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CONSUMER PRODUCT SAFETY ACT OF 1971

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HEARINGS

BEFORE THE

COMMITTEE ON COMMERCE

UNITED STATES SENATE

NINETY-SECOND CONGRESS

FIRST SESSION

ON

S. 983

TO PROTECT CONSUMERS AGAINST UNREASONABLE RISK OF INJURY FROM HAZARDOUS PRODUCTS AND FOR OTHER PURPOSES

S. 1685

TO PROVIDE FOR THE ESTABLISHMENT AND ENFORCEMENT OF CERTAIN INTERIM SAFETY STANDARDS FOR POWER ROTARY LAWNMOWERS

S. 1797

TO PROTECT THE PUBLIC HEALTH AND SAFETY BY REDUCING THE RISKS OF DEATH, ILLNESS, AND INJURY ASSOCIATED WITH THE USE OF CONSUMER PRODUCTS

JULY 19, 21, 22, 23, AND 26, 1971

Serial No. 92–27

PART 1

Printed for the use of the Committee on Commerce

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U.S. GOVERNMENT PRINTING OFFICE

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CONSUMER PRODUCT SAFETY ACT OF 1971

MONDAY, JULY 19, 1971

U.S. SENATE,
COMMITTEE ON COMMERCE,
Washington, D.C.

The committee met, pursuant to notice, at 9:30 a.m., in room 5110, New Senate Office Building, Hon. Frank E. Moss, presiding.

Present: Senators Moss, Prouty, Cook, and Stevens.

OPENING STATEMENT OF SENATOR MOSS

Senator Moss. The committee will come to order.

We are opening hearings this morning on S. 983 and S. 1797, consumer product safety legislation and S. 1685, concerning power lawn mower safety.

I would like to say at the opening that if ever there was an idea whose time had come it is the idea which forms the bedrock of the legislation before us this morning: The manifest need for comprehensive, strong, effective product safety legislation.

The Product Safety Commission has delivered to us volume after volume of data, case study, and analysis. It has charted the treacherous shoals upon which virtually all past and present safety regulatory programs have foundered, and it has tendered us a course for action.

And while there are significant differences between the legislation sponsored by Chairman Magnuson and myself (S. 983) and the administration's proposal (S. 1797), I sense no essential conflict in our objectives. Neither bill attains perfection. We will, I am confident, be able to draw upon the strongest points of each in shaping the ultimate legislation. In fact, in our preliminary discussions with the administration we have encountered openness and flexibility as to the means of achieving our shared objectives.

For my own part I intend to be guided in these hearings and in the executive deliberations by the lessons which our committee's own experience in product safety has taught and which the investigations of the Commission have illuminated. Before we begin, I would like to briefly indicate what I believe these lessons to be:

(1) Consumer safety programs have, in the past, suffered from a chronic lack of independence from political and economic pressures. This has resulted in a dilution of the effectiveness of the product safety laws. Tough standards formulated within a department are sent upstairs. By the time these standards find their way through the labyrinth of the Secretary's Office, the Office of Management and

Staff member assigned to these hearings: S. Lynn Sutcliffe.

Budget, and perhaps even the west wing of the White House, the final standards bears little resemblance to the initial consumer oriented proposal.

(2) But deliberate efforts to deny the efficacy of product safety laws have not been as devastating to our product safety programs as the budget and appropriations process that has consistently starved product safety programs. The Department fails to fight for adequate funds; OMB consistently pairs whatever departmental request is made; and finally the Congress is less than diligent in insuring that the product safety programs it passes are given the appropriations they need.

(3) While industry, through its voluntary standards organizations, possesses great technical know-how to contribute to the development of safety standards, the delegation of safety standards responsibility to voluntary standards organizations or reliance on those standards by the Government results in chronically inadequate, lowest common denominator standards.

(4) In its zeal to afford industry procedural safeguards, Congress has too often in legislation frozen the regulatory process in procedural molasses.

(5) Past consumer safety programs have lacked the comprehensive data base essential to enlightened standard setting. What is needed is both a comprehensive injury alert surveillance system and sophisticated design and engineering know-how to translate safety needs into sophisticated, adequate safety performance standards.

(6) Categorical programs—toy safety, flammable fabrics, refrigerator safety, poison prevention packaging, hazardous substances, electronic product radiation—are vestiges of Congress' past inability to proceed except by halting steps to meet only the most obvious or well publicized hazards—usually long after charred or mutilated bodies have begun to pile up.

The time has plainly arrived to establish a comprehensive safety program with full authority to move to head off any unreasonable product safety hazard, no matter what product, no matter what hazard—immediately by banning, if necessary—deliberately, but without needless delay, to set a minimum safety performance standard, where appropriate.

(7) We have learned that secrecy is the ally of stagnant bureaucracy, the enemy of regulation grounded in the public interest. Protection of true trade secrets is a valid objective where precisely circumscribed. But with this narrow exception, all of the other processes which make up the regulatory machinery must be wide open to public scrutiny.

(8) Congress and the public must be kept fully informed and made welcome as participants in the regulatory process. We've learned that the voice of the citizen consumer must be granted at least equal access to the regulatory process as industry. The standards setting process must of course guarantee to affected industries the right to be heard and to have assurance that its presentations of fact and argument are seriously considered. Equally, citizen advocates both within and without government must have access to the regulators, so that

consumer safety does not grow into a partnership of convenience between the regulator and the regulated, with the public interest subverted, and all but forgotten.

(9) It is not enough that an agency have the power to set adequate safety standards. It must have the powers and the resources to assure that the standards are being met. The power to obtain access to relevant records and to inspect manufacturing premises where that is necessary to compliance are critical requisites.

(10) The agency must have available to it a range of sanctions which will reflect the range of culpability from simple negligence to the intentional violation of safety standards. To those who have taken the position in the past that criminal sanctions are not appropriate for legislation dealing with business executives, I say that the evidence demonstrates that they are tragically wrong. Under competitive pressure even the very largest of manufacturing enterprises is unhappily capable of placing individuals in positions of executive responsibility who will knowingly allow hazardous products to reach the market. It is not enough to fine a corporation. Those individuals responsible must be subject to suitable penalties.

We have a great opportunity to benefit from the legislative experience of the past. If we do our work well, if we never lose sight of the reality of human misery inflicted by needless, avoidable product injuries, then we may finally achieve the level of performance in product safety that we have been promising American consumers for some years.

That is a somewhat lengthy opening statement, but it summarizes much of what we have been trying to get at in this committee for sometime past.

I am very pleased that the Senator from Kentucky, Mr. Cook, the ranking member of the Consumer Subcommitte is with us this morning.

Do you have any opening comments to make, Senator Cook?

Senator Cook. Mr. Chairman, because of the schedules, I am sure of everybody here, I have a very short statement, and I will submit it for the record.

Senator Moss. It may be printed at this point in the record in full.

Senator Cook. Mr. Chairman, in the past we have tackled product safety on a piecemeal basis. Finally we have laid the ground work for overall product safety legislation and I am confident that we can have a bill on the Senate floor in a matter of weeks.

Unlike some proposed legislation, the need for an omnibus product safety law appears to be well documented. Not only has this committee had considerable experience in safety legislation—from automobiles through toys—but also the committee's creation of the National Commission on Product Safety provided the hard data necessary for consideration in developing a meaningful and workable law.

I know that Senator Cotton, who as a sponsor of the legislation setting up the National Commission on Product Safety and has a continuing interest in product safety, is disappointed that he is unable to be here this morning. Mr. Elkind, who is scheduled to testify, will recall that when the Commission presented its final report to the com-

mittee Senator Cotton expressed the hope that generic standards might be developed so as to apply to entire classes of products. I am sure that we will get into that subject again as these hearings progress.

My distinguished colleague from New Hampshire and I also intend to carefully examine how safety standards will apply to imports and exports.

Mr. Chairman, product safety is not a partisan political issue. I think S. 1797, which was developed by the administration after the bill suggested by the Commission, demonstrates that all of us want a strong omnibus product safety law. I am confident that with the help of the witnesses scheduled for these hearings we can fashion an effective piece of legislation so as to eliminate the needless injuries that result from unsafe consumer products.

Thank you.

(The bills and agency comments follow:)

92D CONGRESS
1ST SESSION

S. 983

IN THE SENATE OF THE UNITED STATES

FEBRUARY 25 (legislative day, FEBRUARY 17), 1971

Mr. MAGNUSON (for himself and Mr. Moss) introduced the following bill; which was read twice and referred to the Committee on Commerce

A BILL

To protect consumers against unreasonable risk of injury from hazardous products and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Consumer Product Safety Act of 1971."

FINDINGS AND PURPOSES

SEC. 2. (a) The Congress hereby finds—

(1) the public has a right to be protected against risk of death or injury from hazardous consumer products when such hazards can reasonably be eliminated or minimized;

(2) unacceptable numbers of hazardous consumer products now affect interstate commerce;

(3) the increasing number and complexity of consumer products make it essential to act promptly to avoid unnecessary death and injury in the future;

(4) complexities of modern consumer products and the diverse nature and abilities of consumers using them frequently result in an inability of users to anticipate hazards and to safeguard themselves adequately;

(5) voluntary efforts by industry to develop means of preventing the sale of unsafe products, while sometimes contributing to consumer safety, often have not been adequate to protect consumers;

(6) preservation of free competition precludes enforcement of voluntary product safety standards by private groups; and

(7) the production and sale of consumer products generally affect interstate commerce, making control of unreasonable hazards by State and local governments inadequate and often burdensome to manufacturers.

(b) The purposes of this Act are—

(1) to protect the public against unreasonable product hazards to their health and safety;

(2) to assist consumers in evaluating the comparative safety of consumer products;

(3) to aid manufacturers of consumer products by encouraging industry to develop uniform safety standards for consumer products and by minimizing conflicting State and local regulations; and

(4) to promote research and investigation into the causes and prevention of product-related deaths and injuries.

CONSUMER PRODUCT SAFETY COMMISSION

SEC. 3. (a) A Commission is hereby created and established, to be known as the Consumer Product Safety Commission (hereinafter referred to as the "Commission"), consisting of five Commissioners who shall be appointed by the President, by and with the advice and consent of the Senate, one of whom shall be designated by the President as Chairman. The Chairman shall be the principal executive officer of the Commission and, when so designated, shall act as Chairman until the expiration of his term of office. Any member of the Commission may be removed by the President for neglect of duty or malfeasance in office but for no other cause.

(b) The Commissioners first appointed under this section shall continue in office for terms of one, two, three, four, and five years, respectively, from the date of the enactment of this Act, the term of each to be designated by the President at the time of nomination. Their successors shall be appointed

each for a term of five years from the date of the expiration of the term for which his predecessor was appointed and until his successor is appointed and has qualified, except that he shall not so continue to serve beyond the expiration of the next session of Congress subsequent to the expiration of said fixed term of office and except that any person appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed only for the unexpired term.

(c) Not more than three of the Commissioners shall be appointed from the same political party. No person in the employ of, or holding any official relation to, any person, firm, association, or corporation engaged in selling or manufacturing consumer products or owning stock or bonds of substantial value in such a firm, association, or corporation or who is in any other manner pecuniarily interested in such a firm, association, or corporation, or a substantial supplier thereof, shall enter upon the duties of or hold the office of Commissioner. Commissioners shall not engage in any other business, vocation, or employment.

(d) No vacancy in the Commission shall impair the right of the remaining Commissioners to exercise all the powers of the Commission. Three members of the Commission shall constitute a quorum for the transaction of business. The Commission shall have an official seal of which judicial

notice shall be taken. The Commission shall annually elect a Vice Chairman to act in the absence or in case of the disability of the Chairman or in case of a vacancy in the office of the Chairman.

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

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

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

(2) a list of consumer product safety standards in

effect in such year, with identification of standards newly added during such year;

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

(4) a summary of outstanding problems confronting the administration of this Act in order of priority;

(5) analysis and evaluation of consumer product safety research activities completed and in progress as a result of Government and/or private sponsorship and technical progress achieved during such year;

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

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

(8) the extent of cooperation between Commission officials and representatives of industry and other interested parties in the implementation of this Act, including a log or summary of meetings held between Commission officials and representatives of industry and other interested parties; and

(9) an appraisal of significant actions of State and

local governments relating to the responsibilities of the Commission.

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

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

CONSUMER SAFETY ADVOCATE

SEC. 4. There shall be an independent safety advocate to the Commission, appointed by the President, with the advice and consent of the Senate, for a term of seven years. The independent safety advocate shall be known as the Consumer Safety Advocate, shall represent the interests of consumers before the Commission, and shall have the following additional authority and responsibility:

(a) to receive and act upon complaints from the

public, Congress, or the executive agencies regarding actions or inactions by the Commission;

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

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

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

(e) to recommend modification of any proposed regulation, order, or standard;

(f) to request the development of a regulation or standard by the Commission;

(g) to request commencement of other proceedings by the Commission;

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

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

INJURY INFORMATION CLEARINGHOUSE

SEC. 5. (a) The Commission shall establish and operate an injury information clearinghouse to collect, investigate,

analyze, and disseminate information relating to the causes and prevention of product-related injuries to consumers. The Commission may, under the provisions of section 31 utilize the facilities and personnel of State and local governments to collect, investigate, analyze, and disseminate such data.

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

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

(1) conduct research and investigation into the safety of consumer products;

(2) conduct studies on improvement of consumer products;

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

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

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

(d) The Commission is authorized to carry out the

functions described in this section by making grants or entering into contracts for the conduct of such functions with governmental entities, private organizations, or individuals.

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

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

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

COMMISSION PRIORITIES

SEC. 6. The Commission shall annually evaluate information obtained by it for the purpose of establishing an order

of priorities for its informational, educational, and regulatory activities. After such evaluation the Commission shall publish in the Federal Register a list of the categories of consumer products which it believes warrant primary attention, with the reasons therefor. The Commission may from time to time add to, delete from, or modify such list of priorities. The failure to include category of products in such list of priorities shall not preclude Commission action with respect thereto.

CONSUMER PRODUCT SAFETY STANDARDS

SEC. 7. The Commission shall have authority to promulgate consumer product safety standards or other regulations for consumer product safety including—

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

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

CONSUMER PRODUCT SAFETY STANDARDS—PROCEEDINGS BY COMMISSION

SEC. 8. (a) Whenever the Commission finds that a consumer product safety standard or other regulation authorized by section 7 is necessary to prevent or reduce risk of death or personal injury to the public from an identified product hazard, the Commission shall commence a proceeding for the development of such a standard or regulation.

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

The notice shall state—

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

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

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

(c) If, within such period, a person or organization offers to develop such a proposed standard or regulation and the

Commission determines that such person or organization—

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

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

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

(d) If, within such period, a proposed consumer product safety standard or regulation is developed by such person or organization, the Commission shall resume its proceeding

and shall take such proposed standard or regulation into consideration, along with the views of its staff, prior to publishing a proposed consumer product safety standard or regulation in the Federal Register. A consumer product safety standard or regulation shall thereafter be published within sixty days of submission of such proposed standard unless the Commission, for good cause shown, finds an extension of such period is in the public interest and publishes its reasons for such determination. Such standard or regulation shall include a finding that the Commission determines it is reasonably necessary to prevent or reduce unreasonable risk of death or personal injury to the public from the hazard described.

