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FLAMMABLE FABRICS—1971

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HEARINGS

BEFORE THE

SUBCOMMITTEE ON COMMERCE AND FINANCE

OF THE

COMMITTEE ON

INTERSTATE AND FOREIGN COMMERCE

HOUSE OF REPRESENTATIVES

NINETY-SECOND CONGRESS

FIRST SESSION

ON

H.R. 5066

A BILL TO AUTHORIZE APPROPRIATIONS FOR FISCAL
YEARS 1971, 1972, AND SUCCEEDING FISCAL YEARS TO
CARRY OUT THE FLAMMABLE FABRICS ACT, AS AMENDED

MARCH 4 AND 5, 1971

Serial No. 92-2

Printed for the use of the Committee on Interstate and Foreign Commerce

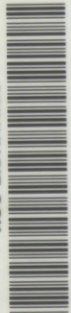


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FLAMMABLE FABRICS—1971

THURSDAY, MARCH 4, 1971

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON COMMERCE AND FINANCE,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10 a.m., in room 2123, Rayburn House Office Building, Hon. John E. Moss (chairman) presiding.

Mr. Moss. The subcommittee will be in order.

This morning the Subcommittee on Commerce and Finance begins 2 days of hearings on H.R. 5066, a bill authorizing appropriations to carry out the Flammable Fabrics Act. Hearings¹ on an identical bill—H.R. 16824—were held before the subcommittee in September of last year, but in the session rush that legislation was not enacted into law.

For the first time, the provisions of the Legislative Reorganization Act of 1970 are applicable to the activities of the subcommittee. In these hearings we intend to carry out the mandate of section 118(b) of that act to review and study the application, administration, and execution of the Flammable Fabrics Act, as amended.

And, in order to comply with section 252(b) of the Legislative Reorganization Act, we will ask each of the Departments—Commerce, and Health, Education, and Welfare—and the Federal Trade Commission, which have duties under the act, as they appear before us, to state their fiscal needs for carrying out the Flammable Fabrics Act for the balance of this fiscal year and the next 5 fiscal years.

The Flammable Fabrics Act was first enacted into law in 1953 in response to a series of tragic deaths which occurred in the late 1940's and early fifties from children's rayon pile cowboy chaps and brushed rayon "torch" sweaters. As enacted in 1953, the legislation only applied to wearing apparel—excluding hats, gloves, footwear, and interlining fabrics.

The test of flammability was fixed in the statute. Because of the rigidity of this standard an amendment to the standard was enacted in 1954 to permit the marketing apparel made from such sheer fabrics as tulle and organdy. From its enactment, the Federal Trade Commission has been charged with enforcing the legislation.

By 1967, it was apparent that the legislation was deficient in two respects: First, the legislative standard of flammability was too rigid and in many instances too low; and, second, in applying only to certain articles of wearing apparel, the scope of the statute was too limited.

¹ "Flammable Fabrics Amendments," serial No. 91-92, hearing before the Subcommittee on Commerce and Finance, Committee on Interstate and Foreign Commerce, 91st Cong., second session, Sept. 10, 1970.

Accordingly, in 1967, we amended the act to apply to all articles of wearing apparel and to interior furnishings used in homes, offices, and other places of assembly or accommodation.

The Secretary of Commerce was given the responsibility for determining appropriate flammability standards—including the manner of testing—where he determined they were needed to protect the public against unreasonable risk of fire leading to death, personal injury, or significant property damage.

The Department's report of its activities under the act for 1968 and 1969 is set forth beginning on page 17 of our September hearings.

Although the Department of Commerce has begun proceedings to establish flammability standards with respect to carpets and rugs, childrens' apparel, blankets, and mattresses, I am dismayed to learn that none of these standards are yet in effect over 3 years after enactment of the 1967 amendments.

During this same time, we are told by the Secretary of Health, Education, and Welfare, in the only annual report which he has submitted under the act, that:

The annual toll from burns associated with flammable fabrics is estimated at 3,000 to 5,000 deaths and 150,000 to 250,000 nonfatal injuries. In terms of financial loss, the yearly total exceeds a quarter billion dollars. No estimate can account for the pain, disfigurement or psychic scars borne by the victims. Studies show that the samples obtained from the investigated fabric ignition cases either meet existing standards for flammability of garments or are not covered by the standards.

Tomorrow, we shall have Chairman Kirkpatrick of the Federal Trade Commission before the subcommittee to describe the Commission's activities under the act.

In the last Congress, the Senate passed a bill—S. 3765—which would have provided for manufacturer and importer certification of articles subject to the Flammable Fabrics Act. It would also have amended the penalties provisions of the act. I am told that this legislation has been reintroduced in the Senate as S. 364 of this Congress. We would find the views of witnesses on this legislation helpful to us during the course of our deliberations.

(The text of H.R. 5066 follows:)

[H.R. 5066, 92d Cong., 1st Sess., introduced by Mr. Staggers (for himself, Mr. Moss, and Mr. Springer) on February 25, 1971]

A BILL To authorize appropriations for fiscal years 1971, 1972, and succeeding fiscal years to carry out the Flammable Fabrics Act, as amended

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That there are authorized to be appropriated such sums as may be necessary for the fiscal years of 1971 and 1972, but not to exceed a total of \$6,000,000, and such sums as may be necessary for succeeding fiscal years, to carry out the purposes of the Flammable Fabrics Act, as amended (15 U.S.C. 1191-1204).

Mr. Moss. Before recognizing our first witness, I would like to recognize three new members of the subcommittee, Mr. Charles J. Carney of Ohio on my right, and on my left, Mr. John Ware of Pennsylvania and Mr. John Y. McCollister of Nebraska. Gentlemen, we welcome you aboard and hope you find the committee as interesting and as challenging as I have during my years of service on it.

I am pleased now to recognize Mr. Richard O. Simpson, Deputy Assistant Secretary for Product Standards of the Department of Commerce. Mr. Secretary, would you come forward and for the record would you identify those accompanying you.

STATEMENT OF RICHARD O. SIMPSON, DEPUTY ASSISTANT SECRETARY FOR PRODUCT STANDARDS, DEPARTMENT OF COMMERCE; ACCOMPANIED BY JAMES W. BRENNAN, ACTING ASSISTANT GENERAL COUNSEL; AND DR. JOSEPH E. CLARK, CHIEF, OFFICE OF FLAMMABLE FABRICS, INSTITUTE OF APPLIED TECHNOLOGY, NATIONAL BUREAU OF STANDARDS

Mr. SIMPSON. Thank you, Mr. Chairman.

My name is Richard O. Simpson. I am Deputy Assistant Secretary for Product Standards of the Department of Commerce. I appreciate the opportunity to appear here today in support of legislation to authorize appropriations to carry out the Flammable Fabrics Act as amended.

With me are Mr. James W. Brennan, Acting Assistant General Counsel of the Department of Commerce, on my right, and Dr. Joseph E. Clark, Chief of the Office of Flammable Fabrics, Institute for Applied Technology, National Bureau of Standards, on my left.

H.R. 5066 provides for authorization of appropriations not to exceed a total of \$6 million for fiscal years 1971 and 1972, and such sums as may be necessary for succeeding years, to carry out the purposes of the Flammable Fabrics Act as amended. Of the \$6 million it is estimated that \$2,400,000 would be available to the Department of Commerce to carry out its responsibilities under the act. We note that this bill is identical in language to H.R. 16824 that was introduced in the 91st Congress at the request of the administration, and was the subject of a hearing before the subcommittee on September 10, 1970. That bill was submitted to provide authorization for the appropriations needed to conduct activities under the Flammable Fabrics Act during fiscal years 1971, 1972, and subsequent years. As the chairman has mentioned, time did not permit completion of the subcommittee's consideration of this matter before the end of the last Congress. However, the 1971 appropriation for the National Bureau of Standards included funds for the flammable fabrics program. Therefore, it has been possible for the Department to continue its activities during fiscal year 1971 and a specific authorization for fiscal year 1971 is no longer necessary.

Enactment of H.R. 5066 would authorize the appropriation of funds that will be required to continue these activities in fiscal year 1972 and subsequent years.

We recommend, however, that the bill be amended to authorize the appropriation for fiscal year 1972 and succeeding fiscal years of such sums as may be necessary to carry out the purposes of the act. Such an approach would be consistent with the administration's proposal on authorization of appropriations for the Fire Research and Safety Act and the Standard Reference Data Act which will be submitted to the Congress shortly.

In asking your consideration for the enactment of this type of authorization of funds, I would like to review briefly what has been accomplished under the act since the amendments of December 14, 1967, and what we anticipate will be accomplished during the period of fiscal years 1971-1972.

During the 6 months of fiscal year 1968 that followed enactment of the 1967 amendments, the National Bureau of Standards reprogramed four persons and \$65,000 from its regular appropriation to initiate the program. In fiscal year 1969, the first year for which specific appropriated funds were available, the direct full-time staff grew to 13 and the funds to \$308,000. In fiscal year 1970, these numbers increased to 20 persons and some \$610,000. By the end of fiscal year 1971 we estimate that we will have a full-time staff of 25 supported by a budget of some \$932,000.

The primary output of the Department of Commerce program to implement the amended act is a body of standards, as needed, to limit the flammability of fabrics and, thereby, to protect the public against unreasonable risk of death, injury, or significant property damage. Protection for the public is the primary consideration. The act requires that the standards to accomplish this must be reasonable and appropriate, therefore, we try also to develop standards so as to minimize the reduction in freedom of choice to consumers and dislocations within the affected industries. Two standards have been published and will become effective later this year. The Standard for the Surface Flammability of Carpets and Rugs, DOC FF 1-70, becomes effective April 16, 1971, and the Standard for the Surface Flammability of Small Carpets and Rugs, DOC FF 2-70, becomes effective December 29, 1971.

A proposed standard for the flammability of children's sleepwear was published November 17, 1970. Public hearings were held in the auditorium of the Department of Commerce January 14 and 15 and 16 witnesses presented statements at the public hearings. Nearly 200 written comments were received during the period for public comments on the proposed standard which ended January 29, 1971. We are now in the process of analyzing these comments.

We have also instituted proceedings for the development of flammability standards for mattresses and blankets. An interlaboratory evaluation has been made of a test method for the flammability of mattresses, and we are now analyzing the results to determine if the repeatability and reproducibility of the test method are satisfactory for further consideration as a proposed flammability standard.

In addition to the direct standards output, and to provide a sound technical basis for standards, we have initiated and carried out studies of the flammability of fabrics, related materials, and products. These included research to identify the nature and severity of the hazards that arise from the accidental burning of wearing apparel, beds, and upholstered chairs. The study of full-scale bed fires showed that the hazard from a dropped glowing cigarette is that of a slow, smoldering, fume-producing fire in the mattress, whereas that from a dropped flaming match is a rapid flaming fire starting in the blanket.

We are also studying the mechanisms by which flame retardant treatments are effective in reducing flammability. We have developed the test methods for the published standards and the proposed standard already mentioned, and are developing other test methods for

possible use in future standards. In cooperation with the Department of Health, Education, and Welfare, we are studying the burn cases investigated and reported to us by their field personnel.

We activated the National Advisory Committee for the Flammable Fabrics Act over 2 years ago and have consulted them, not just before standards are prescribed, as required by the amended act, but also in all phases of our program. The Committee has met five times, and we have had discussions with individual members on about 50 other occasions.

We have had hundreds of contacts with consumer and industry groups or representatives. In addition, we have replied to scores of inquiries from individual consumers. We are cooperating in a joint apparel flammability research program with the National Science Foundation and three major industry associations, the American Textile Manufacturers Institute, the National Cotton Council, and the Man-Made Fibers Producers Association.

Now I wish to indicate the program we expect to carry out over the next year.

We will pursue the completion of a standard for children's sleepwear, and I have already indicated the current status of that effort. We will continue the development and promulgation of standards for mattresses and blankets, and for such other categories of products for which it is determined that unreasonable risk to the public exists.

Some of these are likely to be standards for other classes of children's garments, apparel for the elderly, upholstered furniture, drapes, and second-generation standards for carpets and rugs. Our abilities to advance into these areas will depend on how promptly we are able to complete action in the areas now underway and on the evidence of injuries associated with articles in the new areas. We will continue and expand our efforts in research, feasibility studies, and test method development.

A most important area is that of providing a sound data base for the determination of need for standards and for the standards themselves. In this regard, we are heavily dependent on the efforts of the Department of Health, Education, and Welfare. They have expanded their investigations in recent months with the result that we are receiving case reports and samples of items involved in the accidents at a greatly accelerated rate. This information is fundamental to the proper evaluation of risk, and of determinations of need for standards. Similarly, the proper administration of the new standards that have been set under the act, and of those that reasonably may be expected to be set, requires expanded effort by the Federal Trade Commission. We have worked closely with them in the development of their rules for testing and recordkeeping to implement the two carpet and rug standards. Therefore, we urge not only the authorization of appropriations for the Department of Commerce, but also for the Department of Health, Education, and Welfare, and the Federal Trade Commission.

With the authorization contained in H.R. 5066, the Department of Commerce anticipates reaching a level of staff and effort by the end of fiscal year 1972 that would assure a continued orderly evaluation of the risks to the consumer and development and promulgation of standards to minimize those risks.

We firmly believe that the standards we have set, or have under development, will reduce the numbers of deaths and injuries, and the extent of property losses, that would otherwise result from the accidental burning of fabrics and products.

