs. KNAUER. No, Mr. Chairman; I really don't. I think it will be to the benefit of small businessmen, too, because those who can have their products tested—and I think most of them would want to—will have that advantage. If they don't go in for national advertising, they probably can use it in their local promotional ads, or even on a telltag on the product. I think in the long run it will help the small businessman as well.

Dr. TRIBUS. I think it tends to help the man with a superior product. I don't think that that is a function of the size of the organization.

Senator Moss. Is it your belief that the man with the superior product, who is able so make reference to testing under the standards, can thereby get his share of the market without having the big lavish display of advertising? Is that what you are saying?

Dr. TRIBUS. Yes, sir.

Mrs. KNAUER. I think he will.

Senator Moss. So in that sense it might be something of an advantage to the small producer?

Dr. TRIBUS. I think it is an advantage to the man who seeks to develop a relationship with his consumer in which integrity is an important factor.

Senator Moss. Mr. Sutcliffe has a question or two he would like to ask.

Mr. SUTCLIFFE. For clarification of the bill, to understand some of the terms, I would like to ask a few somewhat technical questions. Under section 1 of the bill you define consumer product as a "type of article of personal property without reference to brand name or source, customarily sold for family or household use, consumption or enjoyment."

Would this cover such things as food, over-the-counter drugs? What is the scope of this definition? In other words, you provide for reference of certain items of consumer products to the appropriate agencies. Would it cover food that could be referred to the Food and Drug Administration or the U.S. Department of Agriculture for measurements of nutritional value?

Mr. ELLERT. Going back to section 6 of the act, which provides "Nothing in this act shall supersede any other law relating to consumer products or any rule or regulations promulgated thereunder," the interpretation would be that section 1 would include consumer products that are not excluded by section 6.

If there is food not covered by the Food and Drug Administration, or Department of Agriculture, this could be determined to be included under the definition of consumer products.

Mr. SUTCLIFFE. There are certain consumer characteristics of products that are covered by other pieces of legislation that are not specifically excluded from that legislation. For example, in the Fair Packaging and Labeling Act there is no exclusion for the representation of nutritional value in food, although that act does not mandate the presentation of nutritional contents.

So I understand you to say in that operation, then, this bill could provide such information to the consumer for food and dry products is that correct?

Mr. ELLERT. Yes. It would be possible it could. It would be a question of setting priorities to the whole range of consumer products, but as far as the authority of the bill is concerned, yes, it could go to those products.

Mr. SUTCLIFFE. Mrs. Knauer, in the setting of priorities, would you refer to such things as the President's Conference on Nutrition, as an important input as to where priorities should be set on certain consumer information?

Mrs. KNAUER. Yes, we would do this. That is right.

Mr. SUTCLIFFE. At certain points in the bill you use the word "determine." For example, on page 2 of the bill, in section 2(c), "When the director determines that." Are you using that word "determine" to invoke section 553 of the Administrative Procedures Act? In other words, would that determination, all of the determinations be published in the Federal Register and have an opportunity for written comment before they become effective?

Mr. ELLERT. Certainly Section 553 would certainly be applicable to the procedures under section 3 where the agency is gathering information to establish the testing method, gathering information to evaluate the testing method from interested parties and then finally publishing a tested method.

However, coming to the section to which you refer it is my feeling that section 553 would not be applicable. However, this does not mean that Mrs. Knauer's office could not use that process for guidance in carrying out the provisions of the act.

If Mrs. Knauer felt she could get more effective information by publishing a notice in the Federal Register as to a particular class of products or priorities, she certainly could use that procedure. However, I would not consider this to be mandatory.

Mr. SUTCLIFFE. Do you think it would be advantageous to make that process mandatory in order to provide notice to all people who may be affected and also allow further information to be developed for the decisionmaking process?

Mr. ELLERT. In talking about this to Mrs. Knauer, I am sure we would have no objection to making it mandatory as to the informal hearing part of section 553, which would be a notice in the Federal Register to receive public comments in writing.

Mrs. KNAUER. I agree with that. Remember we would also be publishing it in the Consumer Register. As you know, we have a Consumer Advisory Council and we also have an ad hoc advisory council made up of national organizations, about 40 of them now, that have viable consumer programs.

They consult with us every second month. They have ongoing subcommittees. And I think they would be very much involved in helping

us set these priorities and they would certainly make sure all of their membership was alerted to the fact we were going to look into televisions, say refrigerators next.

I feel we would get this information out and we would get a lot of information from consumers, input from consumers. This would be the whole purpose of it, because they might have an idea what they wanted to know about a certain product.

Does this answer your question?

Mr. SUTCLIFFE. Yes, it does. In the previous discussions you mentioned criteria in addition to the request for evaluation that would be used to determine the priorities for product evaluation. Could you clarify exactly that criteria? If you can set forth some criteria for when you would invoke the evaluation, could you offer to the committee some possible language that might be used in the legislation itself to specify the criteria by which you would judge? For example, you mentioned the amount of the consumer dollar that went for the purchase of a product as a possible criteria for invoking evaluation, or the necessity of the product to the consumer, or complexity of the product.