(e) If no person or organization offers and is authorized by the Commission to develop such a proposed consumer product safety standard or regulation, the Commission shall publish a consumer product safety standard or regulation within one hundred and eighty days of the publication of the notice commencing the proceeding unless the Commission, for good cause shown, finds an extension of such period is in the public interest and publishes its reasons for such determination. Such standard or regulation shall include a finding that the Commission determines it is reasonably necessary to prevent or reduce unreasonable risk of death or personal injury to the public from the hazard described.

(f) Each consumer product safety standard or regula-

tion shall specify the date such standard or regulation is to take effect not exceeding ninety days from the date issued, unless the Commission finds, for good cause shown, that a later effective date is in the public interest and publishes its reasons for such finding.

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

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

(i) Section 553 of title 5, United States Code, shall

apply to all proceedings for the purpose of establishing, amending, or revoking a consumer product safety standard or other regulation pursuant to this Act.

CONSUMER PRODUCT SAFETY STANDARDS—IMMINENT HAZARDS

SEC. 9. Whenever the Commission makes the findings specified in section 8 (a) and, in addition, at any time finds (1) that such identified product hazard presents an imminent risk to public health or safety and (2) the consumer product in question is already being distributed, or is about to be distributed in interstate commerce, the Commission may issue an interim consumer product safety standard or regulation and make such standard or regulation effective immediately or within such time as the Commission deems necessary in the public interest. The Commission shall specify such findings in a Federal Register notice promulgating such interim standard or regulation, and such findings shall be subject to judicial review pursuant to section 28. In any such review proceeding an interim standard or regulation of the Commission shall be sustained unless the party asserting its invalidity establishes by clear and convincing proof that it is arbitrary. In the event the Commission issues an interim consumer product safety standard or other regulation, it shall commence and complete a proceeding under section 8 with reasonable promptness.

CONSUMER PRODUCT SAFETY STANDARDS—PETITION BY INTERESTED PARTY

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

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

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

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

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

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

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

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

NEW PRODUCTS

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

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

SUITS BY COMMISSION

SEC. 12. (a) Whenever the Commission shall have reason to believe that a make, model, or type of consumer product incorporating an identified product hazard is being marketed or is about to be marketed, it is authorized to commence an action for temporary and permanent injunctive relief with respect to such consumer product in an appropirate Federal district court.

(b) Such a proceeding by the Commission shall be commenced by the filing of a complaint setting forth the

facts which establish that the marketing of such consumer product presents or may present an unreasonable risk of death or personal injury to the public and the nature of injunctive relief which the Commission believes is necessary with respect thereto.

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

(d) The Commission may commence such actions in any district court in the United States in a district where any act, omission, or transaction constituting the alleged violation occurred, or is threatened, or in such court for the district wherein the defendant is found or transacts business. In such cases, process may be served in any other district in which the defendant is an inhabitant or wherever the defendant may be found.

INJUNCTIVE RELIEF

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

(b) Those procedures which may be the subject of

an affirmative order of the court pursuant to this section may include—

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

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

(iii) procedures for adequate product design and performance;

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

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

(vi) procedures for adequate quality control.

BANNED HAZARDOUS PRODUCTS

SEC. 14. (a) Whenever the Commission finds—

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

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

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

the Commission may, by regulation pursuant to section 553 of title 5, United States Code, declare such product a banned hazardous product.

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

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

PRODUCT SAFETY ADVISORY COUNCIL

SEC. 15. (a) The Commission shall establish a Product Safety Advisory Council which it may consult before pre-

scribing a consumer product safety standard or other regulation. The Council shall be appointed by the Commission and shall be composed of fifteen members, each of whom shall be qualified by training and experience in one or more of the fields applicable to the safety of products within the jurisdiction of the Commission. The Council shall be constituted as follows:

(1) five members shall be selected from governmental agencies including Federal, State, and local governments;

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

(3) five members shall be selected from among consumer organizations, community organizations, and recognized consumer leaders.

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

(c) Members of the Council who are not officers or employees of the United States and members of any ad hoc advisory committees created pursuant to subsection (d) shall, while attending meetings or conferences of the Council

or while otherwise engaged in the business of the Council, be entitled to receive compensation at a rate fixed by the Commission, not exceeding $100 per diem, including travel-time, and while away from their homes or regular places of business they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code. Payments under this subsection shall not render members of the Council officers or employees of the United States for any purpose.

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

NOTIFICATION OF DEFECTS; REPAIR OR REPLACEMENT OF HAZARDOUS PRODUCTS

SEC. 16. (a) Every manufacturer of consumer products who discovers or acquires information tending to show that—

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

(2) a consumer product produced, assembled or imported by him on or after the effective date of an applicable standard or regulation prescribed pursuant to sections 8, 9, or 14 fails to comply with such standard or regulation,

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

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

(c) If, in the opinion of such manufacturer the defect or failure to comply (i) is not such as to create a substantial risk of personal injury, or (ii) a special limited form of notice is appropriate, or (iii) the Commission and not the manufacturer should furnish and pay for the notification specified, he may, at the time of giving notice to the Commission of such defect or failure to comply, apply to the Commission for a partial or complete exemption from the requirement of no-

tice specified in subsection (d). If such application states grounds for such exemption, the Commission may afford such manufacturer an opportunity to present his views in support of the application, the burden of proof being on the manufacturer. Where the Commission determines it is in the public interest it may publish notice of such application in the Federal Register and afford interested parties, including consumers, an opportunity to comment thereon. If, after such presentation, the Commission for good cause shown finds (1) that such defect or failure to comply is not such as to create a substantial risk of injury and (2) that exemption would be in the public interest, it may exempt such manufacturer from the requirement of notice to the persons specified in subsection (d) of this section or from the requirements of repair, refund, or replacement imposed by subsection (h) of this section: *Provided*, That it shall publish its reasons for such findings in the Federal Register. If, after such presentation the Commission, for good cause shown, finds that a special limited form of notice is appropriate or that it is in the public interest that the Commission furnish the notification specified, it may grant such partial or complete exemption from subsection (d) and shall publish its reasons for such finding in the Federal Register.

(d) The notification, other than to the Commission,

required by subparagraph (a) of this section shall be accomplished—

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

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

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

(f) Every manufacturer of consumer products shall furnish to the Commission a true copy of all notices, bulletins, and other communications to dealers or distributors of such manufacturer or to purchasers, or subsequent transferees, of consumer products of such manufacturer regarding any such defect in such product or any failure to comply with a standard, regulation, or order applicable to such product. The Commission shall disclose to the public so much of the

information contained in such notices or other information in its possession as it deems will assist in carrying out the purposes of this Act, but it shall not disclose any information which contains or relates to a trade secret unless it determines that it is necessary to carry out the purposes of this Act.

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

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

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

and if the Commission determines that notification or other remedies provided under this section are appropriate, it shall notify the manufacturer of the product of such defect or failure to comply. The notice shall contain the findings of the Commission and shall include a synopsis of the information upon which the findings are based. Unless the Commission determines that delay will unreasonably harm the public health and safety, it shall afford such manufacturer an opportunity to present his views to establish that there is no failure of compliance or that the alleged defect does not exist or does not create a substantial risk of personal injury. Where the Commission determines it is in the public interest, it may

publish notice of such proceeding in the Federal Register and afford interested parties, including consumers, an opportunity to comment thereon. If after such presentation by the manufacturer the Commission determines that such product does not comply with an applicable standard or regulation, or that it contains a defect which creates a substantial risk of personal injury, the Commission may direct the manufacturer to furnish the notification specified in subsection (e) of this section to the persons specified in subparagraph (d) of this section. The Commission may in its discretion use the sanctions provided by section 25, 26, or 27 of this Act with or without utilizing the procedures specified in this section.

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

(1) without charge, bring such product into conformity with such standard or regulation, or remedy such defect and provide reimbursement for any expenses, including transportation expenses incurred in connection with having such product brought into conformity or having such defect remedied, or

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

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

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

PRODUCT CERTIFICATION AND LABELING

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

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

(c) The Commission may by rule or regulation require the use and prescribe the form and content of labels which,

where practicable, may be required by the Commission to be permanently affixed to any consumer product and which shall furnish to the extent practicable the information specified in this section.

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

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

INSPECTION AND RECORD KEEPING

SEC. 18. (a) The Commission is authorized to conduct such inspection and investigation as may be necessary to implement this Act and regulations and standards prescribed

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

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

(1) to enter, at reasonable times, any factory, warehouse, or establishment in which consumer products or component parts thereof are manufactured, assembled, or held for sale after such introduction; and

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

(c) Every manufacturer of consumer products or component parts thereof shall establish and maintain such records, make such reports, and provide such information as the Commission may reasonably by regulation require. Establishment

and maintenance of records of purchasers of products, product design, testing, quality control, defects, and claims for five years, shall not be deemed unreasonable. Upon request of an officer or employee duly designated by the Commission, every such manufacturer shall permit the inspection of appropriate books, records, and papers relevant to determining whether such manufacturer has acted or is acting in compliance with this Act and regulations and standards prescribed pursuant hereto.

(d) The Commission or its representatives shall not disclose any information reported to, or otherwise obtained by it pursuant to this section which contains or relates to a trade secret unless it determines that it is necessary to carry out the purposes of this Act. Such information may be disclosed to other officers or employees of the United States concerned with carrying out this Act or, when relevant in any administrative or judicial proceeding under this Act, Nothing in this section shall authorize the withholding of information by the Commission or by any officer or employee under his control from the duly authorized Committees of Congress.

ADDITIONAL POWERS OF COMMISSION

SEC. 19. (a) The Commission, or any two members thereof as authorized by the Commission, may conduct hearings anywhere in the United States or otherwise secure

data and expressions of opinion pertinent to the safety of consumer products. The Commission shall publish notice of any proposed hearing in the Federal Register and shall afford a reasonable opportunity for interested persons to present relevant testimony and data.

(b) The Commission shall also have the power—

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

(2) to administer oaths;

(3) to require by subpena the attendance and testimony of witnesses and the production of all documentary evidence relating to the execution of its duties;

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

(5) in any proceeding or investigation to order testimony to be taken by deposition before any person who is designated by the Commission and has the power to administer oaths and, in such instances, to compel testimony and the production of evidence in the same

manner as authorized under paragraphs (3) and (4) of this subsection; and

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

(c) Any district court in the United States within the jurisdiction of which any inquiry is carried on may, upon petition by counsel for the Commission, in case of refusal to obey a subpena or order of the Commission issued under subsection (b) of this section, issue an order requiring compliance therewith; and any failure to obey the order of the court may be punished by the court as a contempt thereof.

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

(e) Every manufacturer of consumer products or component parts thereof shall provide to the Commission such performance and technical data related to performance and safety as may be required to carry out the purposes of the

Act. The Commission is authorized to require the manufacturer to give such notification of such performance and technical data at the time of original purchase to prospective purchasers and to the first purchaser of such product, for purposes other than resale, as it determines necessary to carry out the purposes of this Act.

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

(g) The Commission is authorized to enter into contracts with governmental entities, private organizations or individuals for the conduct of activities authorized by this Act.

(h) The Commission is authorized to establish such policies, criteria, and procedures and to prescribe such rules and regulations as it deems necessary to administration of this Act and its functions hereunder. Unless otherwise specified the provisions of title 5, United States Code, section 553 shall apply to such proceeding.

COOPERATION WITH FEDERAL AGENCIES

SEC. 20. The Commission is authorized to obtain from any Federal department or agency such statistics, data, program reports, and other materials as it may deem necessary to carry out its functions under this Act. Each such depart-

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

IMPORTED PRODUCTS

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

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

(1) such product shall be refused admission, and

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

(c) If it appears to the Commission that any consumer product refused admission pursuant to subsection (a) of this section can be brought into compliance with applicable regulations, standards, or orders, final determination as to the admission of such product may be deferred, and the Commission may permit the applicant to perform such operations to bring such product into conformity. The Commission may by regulation prescribe the means of compliance with this subsection, including execution of a sufficient bond for payment of damages and expenses incurred with respect to the imported product.

(d) It shall be the duty of every manufacturer offering a consumer product for importation to the United States to designate in writing an agent upon whom service of all administrative and judicial process may be made and to file such designation with the Commission. Such designation shall be public and may from time to time be changed by like writing similarly filed. Service of all administrative and judicial processes, notices, orders, decisions, and require-

ments may be made upon said manufacturer by service upon such designated agent with like effect as if made personally upon said manufacturer. In default of such designation, the Commission or any court of the United States may effect service of process upon such manufacturer by posting such process, notice, order, requirement, or decision in the office of the Executive Director of the Commission.

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

EXPORTED PRODUCTS

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

ANTITRUST LAWS

SEC. 23. Nothing contained in this Act shall be deemed to exempt from the antitrust laws of the United States any conduct that would otherwise be unlawful under such laws.

PROHIBITED ACTS

SEC. 24. (a) It shall be unlawful for any person to—

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

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

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

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

(5) fail to comply with the requirements of section 16(h) with respect to repair, replacemnet, or refund of certain consumer products; or

(6) fail to furnish a certificate required by section

17 or issue a false certificate if such person in the exercise of due care has reason to know that such certificate is false or misleading in any material respect.

(b) Paragraphs (1) and (2) of section (a) shall not apply to any person who, prior to the first purchase of such consumer product, holds a certificate issued by the manufacturer or importer of such consumer product to the effect that such consumer product conforms to all applicable Federal regulations and safety standards, unless such person knows that such consumer product does not conform.

CIVIL PENALTIES

SEC. 25. (a) Any person who violates section 24 of this Act shall be subject to a civil penalty not to exceed $2,000 for each such violation. A violation of sections 24 (a) (1), (2), (4), (5), and (6) shall constitute a separate violation with respect to each consumer product involved, except that the maximum civil penalty shall not exceed $500,000 for any related series of violations. A violation of section 24 (a) (3) shall constitute a separate violation with respect to each failure or refusal to allow or perform an act required thereby. If such violation is a continuing one, each day of such violation shall constitute a separate offense, except that the maximum civil penalty shall not exceed $500,000 for any related series of violations.

(b) Any such civil penalty may be compromised by the

Commission. In determining the amount of such penalty or whether it should be remitted or mitigated and in what amount, the appropriateness of such penalty to the size of the business of the person charged and the gravity of the violation shall be considered. The amount of such penalty when finally determined, or the amount agreed on compromise, may be deducted from any sums owing by the United States to the person charged.

CRIMINAL PENALITIES

SEC. 26. Any person who knowingly or willfully violates section 24 of this Act shall be guilty of a misdemeanor and upon conviction thereof shall be fined not more than $50,000 or imprisoned not more than one hundred and eighty days or both, in the discretion of the court, provided that nothing herein shall limit other provisions of this Act.

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

ENFORCEMENT

SEC. 27. (a) The district courts of the United States shall have jurisdiction to enforce the provisions of section 24 of this Act. Such actions may be brought in any district court

of the United States for a district wherein any act, omission, or transaction constituting the violation occurred, or in such court for the district wherein the defendant is found or transacts business. In such cases process may be served in any other district in which the defendant is an inhabitant or wherever the defendant may be found.

(b) The district courts of the United States shall have jurisdiction, for cause shown, to restrain violations of section 24, except when such products are disposed of by returning them to the distributor or manufacturer from whom they were obtained.

(c) Any consumer product that fails to conform to an applicable consumer product safety standard or regulation or which has been declared a banned hazardous product pursuant to section 14 of this Act, when introduced into or while in interstate commerce or while held for sale after shipment in interstate commerce shall be liable to be proceeded against on libel of information and condemned in any district court of the United States within the jurisdiction of which such consumer product is found. Proceedings in cases instituted under the authority of this section shall conform as nearly as possible to proceedings in rem in admiralty. Whenever such proceedings involving identical consumer products are pending in two or more jurisdictions they shall be consolidated for trial by order of any such court upon

application seasonably made by any party in interest upon notice to all other parties in interest.