In summary, we are pleased to support legislation which would authorize the necessary funds for fiscal year 1972 and succeeding years to implement the Flammable Fabrics Act as amended. We believe such an authorization would make possible an orderly and reasonable growth in the programs to minimize the risks to the public from flammable fabrics.

Thank you.

Mr. Moss. Thank you, Mr. Secretary.

Now, I wonder if we might first go to the question of projections for the 5 fiscal years from 1972 on. It is now a requirement in the Reorganization Act that as a part of reports submitted by committees of the Congress, such projections must be set forth in detail or the legislation would be subject to a point of order on the Floor of the House. Are you prepared at this time to supply us with those projections?

Mr. SIMPSON. Mr. Chairman, we can give you an estimate in a tabular form, but I do have a statement I would like to read that goes with the table.

(The table referred to follows:)

Budget estimates: Flammable Fabrics Act—Department of Commerce.

Fiscal year 1971	1 \$932, 000
Fiscal year 1972	1 1, 337, 000
Fiscal year 1973	1, 883, 000
Fiscal year 1974	2, 003, 000
Fiscal year 1975	2, 120, 000
Fiscal year 1976	

¹ Does not include pay raise effective January 1971.

NOTE.—These estimates have not been cleared by the Department of Commerce or the Office of Management and Budget.

Mr. SIMPSON. This table that we presented, Mr. Chairman, indicates our estimates for the fiscal years 1971 through 1975. The estimates for fiscal years 1973 through 1975 have not been cleared through the Department of Commerce or the Office of Management and Budget. The estimates for future annual program levels are subject to review by the Department, within the executive branch generally, and by the Congress. They cannot, therefore, be taken as budgetary commitments.

You will note that we have adjusted the projected distribution of the funds for fiscal years 1971 and 1972. This increase for fiscal year 1971 is being accomplished by reprogramming funds within the research and technical services appropriation for the National Bureau of Standards. We believe this redistribution of funds between fiscal year 1971 and fiscal year 1972 will provide a more orderly growth in these years.

Mr. Moss. I would first state that I, of course, recognize the problems you have in supplying projections. We are short 1 year here. We

need fiscal year 1976 in order to comply with the 5 years beyond the upcoming fiscal year, but we are going to have to have more detail in support of these projections in order for the committee to comply with the intent of the Congress in imposing that requirement under the Reorganization Act last year. And so I would ask unanimous consent at this time that the record be held to receive that more definitive material in order that the committee will be able to meet its requirements.

(See table entitled "Estimates For Future Annual Program Level—Flammable Fabrics Program," page 8, this hearing.)

Mr. Moss. Now, on the request for the 1972 fiscal year, the \$2.4 million which is requested by the Department of Commerce, I wonder if you could supply for the record a detailed breakdown on the justification of that sum?

Mr. BRENNAN. Mr. Chairman, that \$2.4 million was for 2 fiscal years, 1971 and 1972.

Mr. Moss. As I recall, the statement was made, "Therefore, it has been possible for the Department to continue its activities during fiscal year 1971 and a specific authorization for fiscal year 1971 is no longer necessary."

It would appear to be contradictory. We would have to have clarification on that.

Mr. SIMPSON. We can clarify that. The intent is that we have been able to go ahead in 1971, but the amounts of money that will be spent in 1971, plus what we would need for 1972, totals \$2.4 million.

Mr. Moss. Then this is actually for 2 fiscal years?

Mr. SIMPSON. That is right.

Mr. Moss. Does it contemplate reimbursement to other funds in order to make up for the diversions which have had to be made in order to meet the needs?

Mr. BRENNAN. No, Mr. Chairman. The appropriations for research and technical services for this year included \$813,000 for the flammable fabrics program, and the difference is made up by reprogramming within that line item.

Mr. Moss. So, no transfer from 1 fiscal year to another would ensue after the authorization or appropriation?

Mr. SIMPSON. That is right.

Mr. Moss. Now, it has been the policy of the Interstate and Foreign Commerce Committee for at least the last 15 years to my intimate knowledge, not to authorize programs beyond 3 fiscal years in order to retain in the committee the authority for review of those programs, and reauthorization as in the judgment of the committee it seems necessary.

I would, therefore, ask that in the submission for 1972, 1973, and 1974, that there be the detail which we can utilize in the full committee to answer the questions of the members of the committee, probably as set forth on page 13 of House Report No. 972 of the first session of the 90th Congress. These are the kinds of breakdowns which the committee prefers to have.

Mr. SIMPSON. We will be glad to supply that.

Mr. Moss. Fine. Without objection, the record will be held at this point to receive that material.

(The following table was received for the record:)

ESTIMATES FOR FUTURE ANNUAL PROGRAM LEVEL—FLAMMABLE FABRICS PROGRAM

[Estimates for fiscal years 1973-76 not cleared by the Department of Commerce or the Office of Management and Budget. These estimates subject to review by the Department of Commerce, by the Office of Management and Budget, and by the Congress, and are not to be taken as budgetary commitments]

[In thousands]

	Fiscal year 1972		Fiscal year 1973		Fiscal year 1974		Fiscal year 1975		Fiscal year 1976	
	In- house	Con- tract	In- house	Con- tract	In- house	Con- tract	In- house	Con- tract	In- house	Con- tract
Research.....	\$260	\$40	\$500	\$100	\$563	\$80	\$613	\$80	\$680	\$80
Standards and test development.....	1 660	40	1 700	50	1 745	50	1 745	50	1 745	50
Information.....	80	-----	85	-----	90	-----	140	-----	200	-----
Accident data analysis and tests.....	192	-----	278	100	300	100	300	100	300	100
Special purpose equipment.....	65	-----	70	-----	75	-----	92	-----	92	-----
Subtotal.....	1,257	80	1,633	250	1,773	230	1,890	230	2,017	230
Total.....	1,337	-----	1,883	-----	2,003	-----	2,120	-----	2,247	-----

¹ Includes \$32,000 for support of the National Advisory Committee.

Mr. MOSS. I have used my 5 minutes. Mr. Carney?

Mr. CARNEY. Mr. Chairman, I would like to know if there is any way the Government, by direct tax, or franchise tax, or some other means, can recuperate the proposed \$6 million authorization? Is there anything, any tax on the product that would repay the Federal Government for this outlay?

Mr. MOSS. The answer is "No." At this time there is no separate charge imposed on any of these products which meet the requirements of the Flammable Fabrics Act.

Mr. CARNEY. Can this bill be amended to include a tax?

Mr. MOSS. In the markup sessions of the committee, it would be appropriate to offer amendments.

Mr. CARNEY. Thank you.

Mr. MOSS. They would have to be germane to the title of the bill. A tax as such would not be germane because this committee does not have taxing jurisdiction. We could impose fees, but not taxes.

Mr. CARNEY. Do you mean franchise fees, or inspection fees, or something of that nature? Is that within our jurisdiction?

Mr. MOSS. I would have to see the language, but you are near the edge of our jurisdiction.

Mr. CARNEY. Thank you.

Mr. MOSS. Mr. Ware?

Mr. WARE. I have nothing.

Mr. MOSS. Mr. McCollister?

Mr. MCCOLLISTER. I have no questions, Mr. Chairman.

Mr. MOSS. Do you have some questions you would like to ask, Mr. Guthrie?

Mr. GUTHRIE. Mr. Simpson, we are concerned as a committee about the length of time that it has taken to put the standards under the Flammable Fabrics Amendments of 1967 into effect. Could you explain to the subcommittee why it has taken over 3 years for these standards to go into effect, and the processes that you have followed in putting them into effect?

Mr. SIMPSON. It would be easier if we might, maybe, as an example, talk about a specific standard.

Mr. GUTHRIE. Certainly. Why not the standards for carpets and rugs that will become effective, I think, on April 16 of this year.

Mr. SIMPSON. I should really let Dr. Clark talk about the amount of knowledge that is available on treatments of products to make them nonflammable, not only carpets, but also the whole subject of wearing apparel. I think it is generally not understood. It is generally believed that there is an awful lot of information already available, that the process of writing a standard is quite simple, and that there are levels of safeness that can be accomplished.

In the general area of wearing apparel, I would like to say that our investigation reveals that it is not really so. If you examine apparel products in the marketplace today, and if you desire to have an incremental increase in the level of safety required, it is hard to accomplish. You almost have to require a nonburning, or a nonpropagating type of material, and usually you can accomplish this only with a chemical treatment or by using some product that is entirely new to the market.

There are basically two chemical treatments that have been tried with very limited success. They have alleged problems of skin rash and toxicology. They are expensive. It is very hard to control the quality of the product in the process.

Mr. GUTHRIE. But, of course, these do not apply in the cases of carpets and rugs. Perhaps it would be helpful if Dr. Clark told us when the proceedings for the Flammable Fabrics Act standards with regard to carpets and rugs were initiated, what the steps are that were followed there, and what we should expect when these flammable standards go into effect on April 16.

Mr. CLARK. Yes, sir. I believe the initial publication of the finding that there may be need for a flammability standard or regulation for carpets and rugs was published in December of 1968. At that time the procedures which were being followed allowed the technical bases to be set at the National Bureau of Standards, and we investigated the processes which were possible to supply materials which would meet some sort of a reasonable and appropriate standard, based on a tested method, designed to reduce an identified hazard.

The initial standard for carpets and rugs aimed at the surface flammability, that is the surface ignitability of carpets and rugs. There was a considerable amount of investigation necessary to determine precisely what that hazard is, and the ease of ignition of a carpet material. As I recall, we spent some 6 to 9 months investigating the hazard itself, and searching for test methods which would, in fact, be simple and reproducible, as the law required.

This technical job of defining the real hazard to which the test method and standards were to be addressed is what took a lot of time in our laboratories and in our investigations.

Mr. SIMPSON. I might add that during this period of time there was no appropriated money for this program at all.

Mr. GUTHRIE. During what period of time was that?

Mr. SIMPSON. December, 1968, right after the act was amended. We had only four people and had reprogramed some \$65,000 in that effort.

Mr. GUTHRIE. I see. Now, I note on page 2 of your testimony you discuss the standards that we should expect to find coming into operation. You mentioned the carpets and rugs and small carpets

and rugs, as I recall, and also children's wearing apparel. What considerations led to fixing standards for carpets and rugs, for instance, before children's wearing apparel?

Mr. SIMPSON. The technical information and accident data base that we had to work on was very low at that time. If you are asking the question: Do we consider carpets and rugs a higher priority than children's wearing apparel? The answer is "No." The surface ignitability of carpets and rugs appeared to be a problem that was solvable. It is one that we think we have solved in a reasonable manner.

The wearing apparel, generally speaking, is a problem that is much more difficult.

Mr. GUTHRIE. Could you elaborate on these areas of difficulty? Why is it more difficult than carpets and rugs?

Mr. SIMPSON. Because of the treatment required to make a durable flame-retardant finish. The product which the consumer buys must be a product that he can wash, and have a reasonable life expectancy. In other words, it must be a safe and durable product after coming from a chemical treatment. There is very little knowledge—there is some but very little knowledge—about that treatment process. The other way, of course, would be to make an entirely new fabric.

Sears has marketed a treated product for about the last 2 years that is made of woven goods only, not knitwear. The bulk of the children's sleepwear market is in the knitwear area. It is just a very complicated technical problem.

Mr. GUTHRIE. Let me ask you then, what may be another technical problem. Why two standards, one for carpets and rugs, and one for small carpets and rugs?

Mr. SIMPSON. The reason was that we considered the risk associated with the two categories of carpets and rugs to be different. The probability of exposure to ignition certainly goes down with the physical size of the carpet. So the hazard we think is less.

The particular test is the same test. We think that the level of standard that is appropriate to the risk, in the one case, is labeling, and in the other case, either pass the test or do not sell the product. That is why we have the two. We think the risk is separable.

Mr. BRENNAN. Mr. Chairman, if I might just add to that, I think you have to remember that when the 1967 amendment went into effect we were midway in the fiscal year, I believe, and we were starting from a zero base. Since that time there have been on-going investigations and development of standards in apparel. I think if you look at the record you will see that very little visible output resulted in the first 18 months. This output is increasing now as we have built up this base of investigation and research, and the standards have been coming along. I think this is something that you have to expect when you are starting out and you are faced with an Act that provides for the establishment of standards based on the research and investigation by the Secretary.

This has to be done before you can make the findings of need, as required by the statute.

Mr. MOSS. Mr. McCollister.

Mr. MCCOLLISTER. Mr. Simpson, in determining the standards, what criteria do you use for greater protection as it relates to the cost of providing that protection? I ask the question concerning the cost of consumer products that you are testing, and I would like to have

some idea, if you can give it to me, of the effect of some of these standards on the ultimate cost of the product? Do you have any information about that?

Mr. SIMPSON. Well, to answer the first part of the question, we do examine the subject of cost to the consumer. As an illustrative example, and I do not say this is the case, but suppose in the case of children's wearing apparel, there is a product on the market that costs \$3 today, and if the only way in which you could make it non-flammable would raise the cost, let us say, to \$25, we think that would be unreasonable. We probably would not write such a standard. If it were possible to have such a nonflammable product at a cost of \$3.01 we think it would be unreasonable not to write such a standard.

We do examine it. On that particular product that Sears is presently marketing, the product usually sells for about \$3 and with fire retardant it markets for \$4.

Mr. McCOLLISTER. Well, at some point you have to equate the hazard involved with the cost of protection.

Mr. SIMPSON. Yes.

Mr. McCOLLISTER. And I would be very interested in the development of the standard to see how you—what kind of criteria you use, what percent of the increase of cost, or however you might express it.