Is it possible for your office with the help of the Department of Commerce to develop this kind of criteria?

Mrs. KNAUER. Yes; I think we could. I am sure we could. In other words, spell it out very definitely what are our criteria, starting with input from consumers, the consumer complaints, what is causing havoc in the marketplace. Is that what you mean? And set the criteria out?

Mr. SUTCLIFFE. It may be helpful as guidance to future Directors of the Office of Consumer Affairs.

Mrs. KNAUER. Yes, surely.

Mr. SUTCLIFFE. In reading the bill the relationship between Government testing programs that would be instigated because of the legislation and a manufacturer's internal testing programs is unclear. For example, certain pieces of legislation might require that a manufacturer certify through his own internal test a product meets certain mandatory safety standards.

The bill says that private or independent laboratories will do testing. Could Government-approved test methods be employed by the manufacturer himself in order to provide certification that his product meets certain performance standards.

Mrs. KNAUER. Yes.

Dr. BRANSCOMB. I think that is the primary intent of the system.

Mrs. KNAUER. You mean where a manufacturer has his own testing facilities and does it for himself?

Mr. SUTCLIFFE. Yes. So the words "independent" and "private" do not denote any kind of testing laboratory that would have to be separate from the manufacturer.

Mrs. KNAUER. No.

Dr. TRIBUS. We think most manufacturers would probably prefer to have at least some of the work done in an independent laboratory, so they would have more credibility in the marketplace. But there is nothing that requires them to do that.

Dr. BRANSCOMB. May I comment? I think it may be helpful to distinguish between the organizations that are the present day sources

of published test methods, which include independent laboratories, trade associations and the like, and those organizations that might in fact perform the tests that the manufacturer will rely upon to insure that his product performs as stated in his advertising. That latter function can be carried out in either commercial test labs or in the manufacturer's own plants. But manufacturers individually do not normally publish recommended test methods for consumer products.

Mr. SUTCLIFFE. But they do conduct those tests?

Dr. BRANSCOMB. Right.

Mr. SUTCLIFFE. I would like to return to a point Senator Moss previously raised regarding compliance testing under the provisions of the National Traffic and Motor Vehicle Safety Act of 1966. Compliance testing is authorized in that act to assure that the safety standards which are promulgated are followed. Under that act we have had some problems with test compliance certification with regard to such items as tires. Compliance testing was not begun on tires because the industry was following a standard it had been following for a number of years. Would we not run the same risk under this bill if there were not some provision for compliance testing, or checking the validity of tests being done by manufacturers or independent laboratories?

Dr. TRIBUS. I suppose there will be spot checks by enforcement agencies on some of these matters. You also have the high probability that manufacturers will test one another's products from time to time. The consumers will report to Mrs. Knauer if they are unhappy.

I think there are quite a few forces in the marketplace, plus enforcement officials, to cover that.

Mr. SUTCLIFFE. You do not feel it will be necessary to have specific authority for the Government to conduct limited compliance tests on products?

Dr. TRIBUS. I certainly would not advocate that at this time. I think we would have to have a lot of experience before we came to that conclusion. And I do not anticipate we will.

Dr. BRANSCOMB. I might comment that we have already today some very encouraging and satisfactory experience on a purely voluntary level between the National Bureau of Standards and a number of private organizations in, round robin comparisons of laboratory test performance. They often look to the Bureau of Standards to participate in and assist with a collaborative reference testing program which helps to maintain quality control in private test laboratories.

We have conducted such programs in the past in the cement and bituminous asphalt fields, and there are discussions under way that may extend this concept to other types of product testing.

Mrs. KNAUER. May I say, Mr. Chairman, I personally toured some of these testing facilities, and they are testing not only the products of their own lines, but the competitors'. They ride herd on the competition, and I think if they uncover any discrepancy, our office would be the first to know about it.

Mr. SUTCLIFFE. One final question and this relates to previous activities for developing test methods for important product information. Under the National Traffic and Motor Vehicle Safety Act of 1966 a uniform quality grading system was mandated for tires and the objective of that system was to provide pertinent and reliable consumer information. The results of that test were to be completed in 1968 as I recall from the legislation. To date we have no uniform

quality grading system for tires. Does this indicate that developing test methods for consumer products will be much more difficult and much more time consuming than the consumer might believe with the passage of this legislation?

Dr. BRANSCOMB. I do not know what the consumer is going to assume about that question from the existence of this legislation. But it is a fact that it is a technically demanding task to develop a credible test method and to insure that it accomplishes the objectives intended.

It does require manpower; it does require resources. They will have to be made available if we are going to move rapidly in this kind of a program. I cannot comment directly on the tire question, because that is a Department of Transportation responsibility.

Senator Moss. Well, thank you very much. This has been a most informative hearing, a good beginning.

We are going to have further hearings and we do hope we can develop a good piece of legislation.

(Whereupon, at 11:35 a.m., the subcommittee was adjourned, subject to call of the Chair.)