JUDICIAL REVIEW

SEC. 28. (a) In a case of actual controversy over the validity of any Commission order—

(1) issuing, amending, or revoking a consumer product safety standard or regulation pursuant to section 8 or 9,

(2) declaring a product to be a banned hazardous product under section 14,

(3) granting or denying an exemption under section 16, or

(4) issuing, amending, or revoking any other final regulation or order under this Act,

any person who will be adversely affected by such regulation or order, including any consumer or group of consumers, may at any time prior to the sixtieth day after such order is issued file a petition with the United States Court of Appeals for the circuit wherein such person resides or has his principal place of business for judicial review of such order. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Commission. The Commission thereupon shall file in the court the record of the proceedings upon which it based its order, as provided in section 2112 of title 23 of the United States Code.

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

(c) Upon the filing of the petition referred to in subsection (a) of this section, the court shall have the jurisdiction to review the order in accordance with sections 701–706 of title 5 of the United States Code and to grant appropriate relief as provided in such sections.

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

(e) The remedies provided for in this section shall be

in addition to and not in substitution for any other remedies provided by law.

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

PRIVATE REMEDIES

SEC. 29. (a) Compliance with consumer product safety standards, regulations, or orders under this Act shall not relieve any person from liability at common law or under State law to any other person.

(b) Evidence that an entire finished product complies with regulations or standards issued by the Commission shall be inadmissible in any private litigation except an action to recover treble damages pursuant to section 30.

(c) The failure of the Commission to take any action or commence a proceeding with respect to the safety of a consumer product shall not be admissible in evidence in litiga-

tion at common law or under State law relating to such consumer product.

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

SUITS FOR TREBLE DAMAGES BY PERSONS INJURED

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

FEDERAL-STATE COOPERATION

SEC. 31. (a) The Commission shall promote Federal-State cooperation for the purpose of reducing or eliminating unreasonable risk of injury to the public from identified prod-

uct hazards. In implementing such program the Commission may—

(i) accept from any State or local authorities engaged in activities relating to health, safety, or consumer protection assistance in such functions as injury data collection, investigation, and educational programs, as well as other assistance in the administration and enforcement of this Act which it may request and which such States or localities may be able and willing to provide and, if so agreed, may pay in advance or otherwise for the reasonable cost of such assistance, and

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

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

EFFECT ON STATE STANDARDS

SEC. 32. (a) Whenever a consumer product safety standard or regulation established under this Act is in effect, no State or political subdivision of a State shall have any

authority either to establish or to continue in effect any safety standard or regulation applicable to the same aspect of performance of such consumer product which is not identical to the Federal standard.

(b) Nothing in this section shall be construed to prevent the Federal Government or the government of any State or political subdivision thereof from establishing a safety requirement applicable to a consumer product for its own use if such requirement imposes a higher standard of performance than that required to comply with the otherwise applicable Federal standard.

(c) The Commission may, upon application of a State or political subdivision thereof, exempt such application from the provisions of subsection (a) where a proposed standard or regulation (1) imposes a higher level of performance than the Federal standard, (2) is required by compelling local conditions, and (3) does not unduly burden interstate commerce.

DEFINITIONS

SEC. 33. (a) "Commission" means the Consumer Product Safety Commission.

(b) "Consumer product" means any product, or component part, which affects interstate commerce and is customarily produced or distributed for sale (i) to a consumer

for use in or around a household or residence, or (ii) for the personal use, consumption, or enjoyment of a consumer. Such term does not include hazards associated with such products to the extent such hazards are subject to duly promulgated regulations under the National Traffic and Motor Vehicle Safety Act of 1966 (15 U.S.C. 1381 et seq.), the Flammable Fabrics Act (15 U.S.C. 1191 et seq.), the Food, Drug and Cosmetic Act (21 U.S.C. 301 et seq.), the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1331 et seq.), the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 135 et seq.), and the Radiation Control for Health and Safety Act (42 U.S.C. 262 et seq.).

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

(d) "Consumer product safety standard" means a minimum safety standard relating to a consumer product, promulgated by the Commission pursuant to section 8 or 9 of this Act for the purpose of preventing or reducing risk of death or personal injury from an identified product hazard. A consumer product safety standard establishes the minimum acceptable safety level for a consumer product. Compliance with a consumer product safety standard may or may not be evidence of adequate care to avoid death or personal injury caused by a specific consumer product.

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

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

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

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

(i) "Importation" includes reimportation of consumer products manufactured or processed, in whole or in part, in the United States.

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

INTERPRETATION AND SEPARABILITY

SEC. 34. The provisions of this Act shall be held to be in addition to and not in substitution for or limitation of the provisions of any other law. If any provision of this Act or the application thereof to any person or circumstances is held invalid, the remainder of the Act and the application of such provision to any other person or circumstances shall not be affected thereby.

AUTHORIZATION OF APPROPRIATIONS

SEC. 35. There are hereby authorized to be appropriated for the purpose of carrying out the provisions of this Act the following sums:

$5,000,000 for the fiscal year ending June 30, 1971;

$7,500,000 for the fiscal year ending June 30, 1972; and

$10,000,000 for the fiscal year ending June 30, 1973.

The foregoing sums do not apply to facilities to be constructed pursuant to section 5(g) of this Act.

EFFECTIVE DATE

SEC. 36. This Act shall take effect on the sixtieth day following the date of its enactment.

92D CONGRESS
1ST SESSION

S. 1685

IN THE SENATE OF THE UNITED STATES

APRIL 29, 1971

Mr. HUMPHREY introduced the following bill; which was read twice and referred to the Committee on Commerce

A BILL

To provide for the establishment and enforcement of certain interim safety standards for power rotary lawnmowers.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Power Rotary Mower Safety Act".

DECLARATION OF PURPOSES

SEC. 2. The Congress declares that—

(1) the National Commission on Product Safety found that the power rotary mower, the most commonly used piece of outdoor power equipment, is responsible for an increasing number of accidents and injuries;

(2) appropriate safety standards established by the

Outdoor Power Equipment Institute, designed to reduce the risk and seriousness of injuries from the use of power rotary mowers, have been revised in response to recommendations made by the National Commission on Product Safety;

(3) delay in establishing mandatory safety standards for power rotary mowers would permit the continued existence of an unnecessary hazard to the public;

(4) it is the purpose of this Act to provide for the establishment and promulgation of such mandatory safety standards for power rotary mowers in order to protect the public from unnecessary hazards from power rotary mowers which are not manufactured in accordance with such standards, and to provide such protection until other standards may be promulgated under other authority of law.

DEFINITIONS

SEC. 3. When used in this Act, the term—

(1) "power rotary mower" means a machine designed and marketed for cutting grass in residential areas, which is powered by an internal combustion, electrical, or other engine, which cuts grass by rotating one or more cutting blades around a vertical axis, and which is designed to be pushed by the operator, to be self-propelled, or (if the grass-cutting function is performed

by an attachment to, or as an integral part of, such machine) to be ridden by the operator, but does not include reel-type mowers, edgers, trimmers, clippers, shears, or other power tools ordinarily used in or around an individual's home, lawn, or garden;

(2) "interstate commerce" means commerce between any place in a State and any place in another State, or between places in the same State through another State;

(3) "State" means any of the United States, the District of Columbia, and the Commonwealth of Puerto Rico; and

(4) "Secretary" means the Secretary of Commerce.

DUTIES OF THE SECRETARY

SEC. 4. (a) The Secretary is authorized and directed to establish and promulgate within ninety days of the date of enactment of this Act safety standards applicable to power rotary mowers. Such standards shall be established in accordance with procedures which will afford interested parties notice and an opportunity for a hearing with respect to proposed standards, and shall be reviewed annually by the Secretary. The standards initially proposed shall be consistent with standards adopted by the Outdoor Power Equipment Institute in January 1971, with respect to power rotary mowers.

(b) The Secretary and the Secretary of the Treasury are authorized to enter into arrangements under which regulations may be promulgated and measures may be taken to effectuate the application of this Act to power rotary mowers imported into the United States. Such power rotary mowers may not be exempted from the application of this Act under this subsection.

COMPLIANCE WITH STANDARDS

SEC. 5. (a) It shall be unlawful to manufacture for sale, offer for sale, sell, assemble, introduce, or deliver for introduction into interstate commerce or in a manner affecting interstate commerce, or import into the United States any power rotary mower manufactured on or after a date sixty days after the date on which safety standards are promulgated under section 4 which fails to meet such standards.

(b) Each manufacturer of power rotary mowers shall permanently affix to any such mower manufactured on or after the date on which such standards are applicable to any power rotary mower under subsection (a) a certification that such mower meets the applicable safety standards in effect on its date of manufacture.

(c) The requirements of this section shall not apply to the sale of or offer to sell any power rotary mower after the first purchase thereof in good faith for purposes other than resale.

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PENALTIES

SEC. 6. (a) Violation of the provisions of section 5 shall be punishable by a civil penalty not to exceed $2,000 for each violation, except that the maximum civil penalty shall not exceed $50,000 for any related series of violations. Each power rotary mower sold or offered for sale in violation of such provisions shall constitute a separate violation for purposes of this subsection.

(b) Intentional violation of such provisions shall be punishable by a fine of not to exceed $50,000 or imprisonment for not to exceed one hundred and eighty days, or both.

ENFORCEMENT

SEC. 7. The district courts of the United States shall have jurisdiction to enforce the provisions of sections 5 and 6 of this Act and to restrain violations of section 5 thereof. The Secretary may bring an action to enforce such provisions in any district court of the United States for a district in which any act, omission, or transaction constituting the violation, occurs, or in any district in which the defendant is found or transacts business. If the sale of any type of power rotary mower which is in violation of section 5 constitutes an imminent hazard to individuals, the court may order a recall or seizure of such mowers at the expense of the manufacturer or importer thereof, under such terms and

conditions as the court determines are reasonable and will protect the public against such hazard.

TERMINATION OF PROVISIONS

SEC. 8. The provisions of this Act and safety standards promulgated thereunder shall have no force or effect after the date on which the Secretary determines that other Federal product safety standards promulgated under any other provision of Federal law are applicable to power rotary mowers, except that no prosecution for violation of the provisions of this Act or the standards promulgated thereunder with respect to which an action or appeal from a conviction therefor is pending shall abate due to the operation of this section.

92D CONGRESS
1ST SESSION

S. 1797

IN THE SENATE OF THE UNITED STATES

MAY 6, 1971

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

A BILL

To protect the public health and safety by reducing the risks of death, illness, and injury associated with the use of consumer products.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Consumer Product Safety 1971".

DECLARATION OF PURPOSE

SEC. 2. The Congress hereby declares that the public must be protected from the risks of death, illness, and injury associated with the use of consumer products. It is therefore the purpose of this Act to provide for the establishment by the Secretary of Health, Education, and Welfare (herein-

after in this Act referred to as "the Secretary") of a consumer product safety program which shall include the promulgation and enforcement of product safety standards to reduce such risks to consumers of products for use in and around the household, the schools, or in recreation, or of products otherwise distributed for the personal use, consumption, or enjoyment of the consumer.

DEFINITIONS

SEC. 3. As used in this Act—

(1) the term "consumer product" means a product which is customarily produced or distributed for sale to a consumer for his personal use, consumption, or enjoyment in or around a household or residence, a school, in recreation, or otherwise; but does not include food, drugs, cosmetics, motor vehicles, economic poisons as defined by the Federal Insecticide, Fungicide, and Rodenticide Act, tobacco and tobacco products, or any product with respect to any risk to health or safety which may be subjected to regulation under the Federal Hazardous Substances Act; the Radiation Control for Health and Safety Act of 1968; the Flammable Fabrics Act; the Clean Air Act; part F of title III of the Public Health Service Act; the Act of March 4, 1913 (37 Stat. 832); the Poison Prevention Packaging Act of 1970; the Occupational Safety and Health Act of

1970; the Act of August 2, 1956 (70 Stat. 953); or the Atomic Energy Act of 1954;

(2) the term "commerce" means commerce among or between the several States, or within the District of Columbia;

(3) the term "State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Trust Territory of the Pacific Islands, or the Canal Zone; and

(4) the term "product safety standard" means a product safety standard promulgated under this Act.

COLLECTION AND DISCLOSURE OF INFORMATION ON CONSUMER PRODUCT RISKS

SEC. 4. (a) The Secretary shall collect, evaluate, and disseminate, on a continuing basis, information on the frequency and causes of death, and the types, frequency, severity, and causes of illness or injury, associated with exposure to or use of consumer products, and on means to test, measure, or evaluate the risks of death, illness, or injury associated therewith. In carrying out his functions under this section the Secretary, in addition to or in aid of the foregoing—

(1) shall collect data or perform research or studies to enable him to establish a need for product

safety standards and to evaluate their efficacy in reducing risks associated with consumer products;

(2) shall plan, conduct, coordinate, or provide technical assistance to research activities, development of methods, training of personnel, or operations, designed to minimize the risks associated with consumer products, or designed to develop means to test, measure, or evaluate such risks;

(3) shall secure information on the risks associated with consumer products from other Federal or State departments and agencies with related interests, professional organizations, industry, industry or labor associations, and other public or private agencies, organizations, or institutions;

(4) shall make available, through publications and by other appropriate means, the results of, and other information concerning, research and studies relating to the nature and extent of the risks associated with consumer products, and may include recommendations for the reduction of such risks, or information on the means of testing consumer products for risks; and

(5) may procure (by negotiation or otherwise) consumer products for research and testing purposes, and sell or otherwise dispose of such products.

(b) The Secretary is authorized to obtain from any

person by subpena issued pursuant to regulation information in the form of books, records, or other writings in his possession pertinent to the frequency or causes of death, or the types, frequency, severity, or causes of illness or injury associated with exposure to or use of consumer products. The district courts of the United States shall have jurisdiction to enforce such supenas upon application of the Attorney General. An action for such enforcement may be brought in any district court of the United States for the district wherein such person is found or transacts business.

(c) (1) Nothing contained in this Act shall be deemed to require the release of any information described by subsection (b) of section 552, title 5, United States Code, or which is otherwise protected by law from disclosure to the public. The Secretary shall not make public information obtained by him under this Act which would disclose trade secrets, formulas, processes, costs, methods of doing business, or other competitive information not otherwise available to the general public; or the names or other means of identification of ill or injured persons without their express written consent.

(2) (A) Except as provided by subparagraph (B) of this paragraph, not less than thirty days prior to his public disclosure of any information obtained under this Act, or to be disclosed to the public in connection therewith, the

Secretary shall provide such information to each manufacturer of any consumer product to which such information pertains, if the manner in which such consumer product is to be designated or described in such information will permit the public to ascertain readily the identity of such manufacturer, and shall provide such manufacturer with a reasonable opportunity to submit comments to the Secretary in regard to such information. Upon the request of such manufacturer, the Secretary shall publish such comments or a fair summary thereof, or a statement of the manufacturer of reasonable length in lieu thereof, concurrently and in association with the disclosure of the information to which such comments or statement appertain. The Secretary shall take reasonable steps to assure, prior to his public disclosure thereof, that information from which the identity of such manufacturer may be readily ascertained is accurate, and that such disclosure is fair in the circumstances and reasonable related to effectuating the purposes of this Act. If the Secretary finds that, in the administration of this Act, he has made public disclosure of inaccurate or misleading information which reflects adversely upon the safety of any consumer product, or the practices of any manufacturer of, distributor of, importer of, or dealer in consumer products, he shall, in a manner similar to that in which such disclosure was made, publish a retraction of such inaccurate or misleading information.