Mr. SIMPSON. We examine it. We try to measure what the consumer will be faced with in the marketplace in the way of increased costs. We feel that if the cost is too high for the protection that is intended to be provided, it might be circumvented in many cases by the consumer doing something else. This is what has happened in England.

Mr. McCOLLISTER. Yes; but how do you define "too high"?

Mr. BRENNAN. If I might go back again to section 4 of the act, it provides for protection against an unreasonable risk. As a corollary to that, the standard must be reasonable. Now, there are no specific percentage levels that are specified in the act, and we have established none in the Department. This has to be a value judgment in each case, based upon the input from the people affected by the standard, consumers as well as manufacturers, and we come down with a judgment in each case on what we consider reasonable.

Now, it is possible that reasonable men might differ in a specific case as to what is a reasonable price to pay for consumer safety.

Mr. McCOLLISTER. When a standard is finally set, does that deny to the marketplace the marketing of a product not meeting that standard?

Mr. BRENNAN. In the case of the large carpets and rugs, it would. In the case of smaller carpets and rugs, because of the nature of the hazard, the lower degree of hazard, it does not deny them, provided that the manufacturer provides a label on his small carpet indicating that it is flammable.

Mr. McCOLLISTER. All right, and as you develop the standards then you surely must include in that standard some estimate of increased cost?

Mr. SIMPSON. Not in the standard, but in a consideration of whether the standard is reasonable and appropriate, we do. In the proposed standard for children's sleepwear, note that I use the word "proposed," it would deny the consumer the right to make a choice in the marketplace.

Mr. McCOLLISTER. Thank you, Mr. Chairman.

Mr. Moss. Well, of course, if you have something that is, say, selling at \$3, and making it reasonably safe would raise it to a price of \$5, but it was so hazardous inherently that it was dangerous, you would remove it from the marketplace, you would not—

Mr. SIMPSON. If it was an imminent hazard, you would remove it from the marketplace, but, in cases involving a lower hazard, it would appear to us, that if the price is in the order of \$4 to \$5, the consumer may, through the home sewing process, or by wearing T-shirts or some other sleeper garment; avoid the more costly products.

This is an example of what did happen in England in subverting the intent of the standard. And, as I say, it was more than the price, it was because the treatment that was available at that time resulted in a very stiff and rigid and harsh product. Also, there is no measure of how much influence on the consumer there is in any process.

Mr. Moss. On the small rugs or carpets, I am intrigued with some of them, and I have seen them at very low prices, and many of the characteristics, the visual characteristics, at least, are of the old sweaters that became known as "Torch" sweaters. It looks as though the surface could flare suddenly. Do I understand that those, under the proposed standards for rugs and carpets, could be marketed if they are, in fact, as hazardous as it would seem to me they are?

Mr. SIMPSON. I will let Dr. Clark respond to that, if in his investigation they found any so-called torch-type carpets.

Mr. CLARK. Yes, sir. I believe your characterization is perhaps appropriate. The highly brushed, the napped surfaces do very often present a surface that is very easily ignited. The accident investigation base to determine whether or not these materials do, in fact, present an unreasonable risk is very much lacking. Consequently, we have to rely primarily on our laboratory research to determine the ease of ignition and the rate of flame spread of such products.

In looking at these products, we have the opinion that the rate of flame spread over an item as small as these are, less than 24 square feet in area, and less than 6 feet in longest dimension, may, in fact, present some level of risk. But, it has been determined by the Secretary of Commerce that this level of risk is reasonable in its trade-off with the information available to the consumer when he has a labeled product.

Mr. Moss. Well, let us take a hypothetical case, a 6 by 6 in the confines of a bathroom. If the entire surface then is flammable, it could be extremely hazardous, could it not?

Mr. SIMPSON. Six by six?

Mr. Moss. You put that same 6 by 6 in a 20 by 30 room and it would have little significance, so in a confined area in which it might be utilized, this is also extremely important. How much attention is being paid to that fact? Some are marketed specifically for use in bathrooms, and in arriving at a standard I think the probable use should certainly be considered in determining the extent of that hazard.

I can understand that a carpet of that size in a large room, say in this room, would have no great significance. There is plenty of space to get away from it. But, in a confined space, it might have great significance.

And also, what is the nature of the smoke content? It is something that can cause a person to lose consciousness, and a flaring up of that type consumes oxygen suddenly, does it not, in a confined area?

Mr. CLARK. Yes, sir. I understood two aspects to your question. The first one, of the environment, is one with which we are very much concerned. We believe the Fire Research and Safety Act will give us broader scope for our fire research program to allow us to investigate the total environment in which the hazard of the flammable fabrics may be investigated.

In respect to the second question on smoke generation by interior furnishings and carpets, specifically, we have a very active program in cooperation with industry groups, with Underwriter's Laboratories, and with consumer groups in which we are attempting to determine the real hazard in corridor fires in which carpets are a prime source of flame spread and smoke generation. Many concerned parties have for the past year or two been looking for a test method which would be appropriate to reducing the smoke hazard generated from interior furnishings.

We are hoping to provide the technical base for those judgments which must be made by ourselves, the Commerce Department, by the Department of Health, Education, and Welfare, Social Security Administration, and several other concerned parties.

Mr. MOSS. You could have a minimum amount of smoke and a maximum amount of fumes, and that could be just as damaging as the smoke, could it not, as in some of these synthetics?

Mr. CLARK. Yes, sir.

Mr. MOSS. And frequently, they are very low-priced.

Mr. CLARK. Yes. We have to determine the toxicological effects of these fumes that most of us are familiar with in combustion processes. There is very little knowledge of it, other than the biomedical effects.

Mr. SIMPSON. Mr. Chairman, in the example you were just discussing, you used the dimensions of 6 by 6. The example is appropriate if it were 6 by 4. The 6 by 6 comes under the standard, and that is by definition "large."

Mr. MOSS. In other words, the 6 by 6 becomes a large carpet rather than a small carpet?

Mr. SIMPSON. That is right.

Mr. MOSS. I think it is well to have that information in the record, and then in talking of small carpets, you are really talking of the smaller size?

Mr. SIMPSON. We are saying less than 24 square feet overall and less than 6 feet in any dimension.

Mr. MOSS. However, in the smaller carpets, do the standards reflect any consideration of this very high flash-type flammability that is characteristic of the heavy brushed naps?

Mr. CLARK. There is a surface flash characteristic of some of the small rugs, yes.

Mr. MOSS. Has any action been taken to remove some of the worst offenders from the market?

Mr. CLARK. There has not yet been any direct action on that point.

Mr. MOSS. I am happy at this time to recognize the new ranking member of the subcommittee, Mr. Broyhill of North Carolina.

Mr. BROYHILL. Thank you, Mr. Chairman. I apologize for being late this morning. May I yield to someone else at this time?

Mr. MOSS. Certainly. Mr. Eckhardt?

Mr. ECKHARDT. I have no questions at this time.

Mr. Moss: Mr. Broyhill?

Mr. BROYHILL. Mr. Chairman, have you asked the witnesses to provide their estimates on funds necessary to finance this program for the next 3, 4, and 5 years?

Mr. Moss. Yes, we have a request pending for detailed information on the next 3 succeeding fiscal years, and on the five in conformity with the Reorganization Act of 1970.

Are there any further questions? Well then, Mr. Simpson, I want to thank you and your associates for appearing here today.

It is possible that there may be additional questions. If so, we will direct them to you and ask that you promptly supply the answers.

Without objection, the record will be held open at this point to receive those answers.

Mr. SIMPSON. We would be glad to do that, Mr. Chairman and gentlemen of the committee.

Mr. Moss. Thank you.

(The following correspondence was received for the record:)

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C., March 8, 1971.

Mr. RICHARD O. SIMPSON,
Deputy Assistant Secretary for Product Standards,
Department of Commerce, Washington, D.C.

DEAR MR. SIMPSON: Thank you for your testimony in our hearings before the Subcommittee on Commerce and Finance on H.R. 5066, 92nd Congress, 1st Session, to authorize appropriations to carry out the Flammable Fabrics Act.

In the course of the hearing, Congressman Carney suggested a charge or fee be levied on manufacturers and importers of fabrics to recoup federal expenditures used to carry out the program under the Flammable Fabrics Act. I would appreciate the detailed views of the Department of Commerce on this suggestion.

In addition to this information, I would also appreciate receiving at the earliest possible date the information requested from you during the course of the flammable fabrics hearing.

Sincerely,

JOHN E. MOSS,
Member of Congress,
Chairman, Subcommittee on Commerce and Finance.

DEPARTMENT OF COMMERCE,
OFFICE OF THE ASSISTANT SECRETARY,
Washington, D.C., March 16, 1971.

Hon. JOHN E. MOSS,
Chairman, Subcommittee on Commerce and Finance,
House of Representatives, Washington, D.C.

DEAR MR. MOSS: This is in response to your letter of March 8, 1971.

The Department of Commerce has the responsibility under the Act to conduct research and investigations and to establish standards. Insofar as the expenditures of the Department under the Act are concerned we believe that it would be undesirable to attempt to recover the costs of such activities from the manufacturers or importers. The activities of this Department under the Act benefit the public generally and as such should be supported by the general tax revenues.

Industry groups are voluntarily contributing to the support of research to increase the level of safety available to the public. For example, the American Textile Manufacturers Institute, the National Cotton Council, and the Man-Made Fiber Producers Association, have each pledged \$25,000 to a fund for research into the quantitative definition of hazards relating to wearing apparel.

NSF and Commerce have agreed that matching funds should be pledged by the National Science Foundation. The total of \$150,000 will be used for support of research at universities or other appropriate institutions. The National Bureau of Standards will provide technical guidance on the type of research to be done, and will evaluate any proposals.

Pursuant to this arrangement, four contracts have been let with independent research organizations. Research has begun this winter on prediction and measurements of ignition and preignition heat transfer and investigations of burn hazards under simulated real life conditions.

Attached is a list of the institutions performing research under this program and a brief indication of the type of research being conducted. In addition to the \$75,000 provided by the industrial organizations, several thousand dollars worth of fabrics and service for use in the studies have been supplied. This has been supplemented by additional support by NSF, raising its total contribution to about \$92,000 and by a small service contract and analytical work by NBS.

We believe that this type of voluntary industry participation is preferable to attempting to provide for recoupment of Federal expenditures by a levy upon manufacturers.

Sincerely yours,

RICHARD O. SIMPSON,
Deputy Assistant Secretary for Product Standards.

Factory Mutual Research Corporation.—Measurement of preignition heat transfer.

Georgia Institute of Technology.—Measurement and prediction of ignition of garment fabrics.

Gillette Research Institute.—Definition of variables in ignition and burning under simulated real life conditions.

Massachusetts Institute of Technology.—Measurement of burn hazard using a skin simulant.

Mr. Moss. Our next witness is Mr. Malcolm W. Jensen, Director of Product Safety, Food and Drug Administration here in Washington.

STATEMENT OF MALCOLM W. JENSEN, DIRECTOR, BUREAU OF PRODUCT SAFETY, FOOD AND DRUG ADMINISTRATION, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE; ACCOMPANIED BY SAMUEL M. HART, DEPUTY DIRECTOR

Mr. JENSEN. My name is Malcolm W. Jensen. I am Director of the Bureau of Product Safety, Food and Drug Administration, Department of Health, Education, and Welfare. I am accompanied by Mr. Samuel M. Hart, Deputy Director of the Bureau. We consider it a pleasure to appear before you to support H.R. 5066, a bill to authorize appropriations for the implementation of the Flammable Fabrics Act as amended.

The Bureau of Product Safety was formed as a major organizational unit of the Food and Drug Administration during the fall of 1970 with a broad mission to reduce the product-related injuries and deaths occurring in and about the household, the school, and other areas of activity and recreation. On February 1 of this year, I became Director of this Bureau after many years with the Department of Commerce, principally at the National Bureau of Standards.

The Flammable Fabrics Act, originally enacted in 1953 and significantly amended in 1967, is designed "to protect the public against undue risk of fire leading to death, injury, or property damage arising out of the ignition of articles of wearing apparel and interior household furnishings." Under section 14(a) of the act, the Secretary of Health, Education, and Welfare, in cooperation with the Secretary of Commerce, has the responsibility of "conducting continuing study and investigation of the deaths, injuries, and economic losses resulting from accidental burning of products, fabrics, or related materials."

Even before the enactment of the 1967 amendments, the injury control program of the Public Health Service had been investigating

injuries, burns, and deaths attributable to flammable fabrics. With the enactment of the amendments, the staff of that program was directed to give high priority to this particular area. Specifically involved were two established study units, one in Denver and one in Boston, each consisting of seven people. An additional study unit was established later in Cincinnati.

The initial information developed by these units comes from hospital records, when such records show that a patient has been admitted or treated for a burn. Hospital permission is sought to interview the patient, because the records seldom will indicate the source or cause of the burn. Permission normally is readily given. A followup visit then is made to the home of the victim to identify the cause of the burn. If it is found that the injury resulted from the burning fabric, a detailed interview and investigation is made in an effort to identify all circumstances, including the source of ignition of the fabric.

We try to obtain a remnant of the garment or other fabric involved. Unfortunately, in many cases none is available, because it either has been completely consumed or has been discarded. Thus, we are unable to meet in full the demands of the Department of Commerce for sample fabrics contributing to burn injuries.

During 1970, a surveillance program covering flammable fabrics investigations was developed and issued to the 17 Food and Drug Administration field offices. We plan to complete at least 1,000 such investigations by the end of fiscal year 1971. Conversations with technical experts of the Department of Commerce convince us that, even with this magnitude of investigations, their needs will not be fully satisfied.

In order to attempt more nearly to meet the primary data needs of the Department of Commerce, we have undertaken a bold new step in injury surveillance. The National Injury Surveillance System, previously employed by FDA, has been modified to conform with the basic philosophy of community diagnosis and "real time" surveillance developed by the National Commission on Product Safety. This new system, called the National Electronic Injury Surveillance System will provide hard data on injuries in a manner different from past efforts in three significant ways.

First, the system is based on a statistically valid sample of hospital emergency rooms across the Nation. The data to be gathered can be used to project national estimates of injuries treated in such facilities with far greater accuracy than has ever been possible before. We plan ultimately to increase the breadth of reporting units to include hospital inpatient data as well, and physicians' office treatment. Each additional source of data will be similarly based on valid statistical sampling frames. This wider range of reporting units will broaden the spectrum of injury severity under surveillance and increase the hard data base.

Secondly, data on all injuries treated will be transmitted electronically, at high speed, from each reporting unit on a daily basis to our computer here in Washington, where they will be reviewed continuously for potential flammable fabric cases. As a result of this high-speed, daily notification that a burn has been suffered, and that a fabric product may have been involved, field personnel located throughout the Nation will be able to conduct indepth investigations of such accidents within 24 to 72 hours of the victim's injury. This

short time frame permits the investigation to be carried out while details of the accident are still fresh in the minds of the victims or witnesses and while samples of the actual burned fabrics may still be obtainable for laboratory testing.

Third, as remedial activities or programs are carried out in "trial" areas, this system will facilitate more ready evaluation of the efficacy of such action in reducing or preventing burns suffered because of fabric flammability. Daily reporting to a central data bank allows for continuous analysis of trends and will permit analytical separation of true program effects from spurious variation or secular trends.

To supplement our in-house capability in the flammable fabrics field, we have entered into a number of contracts with educational and hospital sources. Our current contacts include the following:

The National Burn Information Exchange, University of Michigan at Ann Arbor, we have a study of burn injuries including flammable fabric at a cost of \$52,000;

With the University of Iowa at Iowa City in epidemiological investigations in a rural area of injuries related to consumer products including flammable fabrics, and the cost is about \$7,000; and

With the U.S. Public Health Service Hospital in New Orleans, a study to determine consumer acceptability, retention of fire retardant qualities, and durability of treated fabrics. (This is the 3d year of that program, with about \$5,000 being spent this year.)

We have also contracted with several hospitals to supply results of follow-up investigations of product-related injuries, especially flammable fabric burns.

Mr. Chairman, you and the members of your committee will be interested in examples of the kinds of data we have obtained from various sources such as our contractors, the technical literature, and the Information Council on Fabric Flammability, an informal organization made up of people concerned with this problem.

Fires and burns are the leading causes of death from nontransport accidents to children 1 to 4 years old, and the second leading cause of death at age groups 5 to 14 and 45 and over. About 8,500 such deaths occur each year. Death rates from these causes are higher for nonwhites than whites, and higher for males than females; higher for Indians than for other nonwhite persons, and for white foreign-born than for those native born. Over 80 percent of such deaths occur in the home. The death rate is higher in nonmetropolitan than in metropolitan counties. The highest rates occur in the South and Southwest. Our first annual report on the implementation of the Flammable Fabrics Act showed that approximately 3,000 deaths each year involve ignition of clothing.

It has been estimated that some two million persons each year suffer burn injuries sufficiently serious to require medical attention or to restrict usual activity for a day or more. Approximately 100,000 of these require hospitalization. Some 1.5 million workdays are lost annually because of injuries from burns. Ignition of clothing is said to be the cause of as many as 150,000 burn injuries annually. Eighty-six percent of all flame burns have fabric involvement.

The University of Michigan study on economic losses discloses that the direct medical costs for burns involving flammable fabrics total an estimated \$172 million annually. Involved are 31,000 an-

nual admissions—average length of stay in hospital was 26 days—8,000 re-admissions—16-day average length of stay—and 760,000 visits for outpatient treatment. These totals obviously are substantial, yet they do not even include the value of workdays lost.

A review of funding for flammable fabrics activities in the Food and Drug Administration discloses that for fiscal year 1969 the Congress appropriated \$514,000 and authorized 49 positions. Due to the impact of the Revenue and Expenditure Control Act of 1968, these funds and positions were not made available to FDA. Consequently, in 1969, we obligated \$119,000 for flammable fabrics by reprogramming existing funds in the product safety field. For fiscal year 1970, no funds were appropriated by the Congress for FDA's flammable fabrics activities. Again, we redirected existing resources and obligated the sum of \$273,000 to these activities.

The effectiveness of FDA in implementing the responsibilities of the Department of Health, Education, and Welfare under the Flammable Fabrics Act would be greatly enhanced by the provision of an authorization for an appropriation for these activities. We believe that, with the necessary funds and personnel, a meaningful impact in reducing deaths, injuries, and economic losses caused by flammable fabrics can be achieved.

It is a pleasure to be here with you, Mr. Chairman. We shall be pleased to attempt to answer any questions which you and the members of the committee may have.

Mr. Moss. Thank you, Mr. Jensen, and I feel confident we will have questions.

On page 7, the page you have just concluded, you stated that for fiscal year 1970 no funds were appropriated. Were funds requested?

Mr. JENSEN. I do not have that information, sir. Were funds requested by the Food and Drug Administration, by the Department, by the administration?

Mr. Moss. And the Appropriations Committee did not appropriate?

Mr. JENSEN. No, my answer is I do not have the answer to your question.

Mr. Moss. Well, would you supply that information?

Mr. JENSEN. Yes, sir.

Mr. Moss. And without objection, the record will be held at this point to receive it.

(The following information was received for the record:)

FUNDING OF FDA FLAMMABLE FABRICS ACTIVITIES FOR 1970

In fiscal year 1970, no specific amounts were identified in the budget request or the appropriations committees reports for flammable fabrics activities of the Food and Drug Administration. Of the total funds available to the FDA, \$273,000 was programmed for this purpose in 1970.

Mr. Moss. Do you have a breakdown of the requirements for funding at a level deemed adequate for fiscal 1972, 1973, and 1974 in full detail, and then to the fullest extent possible, 1975 and 1976?

Mr. JENSEN. We do not, sir. We were not aware you desired this information. With your permission, we will supply that.

Mr. Moss. It will be most important that it be supplied in full detail for the 3 years and in substantial detail for the 5-year period in order to comply with the Reorganization Act of 1970.

Mr. JENSEN. They are the 5 years starting with fiscal 1972; is that correct?

Mr. Moss. That is correct, through fiscal 1976.

Mr. JENSEN. Yes, sir.

Mr. Moss. I think I will hold any further questions at this point. (The following information was received for the record:)

FIVE YEAR PROGRAM FOR FLAMMABLE FABRICS ACTIVITIES

Attached is a five year plan for flammable fabrics activities. Please note, however, that these projections represent the best estimates of the FDA officials most closely concerned with the day-to-day operation of our program responsibilities under the Flammable Fabrics Act. These estimates do not, however, represent a Department or Administration commitment to seek appropriations for, or fund, that program at the indicated levels.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE FLAMMABLE FABRICS PROGRAM

Current year, fiscal year 1971

The Department of Health, Education, and Welfare expects to spend \$600,000 this fiscal year for its responsibilities under the Flammable Fabrics Act. Costs for 1971 are distributed as follows:

In-house costs, \$442,000.—These costs include twenty-six manyears of effort of which seventeen are related to field staff who gather data on deaths, injuries, and economic losses resulting from burn injuries. The remaining nine manyears are distributed between the coordinating staff for field operations and headquarters staff responsible for evaluating the data.

Extramural costs, \$158,000.—These costs represent contracted obligations to assist the overall data gathering effort.

Five year projection, fiscal years 1972-76

Significant increases would be required for this program in order to be adequately responsive to the nation's needs. The Food and Drug Administration would require the following resources to effectively discharge its responsibilities under the Flammable Fabrics Act. The major portion would be used to provide additional field staff to gather injury and economic loss data which is needed to indicate specific needs for new standards, regulations and labeling requirements.

The following assumptions have been made in computing legislative authority requirements. All personnel and operating costs have been lapsed by 25 percent. Travel for inspectors time has been computed at 40 percent of their time or 100 days per year. No provision has been made for general cost of living pay increases.

The five year plan is summarized as follows:

	Positions	In House	Contracts	Total
Fiscal year:				
1972	72	\$995, 000	\$180, 000	\$1, 175, 000
1973	108	1, 622, 500	592, 500	2, 215, 000
1974	125	2, 030, 000	695, 000	2, 725, 000
1975	125	2, 270, 000	695, 000	2, 965, 000
1976	125	2, 305, 000	695, 000	3, 000, 000

Detailed information, fiscal year 1972

The major increase in costs result from an increase in the number of investigative staff operating out of FDA's Regional offices. Forty-two positions would be used for investigative effort in the Regional offices, and four positions would provide guidance and support in headquarters. Detailed costs for 1972 are as follows:

Regional personnel:	
2 each GS-13 (\$17,761 per annum) -----	\$35, 522
3 each GS-12 (\$15,040 per annum) -----	45, 120
13 each GS-11 (\$12,615 per annum) -----	163, 995
13 each GS-9 (\$10,470 per annum) -----	136, 110
7 each GS-7 (\$8,582 per annum) -----	60, 074
4 each GS-4 (\$6,202 per annum) -----	24, 808
Subtotal -----	465, 629
Headquarters personnel:	
1 each GS-14 (\$20,815 per annum) -----	20, 815
2 each GS-13 (\$17,761 per annum) -----	35, 522
1 each GS-11 (\$12,615 per annum) -----	12, 615
Subtotal -----	68, 952
Total personnel compensation -----	534, 581
Personnel compensation \$534,581, plus personnel benefits \$45,439 minus lapse rate of 25 percent for new positions equal net per- sonnel compensation and benefits -----	435, 015
Operating costs:	
Travel -----	73, 500
Other operating costs -----	18, 450
Total operating costs -----	91, 950
New contracts -----	22, 000
Total program increased -----	548, 965
Previous year base plus mandatory costs -----	626, 000
Total 1972 authority requested -----	1, 174, 965

Detailed information, fiscal year 1973

Again, the major increase required is for field staff personnel that would investigate and report about deaths, injuries and economic losses related to flammable fabrics. The planned resources for 1973 reflect a reasonable increase towards reaching the goal of 125 positions which is considered necessary for an adequate program. Assuming the authorization of the 72 positions for 1972, an additional 36 positions in 1973 will provide a total of 108 positions dedicated to the Flammable Fabrics program.

In addition, there is a significant increase in the contractual services required. Investigation teams would develop increasing amounts of data that would provide the basis upon which economic studies on the effect of personal injuries and property losses could be conducted. Through new and improved data FDA would be in a better position to furnish the public information regarding the hazards of fabric flammability. Detailed costs for 1973 are as follows:

Regional personnel:	
2 each GS-12 (\$15,040 per annum) -----	\$30, 080
11 each GS-11 (\$12,615 per annum) -----	138, 765
16 each GS-9 (\$10,470 per annum) -----	167, 520
2 each GS-4 (\$6,202 per annum) -----	12, 404
Subtotal -----	348, 769

Headquarters personnel:	
1 each GS-14 (\$20,815 per annum) -----	\$20, 815
2 each GS-13 (\$17,761 per annum) -----	35, 522
1 each GS-11 (\$12,615 per annum) -----	12, 615
1 each GS-7 (\$8,582 per annum) -----	8, 582
Subtotal -----	77, 534
Total personnel compensation -----	426, 303
Personnel compensation \$426,303, plus personnel benefits \$36,236, minus lapse rate of 25 percent for new position equals net personnel compensation and benefits -----	346, 904
Operating costs:	
Travel -----	57, 187
Other operating -----	15, 750
Total operating costs -----	72, 937
New contracts -----	412, 500
Total program increases -----	832, 341
Previous year base plus mandatory costs -----	1, 382, 000
Total 1973 authority requested -----	2, 214, 341

Detailed information, fiscal year 1974

An increase of 17 positions in 1974 would increase the total positions available to the flammable fabrics program to 125, the amount estimated to be necessary to provide an adequate program responsive to consumer safety. Therefore, the 1974 plan reflects the leveling off point, where maximum program effectiveness could be anticipated. As in previous fiscal years, the major personnel effort would be expended in field operations for gathering injury and economic loss data, and refining the means and methods for its collection. Requirements for contractual obligation would be used to study the effects of new flammability standards on injuries and economic losses. These contractual programs would be coordinated with the Department of Commerce for identifying areas of need and providing for effective and efficient utilization of results. The computation of 1974 costs are as follows:

Regional personnel:	
3 each GS-13 (\$17,761 per annum) -----	\$53, 283
3 each GS-12 (\$15,040 per annum) -----	45, 120
10 each GS-11 (\$12,615 per annum) -----	126, 150
1 each GS-5 (\$6,938 per annum) -----	6, 938
	231, 491
Headquarters personnel -----	0
Total personnel compensation -----	231, 491
Personnel compensation \$231,491 plus personnel benefits \$19,677, minus lapse rate of 25 percent for new positions equals net personnel compensation and benefits -----	188, 376
Operating costs:	
Travel -----	30, 000
Other operating -----	6, 375
Total operating costs -----	36, 375
New contracts -----	102, 500
Total program increases -----	327, 251
Previous year base plus mandatory costs -----	2, 397, 500
Total 1974 authority requested -----	2, 724, 751

Fiscal years 1975 and 1976

Our cost estimates for 1975 and 1976 are shown in the five year projection chart above.