(B) Subparagraph (A) (except for the last sentence thereof) shall not apply to the public disclosure of (i) information about any consumer product with respect to which product the Attorney General has filed an action (or an action against a manufacturer thereof with respect to such product) under section 12, or which the Secretary has reasonable cause to believe is in violation of section 15, or (ii) information about any administrative or judicial proceeding under this Act.

(d) The Secretary shall communicate to each manufacturer of a consumer product, insofar as may be practicable, information as to any significant risk to health or safety associated with such product.

AUTHORITY TO PROMULGATE STANDARDS FOR CONSUMER PRODUCTS

SEC. 5. Whenever the Secretary finds a need for such action to reduce or eliminate unreasonable risk of death, or of serious or frequent illness or injury, associated with exposure to or use of a consumer product or any type or class of such products, he may by regulation, in accordance with the requirements of this Act, promulgate for such product, or type or class of such products, a product safety standard relating to its performance, composition, or properties (including its compatibility with systems or environments in which it is intended to be used), or relating to

two or more of such factors, or amend any such standard previously established.

INITIATION OF PROCEEDING TO PROMULGATE A PRODUCT SAFETY STANDARD

Notice of Proceeding

SEC. 6. (a) A proceeding to promulgate a product safety standard shall be initiated by the Secretary by publication in the Federal Register of a notice of proceeding. Such notice shall invite public comment with respect to the initiation of such proceeding and shall include—

(1) a description or other appropriate designation of the product or type or class of products with respect to which the proceeding is initiated;

(2) the risk or risks intended to be controlled;

(3) a summary description of the data upon which the Secretary has found a need to initiate the proceeding, and the manner, consistent with subsection (c) (1) of section 4, in which interested persons may examine such data;

(4) information with respect to any existing standard known to the Secretary which may be relevant to the proceeding; and

(5) an invitation for any person, including any Federal agency, within thirty days after the date of publication of the notice, (A) to submit to the Secre-

tary an existing standard as such proposed product safety standard; or (B) to offer to develop such proposed product safety standard in accordance with regulations of the Secretary prescribing procedures for such development.

Use of Existing Standard

(b) If the Secretary (1) finds that there exists a standard which has been published by any Federal agency or other qualified agency, organization, or institution (2) has made reference to such standard (unless it is a standard submitted pursuant to section 6(a)(5)(A)) in his notice pursuant to subsection (a)(4), and (3) determines that such standard may be substantially acceptable to him as a product safety standard, then he may, in lieu of accepting an offer pursuant to this section, publish such standard as a proposed product safety standard pursuant to section 9.

Acceptance of Offers To Develop Proposed Product Safety Standards

(c)(1) Except as provided by subsection (b), the Secretary shall accept one, and may accept more than one, offer to develop a proposed product safety standard pursuant to the invitation prescribed by subsection (a)(5)(B), upon his determination that—

(A) the offeror is technically competent and is likely to develop an appropriate standard within a reasonable period of time; and

(B) the offeror has the capacity to comply with regulations of the Secretary prescribed pursuant to section 8.

The Secretary shall publish in the Federal Register the name and address of each person whose offer he accepts, and a summary of the terms of such offer as accepted.

(2) Upon an offeror's application therefor prior to the acceptance of his offer under this subsection, the Secretary may agree to contribute to the offeror's cost in developing a proposed product safety standard, if the Secretary determines that such contribution is likely to result in a more satisfactory standard than would be developed without such contribution, and that the offeror is financially responsible. Regulations of the Secretary shall set forth the items of cost in which he may participate, and shall exclude any contribution to the acquisition of land or buildings.

DEVELOPMENT OF A PROPOSED PRODUCT SAFETY STANDARD BY THE SECRETARY

SEC. 7. If the Secretary has published a notice of proceeding as provided by section 6(a), and—

(1) he has accepted neither an existing standard pursuant to section 6(b) nor an offer to develop a proposed product safety standard pursuant to section 6(c); or

(2) he has accepted an offer pursuant to section

6(c), but determines (in accordance with such procedures as he may by regulation prescribe) that the offeror is unable or unwilling to continue satisfactorily the development of the proposed standard which was the subject of the offer or that the standard which has been developed is not satisfactory;

then the Secretary may proceed to develop a proposed product safety standard pursuant to procedures prescribed under section 8.

REGULATIONS GOVERNING DEVELOPMENT OF STANDARDS

SEC. 9. The Secretary shall prescribe regulations governing the development of proposed product safety standards under sections 6 and 7 of this Act, which regulations shall not be considered rules of agency organization, procedure, or practice for purposes of section 553 of title 5 of the United States Code. Such regulations shall include requirements—

(1) that standards recommended for promulgation be supported by test data or such other documents or materials as the Secretary may reasonably require to be developed, and be suitable for promulgation pursuant to section 9;

(2) that standards recommended for promulgation contain such test methods as may be appropriate for measurement of compliance with such standards;

(3) for opportunity by interested persons to participate in the development of such standards;

(4) for the maintenance of such records as the Secretary prescribes in such regulations to disclose the course of the development of standards recommended for promulgation, the comments and other information submitted by any person in connection with such development, including comments and information with respect to the need for such recommended standards, and such other matters as may be relevant to the evaluation of such recommended standards; and

(5) that the Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, have access for the purpose of audit and examination to any books, documents, papers, and records, relevant to the expenditure of any contribution of the Secretary, pursuant to section 6(c), to the development of such recommended standards.

PROMULGATION OF PRODUCT SAFETY STANDARDS; DECLARATION OF BANNED HAZARDOUS CONSUMER PRODUCT

Proposal To Promulgate Product Safety Standard or To Declare a Banned Hazardous Consumer Product

SEC. 9. (a) (1) Not more than two hundred and ten days after his publication of a notice of proceeding pursuant to subsection (a) of section 6 (which time may be extended

by the Secretary by a notice published in the Federal Register stating good cause therefor), the Secretary shall publish in the Federal Register either a notice withdrawing such prior notice or a proposal to promulgate a product safety standard applicable to any consumer product subject to such notice, or a proposal to declare any such subject product a banned hazardous consumer product. A proposal to promulgate a product safety standard and a proposal to declare a product a banned hazardous consumer product may be published in the alternative with respect to any consumer product subject to such notice.

(2) A proposal to promulgate a product safety standard, or to declare a product a banned hazardous consumer product, shall set forth such standard, or the reason for such declaration, the manner in which interested persons may examine data and other information upon which such standard or declaration, or need therefor, is based (consistent with subsection (c) (1) of section 4), and the period within which all interested persons may present their comments on such standard or declaration, or the need therefor, orally or in writing. In considering those of such comments applicable to a proposed standard the Secretary shall give special weight to comments which were submitted during the development of such standard.

Order To Promulgate Product Safety Standard or To Declare a Banned Hazardous Consumer Product

(b) As soon as practicable after the publication of a proposal to promulgate a product safety standard, or to declare a product a banned hazardous consumer product, the Secretary shall, by order published in the Federal Register, act upon such proposed standard or declaration, or withdraw the applicable notice of proceeding. The order shall set forth the product safety standard or declaration, if any, the reasons for the Secretary's action (including reasons for the promulgation of a product safety standard materially different than that set forth in the proposal or for his failure to promulgate any standard), and the date or dates upon which such standard or declaration, or portions thereof, shall become effective. Such date or dates shall be established so as to minimize, consistent with the public health and safety, economic loss to, and disruption or dislocation of, domestic and international trade.

Findings

(c) (1) Prior to his issuance of an order to promulgate a product safety standard pursuant to subsection (b), or to declare a product a banned hazardous consumer product pursuant to subsection (e), the Secretary shall consider, and shall make appropriate findings for inclusion in such order with respect to—

(A) data and comments submitted in the course of any proceeding under section 6 relevant to such order;

(B) the frequency and causes of death, and the types, frequency, severity, and causes of illness and injury, attributed to those aspects of the consumer products subject to such order;

(C) the approximate number of consumer products, or types or classes thereof, subject to such order;

(D) the need of the public for the consumer products subject to such order, and the probable effect of such order upon the utility, cost, or availability of such products to meet such need; and

(E) means of achieving the objective of the order with a minimal disruption or dislocation of competition and of reasonable manufacturing and other commercial practices.

(2) The Secretary shall not promulgate a product safety standard, or declare a product a banned hazardous consumer product, unless he determines, and includes such determination in the order promulgating such standard or declaration, that his findings pursuant to paragraph (1) show that such standard or declaration (including the effective date thereof) is reasonably necessary to carry out the purposes for which such standard or declaration is authorized

by section 5 or subsection (e) of this section, and that the promulgation of such standard or declaration is in the public interest.

Characteristics and Limitations of Product Safety Standards

(d) (1) Product safety standards shall, where feasible, pertain to the safety performance characteristics of consumer products, except that any such standard may apply to the composition, design, construction, finish, or packaging of the product or any component thereof if the Secretary determines such application to be in the public interest.

(2) Without regard to the limitations of paragraph (1), a product safety standard may require that the product or any component thereof be marked, tagged, or accompanied by clear and adequate warnings or instructions reasonably necessary for the protection of health or safety.

Ban of Product

(e) The Secretary may declare a consumer product to be a "banned hazardous consumer product", in accordance with the procedures of this section, only upon his finding, to be included in the Secretary's order pursuant to subsection (b), that no feasible product safety standard will adequately protect the public from unreasonable risk of death, or of serious or frequent illness or injury, associated with exposure to or use of such product. A firearm may not be declared a banned hazardous consumer product.

Disputes of Fact

(f) The Secretary may conduct a hearing in accordance with such conditions or limitations as he may make applicable thereto, for the purpose of resolving any issue of fact material to any finding required to be made by the Secretary under this section.

REVOCATION OR AMENDMENT OF STANDARD

SEC. 10. (a) The Secretary may revoke, in whole or in part, any product safety standard, upon the ground that there no longer exists a need therefor or that such standard is no longer in the public interest. Such revocation shall be published as a proposal in the Federal Register and shall set forth such standard or portion thereof to be revoked, a summary of the reasons for his determination that there may no longer be a need therefor or that such standard (or any part thereof) may no longer be in the public interest, the manner (consistent with subsection (c) (1) of section 4) in which interested persons may examine data and other information relevant to the Secretary's determination, and the period within which all interested persons may present their views, orally or in writing, with respect to such revocation. As soon as practicable thereafter, the Secretary shall by order act upon such propdsal and shall publish such order in the Federal Register. The order shall include the reasons

for the Secretary's action, and the date or dates upon which such revocation shall become effective.

(b) The requirements of sections 6, 7, 8, and 9 of this Act for the promulgation of a product safety standard shall apply to the promulgation of a material amendment of a product safety standard. The Secretary may promulgate an amendment of a product safety standard, other than a material amendment, without regard to sections 6, 7, or 8, but shall comply with the procedures set forth in subsections (a) and (b) of section 9, and shall set forth, in his order promulgating such amendment, such findings as he may deem appropriate in explanation thereof. As used in this subsection, the term "material amendment" means an amendment that would substantially increase any performance standard applicable to a consumer product, or substantially alter the composition, design, construction, finish, or packaging of such product.

JUDICIAL REVIEW

SEC. 11. (a) Any person adversely affected by an order of the Secretary promulgated pursuant to subsection (b) of section 9, or pursuant to section 10, may, at any time after such order is published by the Secretary, file a petition with the United States court of appeals for the circuit in which such person resides or has his principal place of business for a judicial review of such order. Copies of the petition shall be forthwith transmitted by the clerk

of the court to the Secretary or other officer designated by him for that purpose and to the Attorney General. The Secretary shall transmit to the Attorney General, who shall file in the court, the record of the proceedings on which the Secretary based his order, as provided in section 2112 of title 28 of the United States Code. Such record shall include such order of the Secretary and, if issued, held, or obtained in connection therewith, the notice of proceeding published pursuant to subsection (a) of section 6; any notice or proposal published pursuant to subsection (a) of section 9, or section 10; the transcript or summary of any proceedings and the findings arising therefrom; and any other information, including comments of interested persons, required to be considered by the Secretary in the promulgation of such order.

(b) Upon the filing of the petition under subsection (a) of this section the court shall have jurisdiction to review the order of the Secretary in accordance with chapter 7 of title 5 of the United States Code and to grant appropriate relief, including interim relief, as provided in such chapter. The order of the Secretary shall be affirmed if supported by substantial evidence on the record taken as a whole.

(c) The judgment of the court affirming or setting aside, in whole or in part, any order of the Secretary shall be final, subject to review by the Supreme Court of the United States

upon certiorari or certification, as provided in section 1254 of title 28 of the United States Code.

IMMINENT HAZARDS

SEC. 12. (a) The Secretary may request the Attorney General to file, in a district court of the United States having venue thereof, an action against an imminently hazardous consumer product, or against any person who manufactures for sale, sells, or offers for sale, in commerce, or imports into the United States, such product. Such an action may be filed, notwithstanding the existence of a product safety standard applicable to such product, or the pendency of proceedings initiated pursuant to section 6. As used in this section, and hereinafter in this Act, the term "imminently hazardous consumer product" means a consumer product the use of or exposure to which presents imminent and unreasonable risk of death, serious illness, or severe personal injury.

(b) The district court in which such action is filed shall have jurisdiction to declare such product an imminently hazardous consumer product, and to grant (as ancillary to such declaration or in lieu thereof) such temporary or permanent equitable relief as may be necessary to protect the public from such risk. Such relief may include a mandatory order requiring the notification of the original purchasers of such product of such risk, public notice, the recall, the repair, the replacement, or the seizure of such product.

(c) Concurrently with the filing of such action or as soon thereafter as may be practicable, the Secretary shall initiate a proceeding, pursuant to section 6, to promulgate a product safety standard applicable to the consumer product with respect to which such action is filed, or, if the initiation of such proceeding is not feasible, shall initiate a proceeding, pursuant to section 9, to declare such product a banned hazardous consumer product.

NOTIFICATION OF FAILURE TO COMPLY; REPAIR OR REPLACEMENT OF NONCOMPLYING CONSUMER PRODUCT

SEC. 13. If any consumer product fails to comply with any applicable order issued pursuant to this Act, the manufacturer, importer, or distributor of, or dealer in, such product may be required by the Secretary (by order after opportunity for hearing subject to section 554 of title 5 of the United States Code) to give public notice and—

(1) to mail to each consumer of such product known to such manufacturer, importer, distributor, or dealer, and, in the case of a manufacturer or importer, to each distributor or dealer to whom he delivered such product, a notification of such failure containing such information as the Secretary may prescribe, upon the Secretary's determination that such notification is required in order adequately to protect health or safety,

(2) to bring such product into conformity with the

requirements of such order without charge to the consumer,

(3) to replace such product with a like or equivalent product which complies with such order without charge to the consumer, or

(4) to refund the purchase price of such product upon tender of the product, less a reasonable allowance for use if such product has been in the possession of the consumer for one year or more at the time of such tender.

The manufacturer, importer, distributor, or dealer against whom an order is issued under this subsection shall reimburse each consumer of the product which is the subject of such order for any reasonable and foreseeable expenses (including transportation expenses) incurred by such consumer in availing himself of the remedies provided by such order, exclusive of attorneys' fees.