Mr. Moss. Mr. Broyhill?

Mr. BROYHILL. Thank you, Mr. Chairman. I gather from your testimony that your Bureau is a statistical-gathering, information-gathering body. Do you have any other duties, or do you have any other mission other than gathering statistics?

Mr. JENSEN. Yes, sir; we do have. We have the responsibility for the implementation of the Hazardous Substances Act, including, of course, the amendments relating to toy safety.

Mr. BROYHILL. I am talking about in the area of flammable fabrics.

Mr. JENSEN. In the area of flammable fabrics, this is our responsibility; yes, sir.

Mr. BROYHILL. All right. Thank you very much.

Mr. Moss. Mr. ECKHARDT?

Mr. ECKHARDT. I have no questions, Mr. Chairman.

Mr. Moss. Mr. Ware?

Mr. WARE. Just one question, and that is in your statistical computations do you separate the burns by various degrees of severity?

Mr. JENSEN. Do they now, sir?

Mr. WARE. Yes, sir.

Mr. JENSEN. Yes, to the extent this is feasible. We attempt to find out from the physician, from the treating individual, the severity of the burn, particularly if it is a fabric-related burn.

Mr. Moss. Mr. McCollister?

Mr. MCCOLLISTER. I am trying to sort out the responsibilities here among the various executive departments. Evidently it is the responsibility of the Department of Commerce to develop the standards?

Mr. JENSEN. Yes, sir.

Mr. MCCOLLISTER. It is your duty to evaluate the results of those standards in statistical information and showing as the years progress, the effect of the implementation of better standards?

Mr. JENSEN. We clearly see this as part of our responsibility.

Mr. MCCOLLISTER. And then finally it is the duty of the Federal Trade Commission to actually administer the standards, or whose duty is that?

Mr. JENSEN. Yes, the FTC has the responsibility to enforce the standard.

Mr. MCCOLLISTER. Fine. Then can you tell me what manner of coordination there is between the three groups who have the responsibility, the total responsibility for the act?

Mr. JENSEN. Having come from the Department of Commerce to the Department of Health, Education, and Welfare, and now seeing both sides of it, I think coordination is excellent, sir. The real problem is the fellow who has the job of managing, and the problem there is the lack of resources. Much can be done with adequate resources and personnel, but from the very first enactment of the amendment implementation has been difficult in all agencies because resources have been extremely limited.

Mr. MCCOLLISTER. Well, I was intrigued and interested in our chairman's question on the seeming slowness in implementation, and I was wondering if that could come about because of a lack of coordination of the several groups involved in the full responsibility of the act?

Mr. JENSEN. I think this is not true. However, it would be my opinion that any piece of legislation is more easily manageable if one agency has the total responsibility. There are always difficulties inherent in the division of responsibility among several agencies, and here we actually have four agencies, because the Treasury Department has the responsibility for exercising regulatory authority over imports.

Mr. McCOLLISTER. By what process did the responsibility for this become divided among the four agencies?

Mr. JENSEN. This was a congressional process, sir.

Mr. McCOLLISTER. Was it a part of the act of 1967?

Mr. JENSEN. In 1967, yes. In the original act of 1953, the Department of Health, Education, and Welfare was not mentioned. In 1967, HEW came into the picture as the investigating authority, data-gathering authority, but even in the original 1953 act the Department of Commerce was responsible for the standard and FTC was responsible for enforcement.

Mr. McCOLLISTER. Do I understand you to say—

Mr. Moss. I wonder if the gentleman would yield. I believe that the standards of the 1953 act were fixed by statute, and that the sole responsibility in the 1953 act was that of the Federal Trade Commission. Not until the 1967 act did the—

Mr. JENSEN. Mr. Chairman, just one step back, if you would, sir. The 1953 act cited an existing voluntary standard for flammability and directed that the Secretary of Commerce inform the Congress as to the need for updating that standard. The enforcement responsibility was that of the Federal Trade Commission.

Mr. Moss. Yes.

Mr. McCOLLISTER. Did I understand you to say that you thought that it might be better for one agency to be totally responsible?

Mr. JENSEN. It clearly is my opinion that if one agency had the total responsibility, the implementation would be more effective; yes, sir.

Mr. McCOLLISTER. Thank you.

Mr. Moss. I believe the rationale behind the 1967 act was to utilize the resources available in the Government, and not to duplicate them in a single agency at a cost that might be considerably in excess of the cost of utilization of existing resources. I believe that I was the author of the 1967 amendments on the House side, and I recall that the agencies uniformly supported that approach to it.

Mr. JENSEN. I am sure that is true, sir.

Mr. Moss. On the division of authority, we felt that there was within the two executive departments and the independent agency the capacity to establish effective liaison.

Mr. Broyhill.

Mr. BROYHILL. Well, the gentleman, of course, is far more familiar with this than I am. But I have followed the progress of this program as a member of the full committee and I recall you are absolutely correct, that the overriding concern at the time was to try to get something started. In order to do that it was thought that it was best to use those facilities and agencies that were already set up instead of trying to create something new with all the delays that would involve.

Mr. Moss. Well, are there further questions? If not, gentlemen, I want to thank you, and I would ask that you expedite the material requested by the committee. I would make the same suggestion to the Department of Commerce. I understand that you are anxious that we report this legislation promptly, and we can only do so if we have the information required promptly supplied to us.

Mr. JENSEN. It will have our immediate attention, Mr. Chairman. Thank you very much.

Mr. Moss. Well, gentleman, we have moved along more rapidly than our schedule had planned, and so at this point, why, I think we can adjourn until tomorrow morning at 10 a.m., at which time Mr. Kirkpatrick of the Federal Trade Commission will be our witness.

The committee will stand adjourned.

(Whereupon, at 11:10 a.m., the committee adjourned, to reconvene at 10 a.m., on Friday, March 5, 1971.)

FLAMMABLE FABRICS—1971

FRIDAY, MARCH 5, 1971

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON COMMERCE AND FINANCE,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10 a.m., in room 2123, Rayburn House Office Building, Hon. John E. Moss (chairman) presiding.

Mr. Moss. The committee will be in order.

We are continuing today hearings on H.R. 5066. Our witness is Miles Kirkpatrick, Chairman of the Federal Trade Commission.

Mr. Kirkpatrick, will you proceed?

STATEMENT OF HON. MILES W. KIRKPATRICK, CHAIRMAN, FEDERAL TRADE COMMISSION; ACCOMPANIED BY JOHN DELANEY, ASSISTANT EXECUTIVE DIRECTOR FOR ADMINISTRATION; EDWARD FINCH, ASSISTANT DIRECTOR, DIVISION OF TEXTILES AND FURS; JOSEPH MARTIN, GENERAL COUNSEL; AND WILLIAM YANCEY, CHIEF, DIVISION OF BUDGET AND FINANCE

Mr. KIRKPATRICK. Thank you very much.

May I please have it shown, sir, that the statement I am about to make with respect to this matter has not been cleared by the OMB. There simply has not been time to submit it to the OMB and get clearance.

Mr. Moss. Mr. Chairman, that makes me extremely happy. I am one member who feels that the independent regulatory commissions should not clear with the Office of Management and Budget. I have held that conviction for many years.

Mr. KIRKPATRICK. I will be mute on that point, sir.

Mr. Chairman, members of the committee, it is my understanding that you are interested in the Federal Trade Commission's plans for implementing the provisions of the Flammable Fabrics Act of 1967, as amended, and estimates for required funding.

Last June former FTC Chairman Caspar W. Weinberger testified regarding new enforcement procedures that were inaugurated then to speed up Commission action on flammable fabrics cases and prevent dangerous articles of apparel from getting into the hands of consumers. The program that he discussed at that time is continuing. As soon as laboratory analysis discloses any garment to have dangerously flammable properties, every effort is undertaken to reach potential consumers. Manufacturers and distributors are contacted. The lists of their purchasers are acquired and press releases are sent out immedi-

ately, both to the general media and to specific areas where such dangerously flammable fabrics have been made available for sale. In regard to these cases, the Federal Trade Commission will not accept a voluntary assurance of discontinuance but proceeds toward the issuance of a cease and desist order. It also has authority to seize flammable fabrics and has done so twice in the last 4 months.

Our enforcement activities begin with inspections at the wholesale, manufacturing and retail levels and are conducted out of our 11 field offices and 12 field stations. One hundred and twelve consumer protection specialists form a network of trained personnel covering the Nation. They are engaged in inspections, investigations and general consumer protection activities under our various acts and devote approximately 22 man-years per year of effort to inspections under the Flammable Fabrics Act.

In our headquarters Division of Textiles and Furs we have 55 employees engaged in enforcement, regulation, and laboratory analyses. Approximately 65 percent of their time is devoted to Flammable Fabrics Act functions.

Our efforts to date relate primarily to articles of wearing apparel and fabrics covered by the Flammable Fabrics Act of 1953, as amended in 1954. We have not begun enforcement of standards under the amended act of 1967; however, the first standard covering rugs and carpets has now been promulgated by the Department of Commerce and the required waiting period of 1 year before enforcement begins has elapsed. Our testing procedures for it were published in the Federal Register, February 13, 1971, and we will begin enforcement of this standard on April 16, 1971. A related standard for small carpets and rugs was promulgated by the Department of Commerce December 29, 1970, and our enforcement of it will begin on December 29, 1971. Also, the Department of Commerce promulgated its proposed standard for children's sleepwear in the Federal Register on November 17, 1970; therefore, we expect enforcement of this standard to begin during fiscal year 1973.

We are advised that the Department of Commerce is now in the process of developing standards for blankets, mattresses, upholstered furniture and other items of nonwearing apparel that were not covered under the original Flammable Fabrics Act, as amended in 1954, but we have no timetable as to when our enforcement of these standards will begin. They cover products not previously under the jurisdiction of the FTC, and will increase our enforcement responsibilities, thus requiring additional appropriations.

Regarding funding of Flammable Fabrics Act enforcement, it might be well at this time, before proceeding to our estimated requirements, to give some background relating to the funding for administration of the Flammable Fabrics Act of 1953. That act provided authorization for such funds as might be necessary to carry out its provisions and the Federal Trade Commission throughout the years from 1953 to date requested funds for its Textile, Fur, Wool and Flammable Fabrics Acts administration as blanket funds for an overall program rather than specifically for the administration of each act.

Since the passage of the amended Flammable Fabrics Act in 1967, the Federal Trade Commission has continued the funding practices described above in respect to enforcement of the standards under the

original Flammable Fabrics Act and to date has not begun enforcement of any standard under the act of 1967.

For effective enforcement of the standard for carpets and rugs, the first under the amended act, which we will begin enforcing in April 1971, as I have indicated, there is no question but what we will need additional funding not yet requested of the Congress. This Commission does not intend to request additional funds for the 2½ months of fiscal year 1971; however, we firmly believe that in fiscal 1972 the Commission will require a minimum of \$400,000 covering inspections, investigations, legal interpretations and actions, laboratory expenses and necessary overhead for the enforcement of this standard.

In order that this committee can have a financial base on which to consider the Federal Trade Commission's request I would like to advise you that for the administration of standards for fabrics and wearing apparel under the initial act, the Federal Trade Commission spent slightly over \$700,000 in 1970 and is now spending at that same rate for fiscal 1971. During fiscal 1970 using approximately 57 man-years of work the Commission conducted 4,846 inspections and 156 investigations and issued 17 final cease-and-desist orders on flammable fabric cases. Its laboratory also tested 2,040 exhibits and approximately 18 percent of those tested proved to be dangerously flammable requiring our immediate action.

Considering the uncertainties that we face as to the timetable for the development of flammability standards for products not now under our enforcement jurisdiction, we are providing minimum estimates as to our requirements for the next 5 years; however, we may have to come to you to request additional authorization for funding if standards are promulgated which would broaden our jurisdiction earlier than now generally anticipated. Our estimates based on and including our current expenditure rate of approximately \$700,000 a year are as follows:

Fiscal year 1972—\$1,100,000.

Fiscal year 1973—\$1,400,000.

Fiscal year 1974—\$1,700,000.

Fiscal year 1975—\$2,000,000.

Fiscal year 1976—\$2,300,000.

These figures are based on estimates as to additional staffing required as our authority is broadened and provide for approximately 20 additional people each year and necessary supporting costs. These are minimum estimates and effective enforcement may require additional funding.

It is a pleasure to be here with you, Mr. Chairman. We shall be pleased to attempt to answer any questions which you and the members of the committee may have.

May I just add one word, that last year, the Commission adopted a position to favor a bill, the counterpart of which has recently been filed in the Senate, S. 364, having to do with pretesting and certification in this area of flammable fabrics. We would be very happy, sir, to file a statement with you should you wish us to do so.

Mr. Moss. You may file that statement, and without objection, we will hold the record at this point to receive it. When you file it, would you supply copies to each member of the subcommittee?

Mr. KIRKPATRICK. Certainly.

(The following statement was received for the record:)

STATEMENT OF HON. MILES W. KIRKPATRICK, CHAIRMAN, FEDERAL TRADE COMMISSION, ON H.R. 16824, 91ST CONGRESS (COMPANION BILL TO S. 3765, 91ST CONGRESS.)¹

Thank you, Mr. Chairman, for the opportunity to appear before this distinguished Committee to present the views of the entire Federal Trade Commission on current enforcement of the Flammable Fabrics Act and H.R. 16824, the bill authorizing appropriations to carry out the purpose of the Act.