INSPECTION AND RECORDKEEPING

SEC. 14. (a) For purposes of carrying out regulations, standards, or orders promulgated under this Act, officers or employees duly designated by the Secretary, upon presenting appropriate credentials and a written notice to the owner, operator, or agent in charge, or authorized—

(1) to enter, at reasonable times, any factory, warehouse, or establishment in which consumer products

are manufactured, assembled, or held for introduction into commerce or are held for sale after such introduction; or to enter any vehicle being used to transport consumer products in interstate commerce; and

(2) to inspect, at reasonable times and in a reasonable manner, those areas of such factory, warehouse, establishment, or vehicle where or in which such products are produced, stored, or transported, and all pertinent equipment, materials, containers, and labeling therein.

A separate notice shall be given for each such inspection, but a notice shall not be required for each entry made during the period of inspection set forth in such notice. Each such inspection shall be commenced as soon as practicable after the delivery of such notice, and shall be completed with reasonable promptness. If the officer or employee who makes such inspection obtains any sample in the course thereof, he shall, prior to leaving the premises, give to the owner, operator, or agent in charge, a receipt therefor describing such sample.

(b) Every person who manufactures, assembles, distributes, or sells in commerce, or imports, a consumer product required to conform to a product safety standard shall establish and maintain such records, and make such reports, and provide such information as the Secretary may by regu-

lation reasonably require with respect to such product. Upon request of an officer or employee duly designated by the Secretary, every such person shall permit the inspection of such records and other books, records, and papers relevant to determining whether such person is in compliance with this Act and regulations, standards, and orders prescribed thereunder.

(c) The district courts of the United States shall have jurisdiction to issue any warrant in aid of an inspection or investigation under this section, if such warrant is required by the Constitution or laws of the United States, upon a finding that such inspection or investigation is for the purpose of enforcing this Act.

PROHIBITED ACTS

SEC. 15. It shall be unlawful for any person engaged in the business of making consumer products available to consumers, either directly or indirectly, to—

(1) (A) manufacture for sale or lease, in commerce, any consumer product which does not comply with a product safety standard; (B) sell or lease, or offer for sale or lease, in commerce, any consumer product which does not comply with a product safety standard (i) if such product was manufactured or assembled in the United States after the effective date of such standard, or (ii) if such product was imported into the

United States in violation of clause (C); (C) import into the United States any consumer product which does not comply with a product safety standard; or (D) manufacture for sale or lease, sell or lease, or offer for sale or lease, in commerce, or import into the United States, any consumer product which has been declared a banned or imminently hazardous consumer product;

(2) fail or refuse to comply with any order of the Secretary pursuant to section 13;

(3) fail or refuse to comply with any requirement of section 14;

(4) alter, modify, destroy, or remove any portion of, or do any other act with respect to, a consumer product or labeling thereon or attached thereto, if such act is done while the product is being held or transported for sale, and results in the consumer product or its labeling failing to conform to a product safety standard, or renders the product a banned or imminently hazardous consumer product.

ENFORCEMENT

Civil and Criminal Penalties

SEC. 16. (a) Whoever knowingly commits any act prohibited by section 15, or, in case of commission of any such act by a corporation, the corporation and any individual director, officer, or agent of such corporation who knowingly

caused in whole or in part the corporation to commit such act, shall be subject to a civil penalty of not more than $10,000 for each such act, and, if such act was willfully committed, shall be guilty of a misdemeanor and, upon conviction, fined not more than $10,000 for each such act or imprisoned not more than one year, or both. As used in this subsection, the term "knowingly" means (1) the having of actual knowledge, or (2) the presumed having of knowledge deemed to be possessed by a reasonable man who acts in the circumstances, including (A) knowledge obtainable upon the exercise of due care to ascertain the truth of representations, and (B) knowledge of the probable consequences of action taken in disregard of reasonable safeguards.

Injunctions

(b) Upon application by the Attorney General, the district courts of the United States shall have jurisdiction to enjoin the commission of acts prohibited by section 15, and to compel the taking of any action required by this Act.

Seizure

(c) Any consumer product which is not manufactured in compliance with an applicable product safety standard, which is not in compliance with such a standard as the result of an action made unlawful by clause (4) of section 15, or which is declared a banned or imminently hazardous

consumer product, shall be liable to be proceeded against while in commerce or at any time thereafter, on complaint for forfeiture by the Attorney General, and condemned in any district court of the United States within whose district the consumer product is found. The procedure in such cases shall conform, as nearly as may be, to the procedure prescribed by subsections (b), (c), (d), and (e) of section 6 of the Federal Hazardous Substances Act.

Private Suits

(d) Any interested person may bring an action in any district court for the district in which the defendant is found or transacts business to enforce a product safety standard, or to enforce any order under subsection (e) of section 9, or under section 12, and to obtain appropriate injunctive relief. Not less than thirty days prior to the commencement of such action, such interested person shall give notice by registered mail to the Secretary, to the Attorney General, and to the person against whom such action is directed. Such notice shall state the nature of the alleged violation of any such standard or order, the relief to be requested, and the court in which the action will be brought. No separate suit shall be brought under this subsection if the same alleged violation is the subject of a pending action by the United States under this Act. In any action under this section, such interested person may elect, by a demand for such

relief in his complaint, to recover reasonable attorney's fees, in which case the court shall award reasonable attorney's fees to the prevailing party.

IMPORTS

SEC. 17. (a) Any consumer product offered for importation into the United States to which a product safety standard applies (except insofar as the Secretary may otherwise provide with respect to a consumer product accompanied by a certification of compliance with such standard in a form prescribed by the Secretary) or which is declared a banned or imminently hazardous consumer product, shall not be delivered from Customs custody except as provided in section 499 of the Tariff Act of 1930. In the event an imported consumer product is delivered from Customs custody under bond, as provided in section 499 of the Tariff Act of 1930, and is declared a banned or imminently hazardous consumer product or fails to conform with a product safety standard in effect on the date of entry of such merchandise, the Secretary shall so inform the Secretary of the Treasury, and unless it appears to the Secretary that the product can be brought into compliance with all applicable requirements under this Act shall request the Secretary of the Treasury to demand redelivery. Upon a failure to redeliver, the Secretary of the Treasury shall assert a claim for liquidated damages for breach of a con-

dition of the bond arising out of such failure to conform or redeliver in accordance with regulations prescribed by the Secretary of the Treasury or his delegate. When asserting a claim for liquidated damages against an importer for failure to redeliver such nonconforming goods, the liquidated damages shall not be less than 10 per centum of the value of the nonconforming merchandise if, within five years prior thereto, the importer has previously been assessed liquidated damages for failure to redeliver nonconforming goods in response to a demand from the Secretary of the Treasury as set forth above.

(b) If it appears to the Secretary that the consumer product can be brought into compliance with all applicable requirements under this Act, final determination as to admission of such consumer product may be deferred and, upon filing of timely written application by the owner or consignee and the execution by him of a bond as provided in the preceding provisions of this section, the Secretary may, in accordance with regulations, authorize the applicant to perform such action specified in such authorization (including destruction or export of rejected consumer products or portions thereof, as may be specified in such authorization). All such action pursuant to such authorization shall, in accordance with regulations, be under the supervision of an officer or

employee of the Department of Health, Education, and Welfare or of the Department of the Treasury.

(c) The Secretary of the Treasury shall obtain without charge and deliver to the Secretary, upon his request, a reasonable number of samples of consumer products being offered for import. The owner or consignee of any such product may have a hearing before the Secretary with respect to admission of such imports into the United States. If, except as provided by subsection (b), it appears from examination or testing of such samples or otherwise that a product fails to comply with the requirements of this Act, such product shall be refused admission, and the Secretary of the Treasury shall cause destruction of such product unless it is exported, under regulations prescribed by the Secretary of the Treasury, within ninety days after notice to the importer or consignee.

(d) All expenses (including travel, per diem or subsistence, and salaries of officers or employees of the United States) in connection with the destruction provided for in this section, the amount of such expenses to be determined in accordance with regulations of the Secretary of the Treasury, and all expenses in connection with the storage, cartage, or labor with respect to any consumer product refused admission under this section, shall be paid by the owner or consignee and, in default of such payment, shall constitute a lien against any future importations made by such owner or consignee.

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EXPORTS

SEC. 18. This Act shall not apply to any consumer product manufactured, sold, or held for sale for export from the United States (or to any consumer product imported for export), if such consumer product, and any container in which it is enclosed, bears a stamp or label stating that such consumer product is intended for export and such consumer product is in fact exported from the United States; except that this Act shall apply to any consumer product manufactured for sale, offered for sale, or sold for shipment to any installation of the United States located outside of the United States.

EFFECT ON STATE STANDARDS

SEC. 19. (a) No State or political subdivision thereof shall establish or continue in effect, with respect to any consumer product, any standard or similar regulation prescribing requirements applicable to any aspect of health or safety of such consumer product, if such aspect is required to conform to a product safety standard under this Act: *Provided,* That nothing in this section shall be construed to prevent any State or political subdivision thereof from establishing or continuing a health or safety requirement applicable to a consumer product for its own use, if such requirement imposes a higher standard of health or safety than

that required to comply with the applicable product safety standard under this Act.

(b) The Secretary may, upon application of a State or political subdivision thereof, exempt such State or political subdivision from the limitation of subsection (a) if a standard proposed by such application (1) imposes a higher level of health or safety than the Federal product safety standard with respect to products to be manufactured, sold, held for sale, or used in such State or political subdivision thereof, (2) is required by compelling local conditions, (3) does not unduly burden commerce, and (4) is adopted by such State or political subdivision pursuant to procedures and requirements which in the judgment of the Secretary are substantially comparable to those prescribed for product safety standards under this Act.

UTILIZATION OF OTHER FEDERAL AGENCIES

SEC. 20. In carrying out his duties under this Act, the Secretary shall, to the maximum practicable extent, utilize the personnel, facilities, and other technical support available in other Federal agencies.

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, D.C., April 19, 1971.

B–139310.

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

DEAR MR. CHAIRMAN: Your letter of March 8, 1971, requested our comments on S. 983, 92d Congress, entitled: "A bill to protect consumers against unreasonable risk of injury from hazardous products and for other purposes."

We have no special information as to the advantages or disadvantages of this measure and, therefore, make no comments regarding its merit.

Section 3(h) provides that all Commission employees, other than five specified officers, shall be subject to the provisions of title 5, United States Code governing appointments in the competitive service. The committee may also want to make all Commission employees, other than the five specified ones, specifically subject to the Classification Act, the purpose of which is to provide equal pay for equal work throughout the competitive service. The language making the employees subject to the provisions governing appointments seems to imply that they are not subject to the Classification Act provisions.

In addition, we suggest that the committee specify in section 3(h) the Executive level pay scale to which each of the five specified Commission officers is to be entitled. There is no provision now for a limitation on salary that may be paid the five specified Commission officers unless the Civil Service Commission would conclude that they were subject to the Classification Act provisions.

Sincerely yours,

R. F. KELLER,
Acting Comptroller General of the United States.

(More agency comments appear on pages 767, and 892–896.)

Senator Moss. Senator Stevens, do you have any opening statement?

Senator STEVENS. No, I don't, Mr. Chairman.

Senator Moss. We are most pleased to have this morning as our leadoff witness the Secretary of the Department of Health, Education, and Welfare, the Honorable Elliott L. Richardson. He is accompanied by Dr. Charles C. Edwards, Commissioner of the Food and Drug Administration, and Mr. Malcolm Jensen, Director of the Bureau of Product Safety, Food and Drug Administration, and Mr. Steve Kurzman, Assistant Secretary of Legislation for HEW.

Mrs. Virginia Knauer, Special Assistant to the President for Consumer Affairs, will also appear as a witness with Secretary Richardson. We are pleased, indeed, to have all of you fine people from the administration to testify before this committee on product safety.

You may proceed, Mr. Secretary. We are pleased to have you here, sir.

STATEMENTS OF HON. ELLIOT L. RICHARDSON, SECRETARY, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE; AND HON. VIRGINIA KNAUER, SPECIAL ASSISTANT TO THE PRESIDENT FOR CONSUMER AFFAIRS; ACCOMPANIED BY CHARLES C. EDWARDS, COMMISSIONER, FOOD AND DRUG ADMINISTRATION; MALCOLM JENSEN, DIRECTOR, BUREAU OF PRODUCT SAFETY; STEVE KURZMAN, ASSISTANT SECRETARY FOR LEGISLATION; JAMES GRANT, FDA; WILLIAM WALKER, DEPUTY DIRECTOR, OFFICE OF CONSUMER AFFAIRS; JACK PEARCE, DEPUTY GENERAL COUNSEL. OFFICE OF CONSUMER AFFAIRS

Secretary RICHARDSON. Thank you very much, Mr. Chairman, members of the subcommittee.

Accompanying Mrs. Knauer and me, beginning at my left is Mr. Malcolm Jensen, Director of the Bureau of Product Safety of the

Food and Drug Administration. Then Mr. James Grant, Deputy Commissioner of Food and Drug; Dr. Charles Edwards you already identified, the Commissioner of Food and Drugs; and on my immediate left, Mr. Steven Kurzman, Assistant Secretary of HEW for Legislation. On Mrs. Knauer's immediate right is the Deputy Director of the Office of Consumer Affairs, Mr. William Walker; and on his right, Mr. Jack Pearce, Deputy General Counsel of the Office of Consumer Affairs.

Mr. Chairman, you have, I believe, just received a letter from the President to you, and I would like, with your permission, to proceed as follows: First, to read that letter; second, to ask Mrs. Knauer to present her statement, after which I will read mine, and we would both prefer that the committee's questioning be deferred until after both statements have been finished.

Senator Moss. We will proceed in that manner. We are very happy to do it. So if you will proceed to read the letter, which was just delivered to me, and then we will hear from Mrs. Knauer.

Secretary RICHARDSON. Thank you very much, Mr. Chairman.

The letter is dated July 19, 1971. It is addressed to you, Mr. Chairman, and reads as follows:

In my Consumer Message of February 24, I proposed comprehensive product safety legislation authorizing the Department of Health, Education, and Welfare to regulate hazardous consumer products. Subsequently S. 1797, a bill incorporating this proposal, was introduced on behalf of the Administration and referred to your Committee.

As part of the preparation of this bill, I asked Secretary Richardson to undertake a careful study of the organizational structure within the Department of Health, Education, and Welfare that would most effectively implement the consumer product safety authority proposed in S. 1797.

Today, Secretary Richardson will announce, with my approval, that upon enactment of this bill, he will create within DHEW a new Consumer Safety Administration. This unit will build upon the activities, personnel and facilities of the Food and Drug Administration, which has a long and distinguished history in the field of consumer safety, primarily in the vital regulation of the foods we eat and the drugs we use.

The Consumer Safety Administration will continue the work of the FDA. At the same time, the new unit will be structured so that the regulation of hazardous consumer products authorized in S. 1797 will have the facilities, the personnel, and the organizational prominence that will ensure an effective, efficient and responsive product safety program. Finally, where possible, common facilities such as laboratories and field offices will be utilized to gain the maximum possible cost effectiveness.

S. 1797 is a strong bill which will fully satisfy the public need for adequate protection against hazardous consumer products, and Secretary Richardson has acted to ensure that his Department is fully capable of implementing this needed authority. I urge your Committee to report S. 1797 favorably to the Senate.

Sincerely,

RICHARD NIXON.