During the Senate hearings on S. 3765, the companion bill to H.R. 16824, then Chairman Weinberger, speaking for the entire Commission, made the following points:

First, the Commission said that neither timidity nor delay will be tolerated in our staff's enforcement of the Flammable Fabrics Act, and it can be anticipated that there will be more frequent use of the Commission's tougher sanctions such as seizure of flammable products. The Commission told the Senate Subcommittee that we intend to develop within our staff an absolute and uncompromising commitment to use all the powers under the existing Act.

Second, the Senate Subcommittee was told that the public expects, and the Commission fully supports this expectation, that steps be taken immediately to stop dangerous fabrics from reaching the marketplace. Under the existing statute there is nothing to prevent untested fabrics from being placed in retail distribution, and it would require a virtual army of federal inspectors to canvass distributors throughout the country in an attempt to uncover products which never should have been sold in the first place. Furthermore, the Commission has no way of knowing if this needle-in-the-haystack search is ever really successful. Accordingly, the Commission recommended that Section 3 of the Act be amended to require compulsory pre-marketing tests of fabric for the purpose of excluding products which do not conform to flammability standards.

Third, the Commission asked for meaningful criminal and civil sanctions to deter future sales of flammable fabrics. Specifically, the Commission urged that any violation, willful or not, should be at least a misdemeanor. We also recommended the creation of a new civil penalty provision which would empower the Commission to seek \$10,000 for each violation.

I support the Commission's statement before the Senate, and I join with the other members of the Commission in asking Congress to pass the legislation which we have recommended before another life is lost, another child is horribly disfigured, and more unnecessary pain is caused from dangerous fabrics.

The Commission is indeed gratified by the speed with which the Senate responded to our plea for additional protection for the consuming public. We have carefully studied S. 3765 and endorse the objectives of this bill. The Commission strongly urges, however, a major change in the bill which we believe is essential. Before discussing that proposed change, it should be noted that at least in one respect the bill passed by the Senate has improved on the Commission recommendation. There has been added a "certification" requirement. We believe that the concept of certification adds a significant measure of protection for consumers, and we endorse it. As we read the provisions of the bill, the certification provisions would require manufacturers to submit sworn statements attesting to the fact (1) that their fabrics had been tested pursuant to a quality control program prescribed or approved under Section 4 of the Act and (b) that these tests showed that the fabrics had passed the flammability standards established by the Department of Commerce.

We note, however, that S. 3765 is silent as to whom certification is to be made. We recommend that the bill expressly provide that certification be made to the Federal Trade Commission. We believe that a certification filed with the Federal Trade Commission would provide an inexpensive yet highly effective check of manufacturers' compliance with all parts of the Flammable Fabrics Act and particularly the pre-marketing testing requirements. Filing a false statement would be a serious violation of the Act. Moreover, the fact that the manufacturers must file sworn statements with the government should, in itself, encourage honest

¹ This statement was prepared to be delivered to the Subcommittee on Commerce and Finance, House Committee on Interstate and Foreign Commerce, during the subcommittee hearing on H.R. 16824 held during the second session of the 91st Congress. One day of hearing was held (September 10, 1970) but because of other legislative demands time did not permit the scheduling of further witnesses.

See "Flammable Fabrics Amendments," Serial No. 91-92, hearing before the Subcommittee on Commerce and Finance, Committee on Interstate and Foreign Commerce.

and accurate pre-marketing tests. Of course, by filing such certifications with the Commission a manufacturer would not receive immunity from any of the provisions of the Act.

The principal change in S. 3765 which we recommend pertains to enforcement responsibility. On the question of enforcement responsibility, the Final Report of the National Commission on Product Safety said that the division of powers under the Flammable Fabrics Act among various agencies creates difficulties. The National Commission said:

"The Flammable Fabrics Act gives rulemaking authority to the Commerce Department, domestic enforcement to the Federal Trade Commission, enforcement over imports to the Treasury Department, and investigative duties both to Commerce and to Health, Education and Welfare. When extensive interagency liaison and cooperation are required one agency sometimes forestalls actions by the others" (Final Report, p. 97).

We believe the difficulties cited by the Product Safety Commission will be compounded by further fragmentation of enforcement responsibility with the introduction of the Department of Commerce into the enforcement scheme. Up to this point, the Department of Commerce, through its Bureau of Standards, has not played a role in enforcement but has been confined to the area of its expertise—the promulgation of flammability standards such as Commercial Standard 191-53 which covers such technical considerations as the physical design of the device to be used to determine flammability. However, under the Senate bill the Secretary of Commerce's powers have been substantially expanded beyond the promulgation of flammability standards, and it is proposed that Commerce will be given authority to either approve or prescribe the testing program which is to be the basis of the pre-marketing certification.

This testing program contemplated by S. 3765 should not be confused with the development of technical flammability standards but relates instead to the question of the frequency of testing to insure that a high standard of quality control is being maintained. In other words, certification by a manufacturer of non-flammability involves two separate and distinct considerations: (1) the test to determine if the product has met a flammability standard and (2) the manufacturer's program in carrying out flammability tests in such a manner that they are truly representative of his entire production.

The Commission strongly urges that the powers given to the Secretary of Commerce to approve or prescribe the testing program be transferred instead to the Federal Trade Commission. We make this recommendation for the following reasons:

1. The Commission has had considerable experience in establishing reasonable and representative testing programs similar to those contemplated by S. 3765. Under Section 8 of the Flammable Fabrics Act, where the filing of a continuing guarantee is permitted, the Commission has promulgated detailed regulations covering testing programs for various types of fabrics. The Commission has already on file approximately 10,000 guarantees filed under the Flammable Fabrics Act and this existing program can be easily expanded to become an effective pre-marketing certification program. The Department of Commerce under the Flammable Fabrics Act has had no comparable experience or responsibility in either promulgating or administering a standard for reasonable and representative tests.

2. The testing programs under S. 3765 will have an obvious impact on the Commission's enforcement capability. Since the bill makes the manufacturer's due care in following an approved testing program a defense to civil and criminal misdemeanor penalty actions, it is essential that supervision of the testing program itself be placed with the agency which has primary enforcement responsibility. The effectiveness of enforcement is so intricately intertwined with the promulgation of the testing program that any fragmentation of responsibility between enforcement and supervision of the testing program will invite the familiar bureaucratic evils of buck passing, duplication of effort, and delay, all of which are particularly distressing in an area where swift and effective enforcement is necessary to avoid irreparable harm to consumers. Moreover, this dilution and distribution of authority may well make it impossible for the consuming public and their representatives to find the regulatory body which is properly accountable for any shortcomings in enforcement of the Act which may later become apparent. In terms of cost and convenience of manufacturers, it will be to their advantage to have a single agency responsible for enforcement. It will mean that there will be less of a chance that the manufacturers will be subjected to inconsistent interpretations and different enforcement philosophies.

3. The Commission has an existing trained staff of investigators who can immediately be assigned to check compliance with pre-marketing testing programs. These investigators have had experience in checking the records which we require to be maintained by those furnishing guarantees to determine whether tests are reasonable and representative. It is our intention to conduct an educational program for our newly recruited Consumer Specialists whereby these investigators, who are being trained to enforce all of the special labeling statutes administered by the Commission, will develop a high degree of professional competence in determining the adequacy of testing programs.

4. In the historical development of the Flammable Fabrics Act, the Department of Commerce has not sought enforcement responsibility, nor does Commerce have the investigative capabilities for carrying out such responsibilities.

In sum, we believe that historically, logically and in terms of effectiveness of enforcement, the responsibility for administering the testing program aspect of the pre-marketing certification program should be assigned to the Federal Trade Commission.

With respect to Section 7 of S. 3765 which creates additional criminal and civil sanctions for violation of the Act, we are concerned with the possible weakening effect through misinterpretation, of the provision creating a defense of "due care". The phrase "due care" must not become a loophole through which the intent of Congress will be subverted. It is the Commission's understanding that this provision is intended to provide a defense for only those individuals who can demonstrate a total lack of negligence in the application and administration of an approved testing program, in that such individual has taken every reasonable precaution to maintain the efficacy of his testing program. In this regard, the Commission takes note of the generally accepted meaning of the phrase "due care":

"Just, proper, and sufficient care, *so far as the circumstances demand it*; the absence of negligence. That care which an ordinarily prudent person would have exercised *under the circumstances*. "Due care" is care proportioned to any given situation, its surroundings peculiarities, and hazards. *It may and often does require extraordinary care.* . . ." Black's Law Dictionary 589 (4th ed. 1957). [Emphasis added.]

In applying this standard in a criminal or civil prosecution for violation of the Flammable Fabrics Act, the most relevant "circumstance" is the fact that a dangerously flammable fabric entails a not insignificant risk to human life, for which the manufacturer must be responsible. In view of this circumstance, we believe due care will generally require "extraordinary" care in the application and administration of any approved testing program. With this interpretation of the "due care" phrase in Section 7, the Commission endorses this section as a significant potential deterrent.

Finally, we believe that Section 4(e) of S. 3765 is unnecessarily rigid in imposing the flat rule that importers who rely on foreign certification are liable as though they were manufacturers. This section precludes administrative exploration of potentially less costly alternatives such as approval of designated foreign laboratories as suitable testing facilities. If a program of this nature proved feasible, it would not only result in lower costs to the importer and consequent savings to the consumer but also would avoid creation of a non-tariff barrier in foreign commerce.

In sum, the Commission supports the objectives of S. 3765 but urges the modifications proposed above. As modified, we believe this legislation would provide substantial protection to consumers.

Turning from proposed legislation to current programs, former Chairman Weinberger, speaking for the Commission, said before the Senate that even if Congress were to increase our present budget tenfold and even if Congress were to give the Commission a huge increase in manpower to enforce existing flammable fabrics legislation, the Commission could not give any assurance that the public would be adequately protected under the present statute. The Commission said that existing legislation simply does not accomplish, and cannot accomplish, the kind of detection and removal of dangerously flammable fabrics which the public demands. Operating under this existing legislation, current Commission procedures, which largely are based upon finding flammable fabrics after they have been shipped into the marketplace, are at best only a stopgap measure. Moreover, our ability to administer these stopgap measures is seriously jeopardized, because the present staff and resources of the Commission are inadequate to provide even a minimal level of consumer protection.

It is imperative that until Congress acts on our recommendation for effective pre-testing legislation that additional Commission investigators be sent to localities throughout the country to make inspections of both manufacturers and retailers for the purpose of detecting questionable fabrics. We urgently need not only additional personnel in the field, but more laboratory personnel and equipment to test what is found in the field. The added burden of enforcing the flammable fabrics standards promulgated by the Secretary of Commerce covering carpets and rugs and other interior furnishings or wearing apparel will further strain our resources as will the delegation to the Commission of authority to administer the pre-testing programs contemplated by S. 3765.

For all these reasons the Commission supports H.R. 16824 which authorizes the funds needed to carry out our present program. Although no specific allocation of funds appears in the bill, we assume that the budgetary base for the Federal Trade Commission would allow the Commission about \$500,000. Minimally, we should be authorized to maintain our current level of spending which we estimate to be approximately \$700,000. In this connection, the Commission supports the provision in S. 3765 as reported out of the Senate Commerce Committee, increasing the appropriation authorized for all agencies from \$6 million to \$9 million for the period of July 1, 1970, through June 30, 1972. Thereafter, the Senate bill provides for open-ended funding which the Commission urges the Congress to adopt.

In making this plea for new legislation and adequate appropriations, we are, in effect, asking that the consuming public be given the protection it wants and is not now receiving.

Mr. Moss. Mr. Chairman, I want to thank you for your statement. Referring to the table on page 5, I think, in order to meet the requirements of the committee, we will have to have more detail than is evidenced in that table.

Mr. KIRKPATRICK. Yes, I do have a breakdown of fiscal 1970 for that, sir, to show the breakdown of the computation of \$700,000, which is our current expenditure. It breaks down approximately as follows: Field inspections and investigations, \$343,200; for law enforcement activities, \$126,000; for legal advice and interpretation, rulemaking, liaison and related activities, \$156,200; compliance, \$43,180; and laboratory analyses, \$34,800, making a total of \$703,380, sir, which is the origin of the \$700,000 figure stated immediately preceding that table.

Mr. Moss. I wonder if I may have a copy of what you were reading?

Mr. KIRKPATRICK. Yes, indeed.

Mr. Moss. Mr. Broyhill, do you have some questions at this point?

Mr. BROYHILL. No questions, Mr. Chairman.

Mr. Moss. Mr. McCollister?

Mr. MCCOLLISTER. No questions, Mr. Chairman.

Mr. Moss. If we could have a similar breakdown for 1972, 1973, and 1974, Mr. Chairman, and then—

Mr. KIRKPATRICK. We will do our level best with that. You must appreciate that we are getting into the area of considerable estimating at that point, but we shall do our level best to supply just such a breakdown.

Mr. Moss. I realize that. I have learned, however, that when I present a bill in markup to the full committee, my colleagues have no mercy when they demand that I supply detail. The only place that I can go, the only source I have is the Commission itself.