Now, Mr. Chairman, I would like to turn to Mrs. Knauer, Special Assistant to the President for Consumer Affairs.

Senator Moss. Thank you, Mr. Secretary.

Mrs. Knauer, we are pleased to hear from you.

Mrs. KNAUER. Thank you, Mr. Chairman.

Before I proceed, may I introduce my other Deputy Director, Elizabeth Hanford. She is sitting in the audience.

Mr. Chairman and members of the committee: I appreciate the opportunity to discuss consumer product safety legislation with you today.

First let us take a look at the dimensions of the accident situation in and around the home. It is a human problem, but so large that we must address it in statistical terms. The bills we discuss today will not deal with all dimensions of this situation, as I will point out in more detail later.

Also, our records and surveys of accidents and injuries are far from complete. But we can get some appreciation of the general context of our problem. An estimate by HEW's National Center for Health statistics indicates that each year, in and around the American home, about 30,000 persons are killed, 110,000 permanently disabled, 585,000 hospitalized, and more than 20 million injured seriously enough to require medical treatment or be absent from work a day or more. One estimate has put the annual dollar cost to the economy at over $5 billion. Other surveys give us additional information. None indicates that the accident toll is of less magnitude.

According to the National Commission, the most dangerous years are those between one and five. About 7,000 children under the age of 15 die each year in home accidents—a death toll higher than that of cancer and heart disease combined. Studies indicate that a wide range of commonly used products are frequently involved in severe accidents. My office receives a continous stream of inquiries, pleas, and complaints by people who are concerned about actual or potential injuries from power lawnmowers, children's furniture, ladders, boats, glass doors, and numerous other products.

Unfortunately, we cannot assume that we are going to end this toll completely, or effect an immediate, drastic reduction. Ours is a large and active population. It employs a great many devices, and much mechanical and electrical energy of an intensity sufficient to inflict serious harm. The price we pay for the availability of this technology is some degree of unavoidable risk. Moreover, we must recognize that safety has some costs, both economic and in terms of freedom of choice.

Nor can we expect that we can eliminate the problem simply by changing consumer product characteristics. The level of consumers' knowledge of risks, their habits of behavior, and the way products and people interact, all contribute to injuries. All these factors must be addressed in any effort to reduce injuries.

In this and other western nations, however, we have made steady progress in this century in diminishing the extent to which people suffer accidental death; the permanent deprivation of the capacity to live and work with all the human endowment; and the physical and emotional shocks of severe lacerations, fractures, and burns.

This progress is in part embodied in longstanding laws governing foods, drugs, and poisons. In the decade of the 1960's the Nation took several swift steps to expand and improve such protections. The Flammable Fabrics Act was strengthened. The Motor Vehicle Safety Act created the programs which are now reducing the massive toll on the highways. Radiation from consumer electronics was identified as a hazard, and brought under regulation. A bill to reduce risks of poisoning by improving packaging has become law. The Toy Safety Act was made law.

What we address here today is the logical next step in this development—the establishment of Government authority to take action for

safety purposes, when needed, across the full range of consumer products. We have begun to look at the situation from the consumer's point of view. This legislation will expand the protection we give him to all parts of the consumer marketplace.

Both general bills before you, S. 1797 and S. 983, embody well understood and useful means of reducing the incidence of accidental deaths and injuries. I know that the committee is also considering S. 1685. However, because of the limited scope of that bill and the fact that its intended objectives are encompassed by the two broader proposals, I will not comment upon it at this time. I would like to emphasize that the two major product safety bills before you are fundamentally very similar. They both draw upon the concepts and practices of several safety bills before them. This agreement in intent and basic provisions should lead to prompt enactment of legislation in this critical area.

The administration bill results from careful study of the Safety Commission's recommendations, other bills, and other information. We think it improves on the initial draft of proposed legislation prepared by the Commission, embodied in S. 983. We recommend it as a sound, balanced measure, which takes all major factors into account.

The administration bill, and the Commission bill, would give the Government this basic authority:

First, to gather and disseminate information on consumer product-related injuries and deaths, so that consumers, manufacturers, and vendors can take steps to reduce the toll;

Second, to draw a red line on what the market place can offer, where necessary to prevent unreasonable risks to the populace, by

prescribing mandatory safety standards for products;

banning products which constitute imminent hazards to life and limb from the market, pending attempts to make them safe by establishing standards, or a determination that they cannot be made reasonably safe; and

permanently banning products which cannot be made reasonably safe by the establishment of standards.

Third, to require suppliers to notify purchasers of products which violate a safety standard or ban, and to meet repair and replacement obligations.

In addition, the administration bill recognizes, as does the Commission bill, the desirability of making use of private standard making processes, and provides for direct consumer suit to restrain violations of the act's requirements.

The most obvious difference between the administration bill and S. 983 is that the administration bill vests the authority for these functions in HEW.

Let me spell out the administration's reasoning on this choice to some extent. Those who favor an independent safety agency do so in hopes that this will be useful in achieving our common goals—assuring visibility, public accountability, a quick start, and vigor for an important new program. But this is not necessarily the best way to achieve these ends. And it runs counter to a current need to consolidate, not proliferate, agencies. We all know that we cannot indefinitely proliferate agencies for a multitude of special needs. The problem of proliferation of agencies has become acute. For this reason, the President is seeking to consolidate and simplify the Government structure.

Further, there are a number of concrete advantages to placing this function in HEW. This agency now has responsibility for a number of related programs—toy safety, radiation control, poison prevention, and, of course, the major food and drug functions. The facilities and information developed for these programs will be helpful in initiating this program. Using them will avoid the costs of duplicating them elsewhere. We can avoid the significant delay entailed in creating an entirely new agency.

In sum, we believe that, over the long run, this important program can be most efficiently and effectively managed in a major department which has similar and complementary programs, supporting facilities, and a high degree of visibility in the public eye. And we believe that the present Secretary of HEW, Elliot Richardson, will get this consumer product safety program off to an excellent start.

Since Mr. Richardson's Department will administer the legislation, I will defer to him for a further discussion of its particulars.

Senator Moss. Thank you, Mrs. Knauer for your statement. The Secretary indicated that he would like to give his statement before we have any questions.

We will postpone questioning and hear from the Secretary.

Secretary RICHARDSON. Thank you very much, Mr. Chairman, and members of the subcommittee.

I am very pleased to be here today to present the administration's views on the several bills before the Committee on Consumer Product Safety.

Particularly, I would like to outline the principal features of the administration's consumer product safety bill, S. 1797; to point to the most significant ways in which it differs from the bill proposed by the National Commission on Product Safety, S. 983, and to explain the reasons for those differences.

Both bills respond to a problem—injuries from defective consumer products—whose true dimensions are unknown. There is no coordinated system within Government for determining how many of the staggering number of accidents that occur each year in and around the home—a number estimated by the Department's National Center for Health Statistics to be 20 million—are traceable in whole or in part to product defects.

Innumerable individual reports nevertheless persuaded the National Commission and persuade us, that a significant problem does exist. These include reports of children severely injured by the breakage of untempered glass patio doors, persons disabled by debris thrown up by poorly shielded rotary lawnmowers, victims of falls from ladders lacking nonslip treads: the list is endless. If the problem, underscored by these cases, is to be attacked effectively, there must be brought to bear on it the unique capacity of the national government to regulate across State boundaries. Citizens of all the States should be entitled to feel confidence in the safety of the consumer products that they buy and use. But no manufacturer can reasonably be expected to design a product to meet multiple and diverse State safety standard requirements.

Although there are significant differences between the administration bill and the Commission bill, they nevertheless both approach this

problem in essentially the same way. Each would authorize the establishment by the Federal Government of nationwide safety standards, on a product-by-product basis, to reduce or eliminate unreasonable risk of death or personal injury associated with consumer products.

Each bill would require that there be a demonstrable need for the standard; that is, that a standard be established only after the collection of data adequate to show clearly the product's threat to consumer health or safety, and only after a thorough assessment of whether the proposed standard is reasonably necessary in order to reduce or eliminate that threat. Each of the bills would create ample authority to gather the information needed for these findings.

Some 400 organizations in the United States now either develop or sponsor the development of commercial standards, many of them for products, and about 2,300 new or revised standards are published yearly. Both bills would therefore rely heavily upon this expert knowledge by drawing on the private sector to produce most of the standards to be promulgated.

Upon the Government's adoption of a standard, both bills would prohibit the manufacture or sale of consumer products that fail to comply with it.

The bills also contain procedures to permit the banning of unreasonably dangerous consumer products altogether from the marketplace, and to allow expeditious action to protect the public from the occasional product found to be an imminent hazard to health or safety.

In this last regard, the administration bill is more simply constructed than the Commission's bill. Under the administration bill, those consumer products that present an unreasonable risk of death, or of serious or frequent illness or injury, associated with their use, may be required to comply with an appropriate safety standard. If no feasible product safety standard will adequately protect the public from such risk, the product may be banned. If the use of a consumer product presents an imminent and unreasonable risk of death, serious illness, or severe personal injury, the Secretary may request the Attorney General to file a judicial action against the product, its manufacturer, or its distributors. The court would then have jurisdiction to ban the product or take appropriate remedial action.

This regulatory structure avoids one complexity of the Commission bill: it omits, as unnecessary, an authority proposed by the Commission for the unilateral administrative setting of interim standards in order to control imminently hazardous products. It is our feeling that this simplification, as well as certain others, would result in procedures more readily understood and easily administered in the initial years of the new program.

Although in their broad outlines the bills are similar, their differences are nevertheless important.

Perhaps the foremost of these differences is that of the organizational location assigned to the product safety function. The administration bill would place it in our Department. The Commission bill would place it in independent regulatory organization, a Consumer Product Safety Commission consisting of five Commissioners.

The reason for the Commission recommendation is explained in its final report. The Commission feared that if product safety regulation

were subordinated to a larger agency administering other equally comprehensive programs, the emphasis on consumer safety would suffer. "Protection of the public interest will be strengthened," the Commission wrote, "if the agency has authority to make its own final decision, free of restriction by a parent agency, and if its funds are sufficient and its activities highly visible."

I am not inclined to think that these observations hold true over the long term. An action of the Federal Trade Commission, for example, has never seemed to me to be more visible than an action of the FDA, even though the FTC is an independent agency. Nor do I think that independent regulatory agencies have historically shown a greater resistance than other agencies to the pressures that often cause agencies to identify their interests with those of the industries they regulate.

Beyond these issues, though, there are positive advantages to be gained by locating the product safety function in HEW. On a wholly practical level, the Department now has an extensive field enforcement staff engaged in product regulation, as well as medical and technical experts in the area, and scientific testing laboratories. It seems far more economical and efficient to expand this staff to meet the workload to be generated by the administration bill than to require such a staff to be duplicated through enactment of the Commission bill.

In a larger sense, however, we see the administration bill as a measure to protect the public health. Of the various concerns of the citizen as a consumer, that of his health—the freedom from hazards to his health and safety from the products he buys—must surely be paramount. It is more important to him than the threat of economic loss from defective goods or deceptive practices.

Because our Department has primary responsibility within the executive branch for protecting the public health, we now administer those consumer health and safety protection laws having the greatest breadth. These include, as you know, the Federal Food, Drug, and Cosmetic Act, the radiation control for health and safety program, and the Federal Hazardous Substances Act. Enactment of the President's reorganization proposals, by transferring these as well as other product safety programs to a new Department of Human Resources, would further consolidate consumer protection responsibility in a single Federal entity. Centralizing these responsibilities will give Federal consumer protection efforts a single direction; that is, a more rational ordering of regulatory priorities than is now possible, as well as coordinated, and therefore enhanced, enforcement.

The administration is also committed to strengthening the organizational structure for product safety within our Department so that it may bear the new responsibilities that its product safety proposal would give to us. We propose to approach this commitment in an orderly and practical manner by building upon existing competence, experience, and authorities within the Department.

In recognition of our expanding role in the consumer protection field, we have recently brought together within the FDA the previously scattered departmental authority to protect the health and safety of the consumer. Essentially all consumer protection authorities and resources of the Department are therefore now centered in FDA. In

addition to long experience and a proven record of accomplishment, this agency possesses significant scientific competence it maintains an extensive field investigational and enforcement staff, and it has strong laboratory and other technical capacity.

I might add, Mr. Chairman, that I believe also that it has strong and able leadership in the person of Dr. Charles Edwards.

The administration bill would substantially enlarge the Department's consumer protection responsibilities. Upon its enactment, therefore, I propose to build, as the President's letter has just informed the committee, upon the FDA framework by establishing a new Consumer Safety Administration to be composed of three major offices:

The Office of Product Safety Regulation;
The Office of Drug Regulation; and
The Office of Food Regulation.

These offices will be supported by information collecting, field surveillance, and research capabilities, foundations for which already exist within the Department. A National Center for Consumer Safety Statistics will be established to collect, analyze, and disseminate information on injuries and their causes, as they are associated with food, drugs, and consumer products.

Within this organizational frame, undergirded by more specific legislative authority and reinforced by this administration's commitment to seek the necessary resources, we will be well prepared to serve the needs of the American consumer in the 1970's and beyond.

In addition, the administration bill requires us to utilize under it, to the maximum practicable extent, the personnel, facilities, and other technical support available in other Federal agencies. As you will learn on Wednesday, when the Director of the National Bureau of Standards is scheduled to testify before the committee, this support is considerable.

The administration and Commission bills differ in the scope of their coverage. The administration bill would not apply to those hazards of consumer products which are subject to regulation under existing law. It would not apply even if, under those laws, regulatory measures against those hazards have not yet actually been instituted.

The Commission bill, on the other hand, excludes only those hazards against which regulatory measures have been taken.

The advantage of the administration approach, over that of the Commission, is that it avoids subjecting a single product to multiple regulations reflecting diverse regulatory policies of different laws and different agencies.

To some extent, of course, the conflict may occur under both proposed product safety laws. Detergents, which are proposed to be regulated by the Environmental Protection Agency with respect to their environmental effects, should also be regulated (as in some degree they now are under the Federal Hazardous Substances Act) with respect to their threat to the safety of the consumer. But these instances should be kept to an irreducible minimum. The Commission proposal, by causing the regulatory jurisdiction of its proposed new agency to overlap that of ongoing regulatory programs, seems less satisfactory in this regard.

The second difference in coverage is that, unlike the Commission bill, the administration bill makes no provision for establishing standards for new products as to which there is a lack of safety information. Given the greater importance of assuring the safety of products that are demonstrably hazardous, we think it unlikely that such authority would be much used in the foreseeable future. Of course, if a new product were determined to present an imminent hazard—even on the basis of engineering evaluation and before injury data had been compiled—the administration bill would provide all needed authority to bring an immediate judicial proceeding against it.

It is not clear from the Commission bill whether it intends to authorize the imposition of premarket clearance requirements on new products. If it does, then we believe in view of the countless number of new products marketed each year, that the implementation of any such requirements would be a misallocation of limited resources, and would have an unreasonably chilling effect on the introduction of new products and, in consequence, on their availability to the consumer.

Under the administration bill, a proceeding to promulgate a product safety standard is begun by a public notice. This notice must contain an invitation for any person, within 30 days after its publication, to submit to the Secretary an offer to develop such a standard. It is our expectation that some consumer organizations and other groups having competence to develop standards may nevertheless lack sufficient resources to contribute their efforts. In order to assist them to accept the Secretary's statutory invitation, the administration bill would permit the Secretary to contribute to an organization's cost in developing a standard. This provision has no counterpart in the Commission bill.