Mr. KIRKPATRICK. Surely, sir. We will supply such a schedule. (The following table was received for the record:)

FLAMMABLE FABRICS ACTIVITIES, DETAIL OF PROGRAM COSTS BY MAJOR ACTIVITY—FEDERAL TRADE COMMISSION

	1970 actual	1971 estimate	1972 estimate	1973 estimate	1974 estimate	1975 estimate	1976 estimate
Field inspections and investigations.....	\$343,200	\$328,000	\$525,000	\$671,000	\$817,000	\$963,000	\$1,109,000
Legal enforcement.....	126,000	126,000	235,000	302,000	369,000	436,000	503,000
Legal advice, interpretations, rule- making, liaison, etc.....	156,200	156,000	190,000	244,000	298,000	352,000	406,000
Compliance.....	43,180	43,000	63,000	81,000	99,000	117,000	135,000
Laboratory analyses.....	34,800	50,000	87,000	102,000	117,000	132,000	147,000
Total.....	703,380	703,000	1,100,000	1,400,000	1,700,000	2,000,000	2,300,000
Level of manpower (man-years).....	57	57	77	97	117	137	157

For fiscal year 1971 it is estimated that the total resources expended for Flammable Fabrics activities within the Federal Trade Commission will approximate the level of fiscal year 1970. Although increased program costs resulted from pay raises, and other items of an uncontrollable nature, the Commission should be able to obtain the same number of man-years of effort at a cost of approximately \$700,000 because some personnel assigned to our Flammable Fabrics activities, who were in the upper level of their grades, retired and recruitment of Consumer Protection Specialists in our field offices was at lower GS grades than the previous staffing base for Textile and Fur Investigators.

On the basis of investigations initiated, it is anticipated that the fiscal year 1971 workload will increase significantly over previous fiscal years. In fiscal year 1970, 156 investigations were initiated; in the first six months of the current fiscal year, approximately 100 investigations were initiated. If this trend continues, the investigative workload will increase 28 percent over fiscal year 1970.

These estimates assume that current Government-wide compensation scales and prevailing price levels will remain constant throughout the above periods.

Mr. Moss. Mr. Guthrie?

Mr. GUTHRIE. Chairman Kirkpatrick, thank you for your testimony.

The Senate bill, of course, addresses itself to providing a new means of enforcing the Flammable Fabrics Act.

Mr. KIRKPATRICK. Yes, sir.

Mr. GUTHRIE. Do you, as a Commission, have any views as to whether that mode of enforcement will be any more effective and efficient than the system that is now provided under the legislation?

Mr. KIRKPATRICK. I have no doubt that we do, sir. Last year, the Commission was 100 percent-plus behind the bill which as I understand it—I have not seen this bill in detail, but I understand it to be, in principle at least, the same as that which we supported last year with respect to pretesting and certification procedures and also with respect to additional penalties. I have no doubt that the Commission will this year be very enthusiastic about that and give its full support position to it.

Mr. GUTHRIE. Could you describe your present procedures for enforcing this act? How do you fix upon fabrics that are going to be tested in your laboratories?

Mr. KIRKPATRICK. Mr. Finch is here, who is the head of that operation.

I can say this from my own personal experience. People who are experts as a result of experience seem to have an uncanny knack for locating fabrics at the wholesaler or the retail shop that look as if they are not going to pass the test because of their composition, their feel. Then, of course, we get a sample for testing. But maybe Mr. Finch would care to elaborate on that a bit.

Mr. FINCH. As Chairman Kirkpatrick says, our inspectors are trained in what to look for. This is the weight of the fabric, the content. We know that cellulosic fibers, rayon and cotton, have a tendency to be more flammable than, say, polyester or wool or something like that. So they will in their normal inspection work—if they are out on formal investigation or just doing normal routine inspections—they will look wherever they go for something that may be suspect in their mind and they will send it into the lab.

Mr. GUTHRIE. How do you determine where they will go?

Mr. FINCH. Each field office has a certain area in the country to cover. Each office also knows the mills in that area which make fabrics which may be questionable, they know the big retail stores, they go to the certain departments in those stores to see what is on sale. And it may be that a lot of people think you are picking on a retailer in that respect. But if you take the time of an investigator and let him spend, say, 2 days in a store like Macy's or Gimbel's, he will see products of maybe a thousand manufacturers. So, in effect, he is getting very good coverage in that respect.

Now, I might add that we do get cooperation from the Bureau of Customs. We have tried in New York to assist the Bureau of Customs in their screening of products that come in. They cannot physically look at everything. We have tried a procedure in New York which is showing some results of having a FTC investigator at Customs and just go through the documentation that comes in on these various products. He can tell by the weight that is listed on the documents and the content whether this may be suspect. If he sees something like that, he calls the New York office, we send somebody over to immediately pick up that product and get it tested.

In that respect, we get assistance from Customs and we are trying to implement what they can offer in that respect.

Mr. GUTHRIE. It was suggested yesterday that perhaps there is not the best possible coordination among the three agencies responsible for administering the legislation; that is, Commerce, Health, Education, and Welfare, and the Federal Trade Commission. When the Department of Health, Education, and Welfare, through its Food and Drug Administration, has a report on burn injury resulting from fabrics, does the FTC get information with regard to that and go out and investigate the fabric also?

Mr. FINCH. Well, the question there is: "Does it fail the Flammable Fabrics Act testing procedures?" Now, HEW does investigate all burns as far as I know. Most of that is handled in conjunction with the National Bureau of Standards, who has a testing lab similar to ours. Now, if they find that it is something which fails the Flammable Fabrics Act, then they will notify us by telephone.

It is unfortunate that the standard which we are presently working under, Commercial Standard 191-53, is such that there are a lot of fabrics and wearing apparel on the market against which we can take no action. This is the type of statistic that HEW is gathering and they provide those statistics to the Bureau of Standards. It is based upon those statistics that the Secretary of Commerce will determine what areas need updating.

Mr. GUTHRIE. Is there any feedback from the Federal Trade Commission to the Department of Commerce with regard to fabrics that you believe—

Mr. FINCH. Yes, indeed. Every test that we conduct in our lab, a copy of that is provided to the Bureau of Standards and the Secretary of Commerce.

Mr. GUTHRIE. With recommendations?

Mr. FINCH. Well, the recommendations we have given to the Secretary of Commerce over the years are in those areas where we find a lot of passing fabrics or wearing apparel. But yet if you just put a match to it and watch it burn, as you know, it makes a very pretty picture. Yet it is not something that will fail this commercial standard under which we operate right now.

This is one reason why the children's sleepwear standard is in process. We have jurisdiction over sleepwear. It is wearing apparel. But what they are doing is lifting that particular category of clothing, because of its dangerous propensity, out of Commercial Standard 191-53 and making a more strict standard. Now, this is the approach they are taking in that area of wearing apparel.

Mr. GUTHRIE. Let me ask you, do you make recommendations when you send your tests to the Department of Commerce, recommending that though this particular product does meet the existing standard, it seems to you to be inflammable to a degree that will require a higher standard?

Mr. FINCH. Definitely. We do that on a general basis and also specifically applying it to lab tests.

Mr. GUTHRIE. I see.

Mr. FINCH. A very, very recent example of that is that hats are excluded under this standard and in the recent beret cases, some opposition has been given to the fact that well, maybe, they are hats and the FTC should not be proceeding. But Commerce is working on it and we have given them all of our statistics on these beret cases to form a basis for getting rid of that deletion in the standard itself. But we do meet with them once a month at the Assistant Secretary's level and push every program that we think should be used.

Mr. GUTHRIE. Do you also have contact with the Advisory Committee that Commerce has established under the Flammable Fabrics Act?

Mr. FINCH. Yes, sir, we attend every meeting.

Mr. GUTHRIE. I have no further questions, Mr. Chairman.

Mr. Moss. Mr. Chairman, do you have an adequate staff to carry out your enforcement responsibilities under the Flammable Fabrics Act of 1953?

Mr. KIRKPATRICK. At the present time, Mr. Chairman—of course, one could always use more people. It is a question, I suppose, of the standard of enforcement. But I think we are taking reasonable action to enforce that underlying act, yes, sir.

Mr. Moss. Well, I know that you, in utilizing 57 man-years, which would be the work of 57 men on an annual basis, that you conducted 4,846 inspections, 156 investigations, and issued 17 final cease-and-desist orders.

Mr. KIRKPATRICK. Yes, sir.

Mr. Moss. Then in the laboratory tests, 18 percent proved to involve fabrics of dangerous flammability. A rather high percentage.

Mr. KIRKPATRICK. You will understand, sir, of course, that they

are preselected on the basis that Mr. Finch has described. So they are selected out of a great many and selected because they are suspicious.

Mr. Moss. They are selected by the 57 men?

Mr. KIRKPATRICK. Yes, sir, by our inspectors in the field, yes, sir.

Mr. Moss. Within the limits of this 57 man-years of talent available to you?

Mr. KIRKPATRICK. Yes, sir.

Mr. Moss. Would it be a reasonable presumption that if you had more enforcement personnel, you would have more instances of—

Mr. KIRKPATRICK. Oh, very much so. I have no doubt of that, sir.

Mr. Moss. Then we have to give some thought to whether we are enforcing at an adequate level.

Mr. KIRKPATRICK. That is, of course, the reason why we so strongly support the new legislation.

Mr. Moss. Of course, the new legislation would—

Mr. KIRKPATRICK. Ease our problem.

Mr. Moss (continuing). Require testing prior to marketing?

Mr. KIRKPATRICK. Yes, sir.

Mr. Moss. Then you would from that point on only test for the purposes of determining compliance with the standard developed at the time of approval for marketing?

Mr. KIRKPATRICK. I myself have no confidence that we necessarily give up all of our field inspection, sir, but it would, I think, ease our burden somewhat and make more comprehensive our enforcement activities, unquestionably.

Mr. Moss. How does the Commission arrive at the level—it has been fairly constant here, apparently—of funding for enforcement under the act, \$700,000. What has been the impact on enforcement as a result of the escalating costs of the personnel employed? All costs having escalated, you cannot achieve as much enforcement with \$700,000 today as you could the year before or the year before that. And you have not, therefore, maintained a constant level of enforcement, but rather a constant level of budgeting for enforcement.

Mr. KIRKPATRICK. That is certainly the case, sir.

Mr. Moss. Now, has there been a diminishing effectiveness, then, in enforcement?

Mr. KIRKPATRICK. I would hope there has not been, sir. I would hope there has been perhaps a more sophisticated selection on a sampling basis of the various activities of the inspectors in the field. Maybe Mr. Finch can speak to that better than I can in detail. But that which you say, of course, is logically irrefutable, that costs are going up. As against that, all I can suggest is that we have improved our techniques.

Mr. Moss. Well, is it not a fact, Mr. Finch, that the volume of blends of fabrics coming into the marketplace that have potentials for high flammability has increased rather than diminished?

Mr. FINCH. They certainly do, Mr. Moss. We have, during the past 6 months, found some fabrics to be dangerously flammable and which, in combinations of fibers making up a fabric, which have not been previously dangerous. An example of that would be if you generally take a 100 percent acetate fabric and put it on our testing apparatus, it will pass. If you take nylon, it will pass. But we have found that a blend of nylon and acetate in certain percentages sub-

jected to the same test will fail miserably. So this is the type of thing that we are constantly running across.

You can take a 100 percent nylon scarf, a woman's head scarf, and it will pass. But you run a little metallic design through it. This metallic will support that flame right up the nylon and make it fail. And this has been a larger number of our cases recently, and it was one of the seizures.

But as far as manpower, the real screening effect is at the inspection level. We get very few complaints from the consumer saying, well, I had a scarf and I think it is flammable. We get a lot of calls, but the bulk of our work is generated at this inspection level and this is why we would like to shift over to get at customs and give them more people of ours to screen at that level.

This also is directed to the question of the pretest in the legislation that was passed last year by the Senate.

Generally, you have a lot of people who are very conscious of the fact that they do not want to put a flammable product on the market. And they will test. But what we are trying to do by pretest is to bring within that area a larger percentage of people who check before they start selling it. In that way, we will not be faced with this proposition of trying to scour the country after it has been introduced in the commerce.

Mr. Moss. How, then, Mr. Chairman, does the Commission arrive at the determination to continue the level of enforcement at approximately \$700,000. Over a 3-year period now, it has been pretty close to that level. We know that there is a greater volume moving into the marketplace and from all of the mail I have been getting recently regarding imports of fabrics, we know that there is much more coming into the country. It creates a problem requiring, if adequate coverage is to be given, more man-hours available for cooperation with the Bureau of Customs and more field inspections domestically, with, actually, fewer men or fewer man-hours.

Did you have a ceiling given you which you had to live within?

Mr. KIRKPATRICK. Let me, if I may, refer that question to Mr. Delaney.

Mr. Moss. It might be helpful, Mr. Chairman. We have two new members of the subcommittee present with us today, if you would introduce the gentlemen accompanying you and give their duties in the Federal Trade Commission.

Mr. KIRKPATRICK. Yes, certainly. At my left, sir, is Mr. Joseph Martin, our General Counsel.

This is Mr. Finch, who has already talked to you. He is the head of our textile and flammable fabrics operation; Mr. Delaney has a long title. He will have to give that to you. He is, in effect, our fiscal officer.

Mr. DELANEY. I am Assistant Executive Director for Administration.

Mr. KIRKPATRICK. And finally, Mr. Yancey who is, in effect, our Comptroller.

Mr. Moss. All right. If you would try to give us the answer to the question.

Mr. DELANEY. The truth of the matter, Mr. Chairman, is we have had a continuing expansion on the level of our flammable fabrics activities over the years. In 1969, it was somewhat over \$300,000. The

year before, it was around \$200,000. In 1971, it went up to around \$703,000—or in 1970, rather. In 1971, of course, we had to, our budget itself was exactly the same level financially as the year before, so we had to set this program really, at that same level.