Both bills provide a range of penalties for knowing or willful noncompliance with their provisions. An important difference between them, however, is the ancillary means each would propose to encourage compliance.

The Commission bill would entitle a person injured by reason of any knowing or willful violation of a consumer product safety standard to sue in the U.S. district court—without regard to the amount in controversy—for three times the damages sustained, as well as reasonable attorney's fees and court costs. The value of this provision is debatable. A person now injured by a defective product would ordinarily have a tort remedy in State court or, in certain cases, in Federal court. It is problematical whether increasing the damages payable as the result of legal action would exert sufficient influence measurably to increase compliance with a product safety law. Judgments against large manufacturers resulting from such actions could in all probability be absorbed in the cost to the consumer of the manufacturer's products. Moreover, it seems to us undesirable to multiply the use of the U.S. district courts as forums for individual tort claims particularly under circumstances in which the current limitations on the minimum amount in controversy would not apply.

The administration bill chooses a more direct and, we think, more effective device to promote compliance. It would provide consumers with a statutory right to bring suit to enforce its provisions. This approach should supply an effective supplement to Federal regulatory activity under the bill, and should act as a goad to the Depart-

ment—if one were needed—to insure the bill's diligent enforcement.

The Commission bill would establish an independent consumer safety advocate to represent the consumer before the proposed Consumer Product Safety Commission. This provision has no counterpart in the administration bill. The administration bill contemplates that in most circumstances consumer product safety standards will be developed for the Department in the private sector. Some of those standards will be developed by consumer groups. In other cases, the bill, and the regulations that are required under it, would insure the fullest opportunity to consumer groups and individual consumers to participate in, and to be heard during the course of, the development of the standards.

Finally, the Commission bill would establish a system under which manufacturers would certify to their distributors and dealers that their products conform to applicable safety standards. The Consumer Product Safety Commission could also order that any product subject to a consumer product safety standard be also subject to a reasonable testing program operated by an independent qualified third-party.

The administration bill would require that standards contain test methods, wherever feasible, for measurement of compliance.

The cost of monitoring the private independent laboratories that would conduct the Commission's certification program would be high. I doubt that the benefits to be gained from it would be commensurate with this cost. Under both bills, given their ranges of civil and criminal penalties, manufacturers, distributors, dealers, and importers would have considerable incentive to take the steps necessary to assure that their products meet the tests prescribed by the applicable standards. Therefore, a manufacturer's certificate of compliance under the Commission bill may offer no additional guarantee of the conformity of his product; but it may, instead, lessen the diligence of the dealer or distributor who chooses wholly to rely upon it.

In summary, our bill is simpler than the Commission bill; we think it easier to administer and to fit into the extensive network of product regulation now in place.

It differs from that bill, as we have pointed out, in a number of substantial respects:

It would vest the new product safety program in HEW.

It would cover only product hazards not now subject to regulation, and would thereby avoid unnecessary overlap with ongoing consumer product safety programs.

Its primary tools of regulation would be three: Mandatory safety standards, the banning of unreasonable dangerous products for which no feasible standards may be set, and the use of judicial action to move against products that are imminently hazardous.

It would not authorize standards, even for products newly introduced into the market, without an adequate data or engineering base demonstrating the product's hazard; nor would it provide premarket clearance of new products.

It would permit financial assistance to consumer and other groups that need such assistance in order to develop standards for promulgation under the program.

It would provide for full consumer participation in the standard-making process, instead of creating a consumer advocate or other consumer representative to act for consumers.

It would require standards to contain appropriate tests so that a product's compliance with standards could be measured, but it would avoid the establishment of an expensive and unnecessary structure of product certification.

It would empower the courts to entertain suits by consumers to enforce standards and other orders under the program, in lieu of the less effective enforcement device of authorizing treble damage suits.

This does not exhaust the differences between the bills. We would ask the committee's permission to insert, at this point in the record, a more detailed list that is now in preparation.[1]

Senator Moss. That will be so ordered.

Secretary RICHARDSON. The administration bill builds upon the work of the National Commission, and uses the Commission's conclusions as its own point of departure. For this reason, we think it is to be preferred to the Commission bill.

But like the Commission bill, our bill is not a substitute for voluntary industry action to increase the safety of products used in or around the home. Our bill is meant to supplement this effort, a supplement, we think, that the public as a whole will welcome.

Nor is our bill a substitute for the safety education of the consumer. Nevertheless, we cannot help but agree with the observation of Dr. Allan B. Coleman, chairman of the Committee on Accident Prevention of the American Academy of Pediatrics, on the subject of educating for safety:

> The person who pays the most heed to education efforts doesn't need it and didn't need it in the first place. The biggest need is probably engineering for safety, built-in safety, fail-safe products, fail-safe designs.

This concludes my prepared statement, Mr. Chairman.

Those who are assembled here will be glad to respond to your questions and, I hope, answer them.

Senator Moss. Thank you very much, Mr. Secretary, for your very constructive statement, and also that of Mrs. Knauer.

I think it would be fair to say that there is no great disagreement between the administration and the Commission as to the need for an omnibus product safety authority, and we agree that there is need for some legislation, at least similar to S. 983 or S. 1797. And I gather from your statements that there is also a clear need to create a comprehensive injury surveillance capability within the Federal Government so that the Product Safety Agency knows where to aim its guns in order to reduce the incidence of death and injury.

I do have a few questions I would like to ask on the apparent differences in the two bills, S. 983 and S. 1797, in four general categories: (1) The structure; (2) standard setting process; (3) emergency powers; and (4) enforcement.

What existing programs, Mr. Secretary, will be administered by the newly reorganized Consumer Safety Administration?

Secretary RICHARDSON. It would administer, Mr. Chairman, the programs now in effect under the Federal Food, Drug, and Cosmetic

[1] See p. 897.

Act, the Federal Hazardous Substances Act including the toy safety legislation and the Poison Prevention Packaging Act.

We have under consideration also the question of whether it should assume at least part of the responsibility for the administration of the Radiation Control for Health and Safety Act.

Senator Moss. Is there a time set when this reorganization will be achieved? Must it await the passage of this legislation, or can it be done immediately?

Secretary RICHARDSON. We have already set up, Mr. Chairman, a Bureau of Product Safety within the FDA, which does comprehend responsibility for administration of all of these things except radiation control, so to that extent we have gone forward already.

The reason, primarily, for taking a further reorganizational step upon enactment of the legislation would be, as I said in my statement, that the enactment of this legislation would represent a substantial enlargement of the present responsibilities of the Department for the regulation of product safety, and so it seems justified at that point to take the further steps outlined in my testimony, including the creation of a new Consumer Safety Administration.

Senator Moss. In your opinion, is the structure of a regulatory agency important to the effect of the functioning of the agency, and in what ways is this structure important?

Secretary RICHARDSON. I think it is important, Mr. Chairman, to the extent that comparable functions and similar responsibilities are located together in such a way that, first, there is clear-cut accountability for their enforcement. And, second, so that there is a mutually complementary and mutually enforcing relationship among the functions to be carried out; such as, for example, field inspection and laboratory testing.

Senator Moss. What about the criticism that having the agency located within the larger department, loses some of the independence and freedom from influence?

Secretary RICHARDSON. I do not believe, Mr. Chairman, that this is a significant factor with respect to the issue of location. The Food and Drug Administration presently exercises, I fully believe, all the independent judgment and authority over its regulatory responsibilities that are exercised by any wholly independent agency.

Meanwhile, however, I think there is a gain inherent in the fact that there can be mutual cooperation and interchange in the case of an agency having responsibility primarily in the field of health with other agencies that have health responsibilities.

The Division of Biologics Standards, for example, within the National Institutes of Health has some functions comparable to the regulatory responsibilities of the FDA over drugs.

In the case of radiation hazards, for example, even though regulatory responsibility may be wholly invested in the new agency, which is an issue not finally resolved, there are nonetheless basic investigational aspects of the problem with respect to the understanding of the health implications of such hazards on which the new agency can usefully draw from the resources of the Public Health Service, and so on.

We think that the present location of the FDA within HEW strengthens its overall capabilities, and so we believe the same would

essentially be true with respect to the new agency to be based upon the present framework subsequent to the enactment of this legislation.

Senator Moss. You proposed the establishment of three offices, one for food, drugs, and product safety. Would the staffs of these offices be approximately equal in resource commitment and manpower?

Secretary RICHARDSON. They would be fairly closely comparable, although it would take some period of development for the Office of Product Safety Regulation to reach the full size that is now represented in the area of drug regulations, for example.

May I ask Dr. Edwards to respond more fully to that question?

Senator Moss. Dr. Edwards.

Dr. EDWARDS. Yes, thank you.

Mr. Chairman, although, as the Secretary has indicated, at the moment both economic and manpower resources are not equal, we would anticipate that within a period of 3 to 5 years product safety will probably require more in the way of resources, both manpower and economic.

In our 1972 budget we have allocated some 718 positions and close to $19 million for product safety. Now when we talk about product safety, we are referring not only to the Bureau of Product Safety, but we also include the Bureau of Radiological Health. We include our field activities which are related to product safety, and of course we also include our cosmetic activities. These would all be included in the office of product safety regulation under the reorganization the Secretary has outlined.

Secretary RICHARDSON. May I add a few numbers to this, Mr. Chairman? The Commissioner has referred to a total of $19 million as the amount presently allocated in the 1972 budget for product safety.

It would be our intention upon enactment of this legislation to seek $14 million in additional funds in the first full year of its administration. The comparable totals for 1972 are $42 million for the administration of the FDA's responsibilities in the field of drugs and $45 million in the field of foods.

Senator Moss. Looking at the figures from the appropriations hearing, you have taken some funding out of food and drug and transferred it into product safety, is that correct?

Secretary RICHARDSON. I think that is true, in allocations under existing authority. The establishment of the new bureau in effect justified the relocation of some functions that had previously been classified as belonging in the field of food or drugs, as essentially product safety functions. But there was in addition an appropriations increase for the activity as a whole, and there would be, as I said a moment ago, a further $14 million increase in the first full year upon the enactment of the proposed legislation.

Is that essentially right, Mr. Commissioner?

Dr. EDWARDS. That is correct, Mr. Secretary.

In addition to that, we have reprogramed some money in our 1972 budget in the food field for our grants program. We have reallocated that to our product safety operation.

Senator Moss. Well, would you supply the figures showing for the record the extent to which the reprograming varies from the budget request that was submitted to the Appropriations Committee for HEW?

Secretary RICHARDSON. We will be glad to do that, Mr. Chairman.[2]

Senator Moss. Thank you.

I was concerned about this question of independence and I think we can look to the Auto Safety Act for guidance. The National Highway Safety Bureau which was authorized to set auto standards, was placed in the Highway Administration. The Safety Bureau was supposed to be coequal to the Bureau of Public Roads, but because the Bureau of Public Roads was more firmly established, the Safety Bureau suffered. As you know, it was finally removed from the Highway Administration and upgraded to the National Highway Traffic Safety Administration. Would this "infancy" problem plague the product safety bureau that you proposed?

Secretary RICHARDSON. I don't think so, Mr. Chairman. It seems to me on the face of it that there is a clear distinction in the two situations. Whatever the merits of what may have been done with respect to highway safety, it is clear that the Bureau of Public Roads is not primarly charged with auto safety as such. Whereas each of the other proposed offices in the new Consumer Safety Administration is already concerned with consumer protection, these responsibilities apply to foods and drugs as opposed to other consumer products generally.

So we think that there would be mutual reenforcement, a synergistic impact, in effect, a total greater than the sum of the parts, through combining these responsibilities as distinguished from separating them.

Senator Moss. In this proposed Consumer Safety Administration, will the administrator set the product safety standards or will the Secretary?

Secretary RICHARDSON. As a practical matter, the Secretary would delegate this responsibility to the head of the Consumer Safety Administration.

Senator Moss. But would the standards have to be sent up to the Secretary in order to be approved, or would the administrator have final authority?

Secretary RICHARDSON. I think that in this case, the final authority should be delegated to the administrator of the proposed agency.

Senator Moss. Will he have a fixed term of appointment, or will he serve at the pleasure of the Secretary?

Secretary RICHARDSON. He will be appointed by the President and serve at the pleasure of the President.

Senator Moss. Not with a definite fixed term of years?

Secretary RICHARDSON. That is correct.

Senator Moss. And will the administrator be able to deal directly with the OMB or must he go through the Secretary's office?

Secretary RICHARDSON. He will go through the Secretary like other constituent agencies of HEW.

Senator Moss. Would the Consumer Safety Administration be located in the Department of Human Resources under the President's reorganization plan?

Secretary RICHARDSON. My earlier testimony was that the Consumer Safety Administration will be established as soon as product safety legislation, along the lines now that are the subject of this hearing, is enacted. It would not await the creation of the Department of Human Resources, although it is fair to say that the creation of the proposed new Department is a step in the same general direction. As you know,

[2] See p. 900.

Mr. Chairman, the proposed new Department would embrace some of the regulatory authority over foods, for example, which is now vested in the Department of Agriculture, thus strengthening in effect the range of responsibility of the Consumer Safety Administration.

The Department of Human Resources would also absorb that part of the responsibility for the Flammable Fabrics Act now administered by the Department of Commerce, so that that would also enlarge the role and make more comprehensive and complete the consumer protection function of the CSA.

Senator Moss. This Consumer Safety Administration would parallel quite readily the EPA in terms of function of operation. Is that true?

Secretary RICHARDSON. It would do so, Mr. Chairman, with, of course, the distinction that the EPA is concerned with consumer products only insofar as their composition or use affects the external environment as distinguished from safety of individual consumers under conditions of ordinary use of products at home.

There is, as my statement pointed out earlier, in connection with some products like detergents, for example, an area of potential overlap, and this is the kind of thing that has to be worked out between the agencies in order to prevent waste, and in order to reduce confusion on the part of the public and the regulated industry.

I see no way, however, given the public interest in the existence and operation of an EPA and an agency charged with consumer safety, of avoiding entirely some such areas of potential duplication. And the only way of resolving them, it seems to me, are, as often in Government, dependent upon good communication and cooperation.

Senator Moss. One reason I asked the question is that the President has not chosen to consolidate the EPA into any one of the four departments, and since there is a similarity between the two, I wondered why the Consumer Safety Administration should be consolidated?

Secretary RICHARDSON. Well, I am not sure that I am really a competent witness on this question, Mr. Chairman, but I think that the answer on its face is that the EPA is in a sense poised between a number of other departments. It has responsibilities that would be of direct concern in relationship to the Department of Natural Resources, to the proposed Department of Urban Affairs and Economic Affairs, as well as to Human Resources, and so it would be hard to know which of the departments you assigned it to.

I take it it was essentially this kind of reasoning that led to its being created as a separate agency in the first place.

Senator Moss. I have some more questions, but Senator Prouty has to leave, and I want to give him an opportunity to ask any questions he may have at this point before he has to depart.

Senator Prouty.

Senator PROUTY. Thank you, Mr. Chairman.

First, I ask unanimous consent to have a brief statement inserted in the hearing record.

Senator Moss. That will be done.

(The statement follows:)

STATEMENT OF HON. WINSTON PROUTY, U.S. SENATOR FROM VERMONT

Mr. Chairman, today we are beginning hearings on proposed legislation which is as important to the health and well-being of the American people as any legislation before Congress. I am confident that before the end of the year the President will be able to sign into law a comprehensive Product Safety Act.