The question of dropping off of inspections, we may find out honestly at the end of this year if we maintain the same level, that when we have our accounts made up, we may be a little above the 1970 figure for flammable fabrics. We cannot be sure yet. We have allocated the same amount of money to it, but if our costs do rise, it is going to show up in the bookkeeping at the end of the year. Of course, it can't rise beyond our normal budget. Something else will have to suffer a little bit.

Mr. Moss. I note that in requesting authorization for the 1972 funds, they are to be expanded by \$400,000 in anticipation of increased responsibilities in enforcement, particularly of the standards for rugs and for carpets. That would leave you, then, at the level of \$700,000 for the enforcement of all the other flammable fabrics standards. Then that would put you in fiscal 1970 at \$703,000; fiscal 1971 at \$703,000; and fiscal 1972, for the same duties, at approximately \$700,000.

Now, if I recall, from 1970 until fiscal 1972, there has been a significant increase in the cost of manpower itself.

Mr. DELANEY. That is right.

Mr. Moss. I have not attempted to compute it, but we will say it is at least 20 or 25 percent, is it not?

Mr. DELANEY. That is correct, sir.

Mr. Moss. So you actually have a reduction of somewhere between 20 and 25 percent in the effective resources available for enforcement.

Mr. DELANEY. That is true, sir.

Mr. Moss. In an expanding market for use of fabrics.

Mr. DELANEY. Well, Mr. Chairman, we estimated that approximately \$100,000 of this \$400,000 would be for this expansionary cost item. We figured that 20 man-years at around—the type of personnel we have on this program—somewhere around 10,000, plus all the supporting costs, would take care of the added enforcement. The \$100,000 in our first estimate there of 1972 is really to pick up the slack.

Mr. Moss. Well, let me show you then the problem I have if I attempt to explain what I had before I asked the question.

Mr. DELANEY. I am sorry.

Mr. Moss. I had a figure of 1.1 million. In this statement, however, you say that we firmly believe that in fiscal 1972, the Commission will require a minimum of \$400,000 covering inspections, investigations, legal interpretations and actions, laboratory expenses and necessary overhead for the enforcement of this standard relating directly to the preceding statement covering carpets and rugs. So where is the \$100,000? Do we now reduce to \$600,000 the general enforcement with \$100,000 in there for growth? How can you grow and reduce at the same time?

Mr. DELANEY. You have asked a very good question, Mr. Chairman. We say this for carpets and rugs and it is a total—it was really the total program that we based it on. We started off, of course, with the \$700,000 as a base. The first year, we asked for \$400,000 to the overall program as an increase. In that one sentence, of course, we attribute

it mainly to carpets and rugs. But it is the total program money. Our estimate was of 20 more man-years of work on carpets and rugs and on the extra costs. So maybe the statement is not quite correct.

Mr. Moss. Would you supply for the record a detailed breakdown of all the components going into a man-year of cost? You said you were projecting 20 additional man-years.

Mr. DELANEY. Yes, sir.

Mr. Moss. So let us have the components going to make up a man-year of cost.

Mr. DELANEY. Yes, sir.

Mr. Moss. I think it might be very helpful to the subcommittee.

(The following information was received for the record:)

Flammable Fabrics Activities—Federal Trade Commission

Elements of cost per man-year:

Personnel compensation	\$12, 651
Personnel benefits	1, 012
General operating expenses (travel, communications, rent, printing, supplies, etc.)	1, 337
Cost per man-year	\$15, 000
Number of man-years	20

Program increase requested (fiscal years 1972-1974) 300, 000

Note.—For fiscal year 1972, an additional \$100,000 is requested to cover extraordinary startup costs associated with (1) expanding our laboratory testing facilities and providing a controlled environment room—including space rental and alterations, special testing equipment, initial supplies and materials—and (2) maintaining the staffing base of the Commission's ongoing flammable fabrics activities.

Mr. Moss. You anticipate no enforcement of the sleepwear standard until fiscal 1973?

Mr. KIRKPATRICK. That is my understanding, Mr. Chairman, yes.

Mr. Moss. Aside from the enforcement of specific standards, do you have a general responsibility for the household items utilized in places of public assembly, under the amendments of 1967, to inspect and test to determine that absent a standard, items of unusual flammability are not being marketed?

Mr. KIRKPATRICK. Absent a standard, Mr. Chairman, my understanding is that we have no responsibility, no authority to act.

Mr. Moss. Well, with the speed with which items can be marketed today, would it not be wise to have a general responsibility absent a standard?

Mr. KIRKPATRICK. I would like to consider that. It seems to me one must have a standard to start with. I am of the view that standards seem to be a long time in being promulgated, but I do not know how we would really, what we would be doing if we did not have some standard. That gives me some pause.

Mr. Moss. Well, I know that we have had items imported into this country, for example, that were almost explosively flammable. Has no one a responsibility to remove those from the market? I think the Secretary has under certain conditions.

Mr. KIRKPATRICK. Under certain conditions, I believe that is correct, sir.

Mr. Moss. But if you are the enforcement arm, you are the ones who would come into contact with it most quickly, would you not?

Mr. KIRKPATRICK. Of course, we would not under our present scheme inspect in that area. But it might well come to our attention, sir, no question about that.

Mr. MOSS. Well, if some of Mr. Finch's people who are sophisticated in this field saw a product, say a drip-dry fabric that, by the very blend of fabrics or fibers, they knew to be extremely flammable, what action would be taken today?

Mr. FINCH. We do run across this situation quite often. If you will look at the figures on the tests in our laboratory, of 2,000, 18 percent were failures. Obviously, the other percentage passed. This is an area about which you speak. The question then is if—I do not mean to speak for the Commission itself.

Mr. MOSS. We realize that.

Mr. FINCH. But the real legal problem there is let's say we were to tell a manufacturer, well, this particular product passed the standard under which it is covered, but the Commission feels it is dangerous. Well, then, we have a real legal problem at that point—well, what is your basis for saying it is dangerous? Well, it burns. Well, everything burns.

So it would be a matter for, say, the Commission or this committee or a judge saying, well, all right in my opinion, that burns faster than I think it should. This, I think, is the basis for the chairman's statement that if we have a standard, we have something to base our conclusion on.

But aside from that, we are at a—

Mr. MOSS. Then should we not have an overall minimal standard?

Mr. FINCH. Well, this is what the Secretary of Commerce and the Bureau of Standards have been working on since 1967 in the amendment. The approach they have taken was let us say that they have analyzed fiber content of all types, all combinations and all types of wearing apparel, drapery fabrics and everything. They have a pretty good idea how fast things will burn. They could say, the present standard is less than 3.5 seconds and you have a failure. They can say we will use the same standards but make it 25 seconds. Anything that burns faster than 25 seconds, you take it off the market.

All right, then we do not have clothing on the market. So what they have to do is come back from that figure. Where can we find something where we can effectively protect people, but yet not take a product off the market like a man's suit? So this is why they came up with something on sleep wear.

Mr. MOSS. But can't you determine a minimum standard for items that are almost explosively flammable?

Mr. FINCH. Of course, this is what the—

Mr. MOSS. A man's suit would not be in that category?

Mr. FINCH. No, it would not.

Mr. MOSS. In the demonstrations you people made for us at the time we enacted the 1967 amendments, much of the material could take a fair amount of heat before it would flame.

Mr. FINCH. That is right. But we think we are covering that aspect of it very well. But when you get into the category of women's blouses made of combinations of cotton and polyester, very lightweight, or even a lot of men's shirts made of 100 percent polyester, they will burn very fast. But they pass the standard handsomely. So the problem that the Bureau of Standards has, and this is really not

ours at the present time, but the problem they have is finding those areas where they can create a standard and statistically make a finding that there is a need in that area.

As I said before, this is how they came up with children's sleepwear. They have statistics to show that in that area, in the percentage of children's size 6X and down, there is more injury in relation to the total population in that area than should exist.

Mr. Moss. Well, I shall not pursue this further at this time because the legislation before us now is somewhat urgent in character and is necessary to continue existing programs. However, when we schedule consideration of legislation in this field, and we will be doing that very shortly, I think we will want to go into the matter of standards, the adequacy of them, far more thoroughly than we are at this time. I do not want anyone to feel that the committee is dealing with this superficially. We are not. We are very much concerned, as I know you are, over the insuring of safety to the American consumer.

Are there further questions?

Mr. McCollister?

Mr. McCOLLISTER. Ideally, the best situation would be where every manufacturer of garments and products with which you are concerned would be so aware of the nature of the standard, have their own test procedures to prevent the product from reaching the market in the first place. To what extent is the burden you carry lightened by manufacturers increasingly adopting test procedures whereby these products do not reach the market in the first place?

Mr. FINCH. The best effect that type of procedure would have would be preventing the distribution from the manufacturer or the importer. A lot of our enforcement time and effort goes into finding these things after they have been shipped out through the streams of commerce. When we find a product flammable in our lab, I am notified immediately. We have a coordinator who is told also immediately. He gets on the telephone and he calls the investigator who sent it in and he calls the person from whom he obtained it and tells him what our findings are and we want your customer list, we want total inventory on it, we want you to write your customers, and we want you to recall the product.

Now, when you get into the recall and obtaining the customer list, this a lot of the manufacturers do not like to give. But we make them and if they do not give it to us, we subpoena it. But that type of operation would be nullified, or it would be obviated by the fact that they did not put it into the stream of commerce to begin with.

Mr. KIRKPATRICK. I think the Congressman's question was to what extent are manufacturers voluntarily testing.

Mr. McCOLLISTER. It is expensive for them to manufacture a product and let it reach all the sources of distribution and then have to call it back. Even disregarding the hazard, which is our principal concern, it is very expensive for them. Are they trying to—

Mr. FINCH. To answer that, in the overall picture of a number of people who may be involved with fabrics that are subject to the act, there are very few who file with us continuing guarantees. These are what a supplier will give to his customer, saying I have made some reasonable and representative tests on this particular product as to flammability, so you can buy it with that assurance. We only have

around 14,000 or 15,000 of those on file with the Commission right now.

Now, if you take—I do not know exactly how many people may be subject to the act. I am sure it is in the hundreds of thousands. But that the amount of continuing guarantees we have on file with the Commission.

Now, under pretest, they would have to perform these tests in spite of the fact that they do not give a guarantee. So this is what we are hoping by pretest, to bring more people into that area of—well, we are going to force him to make the test. But now, we want to have all those who are willing to do it voluntarily and those we force to do it, it will considerably cut down, we hope, on this trying to find it after it has already gone down to the consumer level.

And I might add that in that area, without trying to pick on any specific category of business, probably in excess of 60 percent of our enforcement work is involved with imported products. The very, very few importers will give a guarantee, because this would require that once they get the product in this country, or somewhere along the line before they sell it, someone would have to have tested it.

Mr. McCOLLISTER. I was thinking more of domestic manufacturers—

Mr. FINCH. And it is expensive.

Mr. McCOLLISTER (continuing). In their own self-interest testing the product before it reaches the marketplace where they then would have to—

Mr. FINCH. Of the 16,000 we have on hand, 14,000, I doubt if there is an importer in the group.

Mr. McCOLLISTER. Thank you.

Mr. Moss. Do you have any further questions?

Mr. McCOLLISTER. No.

Mr. Moss. I find looking at my notes that I did not pursue as far as I should the question of the manning levels. Has the Commission requested a level of manning in excess of the \$700,000?

Mr. KIRKPATRICK. I am reaching in my recollection. We, of course, for fiscal 1971, have gotten substantially cut in our budget requests. I was not here when that budget request was made. I believe that it did include a substantial increase in field office personnel. The question gets complicated by the fact that we have changed the nature of the jobs of the field personnel and now have a new category known as consumer protection specialists, who have absorbed the some 40 then existing inspectors who were wool and flammable fabrics and textile inspectors. So now some 128 people are now covering the entire field which was covered before by a fewer number of people, but specialized. So we have beefed up the manpower in the field offices and, to give a direct answer to your question, it is very difficult under those circumstances.

Mr. Moss. Well, your level of enforcement, the number of man-hours available for enforcement, however you characterize it, are either going up or going down.

Mr. KIRKPATRICK. May I consult with my colleagues in that?

Mr. DELANEY. We requested 40 additional professional people in our field offices in 1972.

Mr. Moss. Will you supply us with the detail of the level of manning which the Commission felt to be required for the 1972 fiscal year.

Mr. DELANEY. Yes.

Mr. Moss. Without objection, I will hold the record open at this point to receive that information.

(The following information was received for the record:)

<i>Proposed level of manning for the Federal Trade Commission in fiscal year 1972</i>	
Commissioners' Offices.....	50
Office of Executive Director.....	160
Office of General Counsel.....	50
Office of Secretary.....	79
Policy planning and evaluation.....	8
Office of Hearing Examiners.....	23
Bureau of Competition.....	210
Bureau of Consumer Protection.....	300
Bureau of Economics.....	154
Field offices.....	428
Total.....	1,462

As indicated in earlier testimony, the Commission proposes a manning level of 77 in fiscal year 1972 for our flammable fabrics activities.

Mr. Moss. There being no further questions, Mr. Chairman, I want to express the appreciation of the subcommittee to you and the members of your staff for your appearance here today.

Mr. KIRKPATRICK. Thank you, sir, for your invitation and attention.

Mr. Moss. The subcommittee will stand adjourned.

(Whereupon, at 10:50 a.m., the subcommittee was adjourned.)