This Committee, with the leadership of Senator Magnuson and Senator Cotton, has already laid the complex and careful groundwork for developing a workable law. Four years ago I was pleased to support a bill cosponsored by the Chairman and Senator Cotton which set up the National Commission on Product Safety.

Senator Cotton will not be back from New Hampshire until lated today so he is not able to be here this morning. All of us know of his interest in product safety. A year ago June when the Commission presented its final report to this Committee, Chairman Magnuson perhaps best described Senator Cotton's contribution in this area when he stated:

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

I believe I can speak for Senator Cotton and all other Republicans on the Committee when I say that all of us will do all that we can to assure prompt enactment of an omnibus product safety bill. In our modern affluent society we have literally millions of household products. Those products make life easier and are the marvel of the world. Unfortunately, each year they also result in 20 million injuries and 30,000 deaths. The same modern technology which permits the development and design of the thousands of useful household products must be focused on the goal of making those products the safest in the world.

During the life of the National Commission on Product Safety we on this Committee responded with urgency in passing the Child Protection and Toy Safety Act of 1969. Based on preliminary findings of the Commission we moved with haste to insure standards for toys which too often became products of sadness rather than joy. Today the same urgency and priority should be given to the omnibus legislation before us.

S. 983, which embodies the recommendations of the National Commission on Product Safety, and S. 1797, which embodies the Administration's recommendations for product safety legislation, are both strong omnibus product safety bills. Their differences are more in form than in substance and I am confident that these hearings will serve to narrow those differences so that our Committee can report a bill to the Senate for consideration early this Fall.

Senator PROUTY. I would like to ask a few questions at this point.

Senator MOSS. You may.

Senator PROUTY. I believe I can speak for Senator Cotton and all other Republicans on the committee when I say that all of us will do all we can to assure prompt enactment of an omnibus product safety bill.

I regret that I was unable to be here for your statement, and if any of the questions which I pose have been answered in your statement, please so indicate.

Mr. Secretary, your expertise extends beyond HEW to many other areas. Relying for a minute on your State Department experience, I would like to hear your reasons for the proposed treatment of imported products. Why should we place the responsibility on the importers rather than directly on the foreign manufacturer?

Secretary RICHARDSON. The reason, Senator Prouty, essentially is that the importer by definition is responsible for bringing the product into the country, where we can easily get our hands on it. Whereas, the attempt to apply in an extra-territorial manner the force of our own regulations as to things that may or may not be brought into the United States would be exceedingly difficult to administer.

Senator PROUTY. In other words, you don't think it is good diplomacy for us to undergo this procedure with a foreign country?

With respect to exports, should exports meet the same safety standards as products manufactured for domestic consumption?

Secretary RICHARDSON. Under our proposed legislation, they would not have to. They would only have to meet any standards required by the purchasing or importing countries.

Senator PROUTY. I am not a lawyer, so I find myself asking legal questions every time lawyers are around. In section 16 of S. 1797, the penalty section, "Any individual director, officer, or agent of a corporation is liable for civil or criminal offense." I am wondering if that provision isn't a bit harsh?

Secretary RICHARDSON. I don't think so, Senator Prouty. I think, where penalties are concerned, that it should be possible to reach the culpable individual. We are not dealing, in the case of criminal actions, specifically with the law of agency, for example, under which you charge the superior, but rather with situations in which there is involved criminal intent. And where an individual who may not be boss is nonetheless directly responsible for part of the conspiracy to avoid or evade the law, it seems to me appropriate that he should be charged.

I remember the U.S. attorney in Massachusetts prosecuted under other Federal laws all individuals who were responsible, down the line in the corporate hierarchy.

Senator PROUTY. In S. 983, section 11, the Commission is given authority for setting standards for new products. I am not sure whether that provision envisions premarket clearance or not. But I would like to have you tell us about that.

Secretary RICHARDSON. We aren't sure either, Senator Prouty, whether the provision in S. 983 does or does not require preclearance. In any event, we do not believe that it is either necessary or desirable to create a mechanism that would require preclearance of all new products. We think that to do so would have a chilling effect on the market for new products, and that sufficient protection of the public is provided by action promptly upon the basis of engineering data tending to show that there may be a risk to the public from a newly marketed or proposed product. We think that it will be possible to move quickly enough in order to reach actual risks without having to create the very cumbersome and expensive machinery that would be involved in pretesting all new products.

Senator PROUTY. S. 983, in section 15, by statute, sets up a product safety advisory council. Would you favor such an advisory council, and if so, should we write it into the law?

Secretary RICHARDSON. We could, of course, do this administratively, Senator Prouty, under the administration bill. We don't think that it is necessary to provide specifically by the statute for doing so, although we don't have any strong objections to it either. There is a consideration that by calling on an ad hoc basis for advisory groups for particular product areas we retain a degree of flexibility that we might lose if a council had to be in on the act all the time.

Senator PROUTY. Thank you, Mr. Secretary.

Thank you, Mr. Chairman.

Senator Moss. Thank you.

If an advisory council was appointed, the composition of the council with respect to the views represented would be quite significant; isn't that correct?

Secretary RICHARDSON. That certainly is correct, Mr. Chairman.

Senator MOSS. Thank you, Senator Prouty. I know you have to leave, but I did want to give you the opportunity to ask your questions.

I do have a few more questions that I would like to ask, Mr. Secretary.

These concern standard setting, Mr. Secretary. I am frankly surprised at your statement in your prepared testimony, where you say there will be heavy reliance on existing voluntary standard setting bodies under the administration's standard setting procedure, and I wanted to quote a short paragraph from the final report of the National Commission on Product Safety:

> More than 1,000 industry standards are applicable in one way or another to the safety characteristics of the more than 350 product categories we have listed. These standards represent the efforts of 48 standard-making organizations in the United States. Unfortunately, these standards are chronically inadequate, both in scope and permissible levels of risk. They do not usually address themselves to all significant foreseeable hazards. They give insufficient consideration to human factors, such as predictable risk taking, juvenile behavior, illiteracy, or inexperience. The levels of allowed exposure to electrical, thermal, and mechanical and other energy exchanges are frequently too high.

Wouldn't it be shortsighted to create a standard setting procedure that relied upon standard setting activities by the private sector?

Secretary RICHARDSON. Well, I think, Mr. Chairman, that it should be clear that the private sector would be called upon to develop a standard on the basis of data indicating the scope and character of an identified risk. This means in substance that we would be calling upon the private sector for whatever expertise it could supply, not to develop a consensus standard, as has been true very often in the past, but to develop a standard adequate to cope with the identified risk itself.

And, of course, subsequent to the development of the standard by the private group, there would then be its publication for comment by others, including participation by consumer groups who themselves in many instances would be the private group called upon to develop the standard.

So what is involved, really, is a matter of making as effective use as possible of existing expertise without trying to duplicate it with Government personnel, since to do so you have to cover the whole range of consumer products, in effect, which would mean an enormous bureaucracy, much of it on a standby basis, pending the possible development of new products, or the awareness that a hazard had emerged.

In fact, I don't believe that there is very great difference between the bills in this respect. The use of the private sector is something that would be involved in the administration of the law in both instances, I think.

The one significant difference between the two pieces of legislation is that the Commission bill contemplates that the product safety agency would have authority on an interim basis or pending the development of a standard by an outside group, to initiate action leading toward the development of a standard concurrently.

This seems to me a valuable provision of the Commission bill and one that could very well be accommodated with ours.

Senator Moss. In the matter of the auto safety law, experience has demonstrated that in-house research for standard setting is absolutely necessary if safety through standard settings is to be achieved.

In those areas where the National Highway Traffic Safety Administration has had to rely on test procedures on the private sector, the quality of standard has been significantly lower, and this is the point that I want to raise here.

If we depend on industry to set the standard, it would be a safety standard of the lowest common denominator.

Secretary RICHARDSON. This clearly is to be avoided, Mr. Chairman, and I think we should take exception to the words "depend on the industry to set the standard." We would ask industry to participate in the development of the standard in the first instance, drawing upon its own testing capabilities, engineering data, and so on. But the Department of HEW, and specifically the Consumer Safety Administration would have to assume direct responsibility and accountability for the standards set.

Senator Moss. I think your previous statement indicates that you believe that under both bills the product safety agency would be able to utilize consumer oriented organization, although in your prepared statement you said that S. 983 does not provide for financial support for the independent standard developers.

But if you would examine section 5(d) of S. 983 you will see that it authorizes the Product Safety Commission to contract with third parties, and I gather that is essentially what you are advocating; that the agency be able to contract with and utilize the expertise of private agencies, but nevertheless to have the standard promulgated by the agency and not to rely solely on a standard developed by industry.

Secretary RICHARDSON. Yes; I agree with that, Mr. Chairman.

Senator Moss. Mr. Secretary, S. 1797 provides for hearings when there are factual disputes concerning the findings upon which an order to promulgate a standard is based. It is not clear to me when that hearing would be held. If the findings are not made known until the order is promulgated, then the hearing would not be held until after the issuance of the order.

If that is the intent, would the hearing stay the effective date of any order?

Secretary RICHARDSON. I would have to ask the deputy assistant general counsel, Mr. Hirsch, who has participated in the drafting of the legislation and is more familiar than I am with the details of the administrative procedures to answer that, Mr. Chairman.

Mr. HIRSCH. The purpose of this provision, Mr. Chairman, was to make clear the Secretary's authority to conduct the type of hearing that the provision describes. Presumably, there would not be any final order that would require action until there had been such a hearing in those cases in which the Secretary determined that such a hearing was required to be conducted.

Senator Moss. If the findings aren't made public until the order is issued, how would there be any way to determine whether there is a factual dispute?

Mr. HIRSCH. I think it would depend upon what point you are in the proceeding. Let me refer specifically to the provision for the moment.

Senator Moss. Since this is a point for clarification, if you don't have it readily at hand, it could be supplied for the record.

Mr. HIRSCH. We will supply that for the record, Mr. Chairman.[3]

Senator Moss. All right. It will be supplied for the record.

Mr. Secretary, why doesn't the administration bill impose any time restraints other than the initial 210 days on standard setting? Has not the FDA been criticized for its slowness in promulgating standards under the Toy Safety Act and the Toy Prevention Packaging Act?

Secretary RICHARDSON. We think that the provision for 210 days as an outside limit within which to act does establish a constraint on delay.

Senator Moss. But it does not apply to the issuance of the final order, does it?

Secretary RICHARDSON. I thought it did, Mr. Chairman.

Senator Moss. It is 210 days to come up with a proposed standard, I believe.

Secretary RICHARDSON. I am sorry; I am sure you are right. The only assurance, I think, that there will be prompt action thereafter is that the data has been considered and that the proposed Consumer Safety Administration would be under pressure to come forward with final action.

Beyond that, the bill confers authority to ban or regulate a hazard under the imminent hazard section.

Senator Moss. We have had this experience with the children's sleepwear standards under the Flammable Fabrics Act, and that has shown us that the length of time isn't left solely to the discretion of the regulatory agency. It could be stretched out almost indefinitely.

Secretary RICHARDSON. It is hard to foresee what problems may arise in the course of development of a standard in a given area, including judicial delays.

Let me ask Dr. Edwards to comment further on this.

Senator Moss. All right, Dr. Edwards.

Dr. EDWARDS. Well, I think, Mr. Chairman, there have been undue delays along the line, and many of these delays I very frankly am not in a position to explain. I think, however, that in some of the delays that we have been criticized for, the criticism has been unjustified criticism. I know there has been considerable comment in the press and elsewhere recently about the delay in implementation of poison prevention packaging standards.

I think, actually, we have moved along quite rapidly in this area, and in the next 10 weeks we will be publishing for comment at least eight to 10 different standards for various types of substances to be specially packaged.

Again, I really can't make any explanation for the past, but things are beginning to move now and I think we are headed in the right direction in this regard.

Senator Moss. Well, would there be any objection to, say, 60 days for issuance of the final order after the proposed standards, which has the 210-day limit on it?

Secretary RICHARDSON. I see no objection, Mr. Chairman.

Senator Moss. Mr. Secretary, I was glad to see you mention that a need for standards could be supported by an adequate injury data

[3] See p. 900.

base or by an engineering base. I understand this to mean we wouldn't have to wait for the injury before supporting the need for a safety standard? That is, engineeringwise, the article could be determined to be injurious or prone for injury without waiting for the injuries actually to occur, is that correct?

Secretary RICHARDSON. That is correct, Mr. Chairman.

Senator Moss. Is the HEW exploring the possibility of setting product standards by using computer prediction models to determine the injury characteristics of a particular product?

Secretary RICHARDSON. I will ask Dr. Edwards to comment on that.

Dr. EDWARDS. We certainly are, Mr. Chairman. If you would like further details on that—with the Secretary's permission—I would ask Mr. Jensen to speak to this particular issue.

Senator Moss. We would be glad to hear from you, Mr. Jensen.

Mr. JENSEN. Thank you, Dr. Edwards.

Mr. Chairman, the Bureau of Product Safety for the last several months has been exploring in considerable detail using the capability of the staff and also outside experts, the feasibility of establishing a statistically sound injury collection system, and when I say collection, I mean collection and analysis, too. We will be on board hopefully by the end of this month, assuming that some of the strikes are ended, with a system that will provide daily reports from some 119 hospitals around the Nation of all product related injuries that come into the emergency rooms.

We recognize this is only first base. Second base, of course, would be the physicians' offices, and ultimately, if necessary, the homes. We are trying very hard to devise a system that will provide us with the basis for program planning, or program priorities, on injuries that occur, and also the capability to predict injuries that have not yet occurred, and, of course, that is the ultimate.

Senator Moss. That is essentially what I was asking about; the ability to predict the injury characteristics of a product rather than waiting for the reports to come in of injuries that have occurred.

Mr. JENSEN. It certainly is technically feasible to establish a model in which could be fed the information on the use or reasonable misuse of a product and determine with some precision what might be anticipated with respect to the contribution of that product to the injury of consumers.

Senator Moss. By using computer prediction, it would be possible to quickly get some readout on the injury prone nature of the product.

Mr. JENSEN. This clearly would be our aim, Mr. Chairman.

Senator Moss. Mr. Secretary, could you explain what findings would be necessary to support a product safety standard. Is cost one of those findings?

Secretary RICHARDSON. I am not sure that I understand the question, Mr. Chairman.

Senator Moss. In the information disclosure part of your bill the Secretary is prohibited from disclosing cost information he obtains from manufacturers. How is he ever going to make estimation of costs if he is not going to make some disclosure of cost information obtained from manufacturers?

Secretary RICHARDSON. You mean as to the cost of the safety measures to be incorporated into the product?

Senator Moss. I will ask my colleagues to correct me if I am wrong in this, Mr. Chairman, but I believe that the provision restraining the disclosure of cost data is directed rather to the accounting data of the manufacturers as applied to the manufacturer of the product generally, in order to avoid prejudice to him in relation to his competitors, but that it need not, and does not apply to the costs of taking the necessary action to make the product safe.

Do you think the enumeration of findings imposes too great a burden on the standard setter?

Secretary RICHARDSON. I am sorry, what was that question again, Mr. Chairman?

Senator Moss. The enumeration of findings, does that impose too great a burden on the one who sets the standards?

Secretary RICHARDSON. I don't think that it would, although it may be that given the volume and the numbers of products involved—let me ask Dr. Edwards to comment on this.

Dr. EDWARDS. We think it is absolutely essential, Mr. Chairman.

Senator Moss. You think it is essential?

Dr. EDWARDS. Yes.

Senator Moss. And therefore your answer is it is not too great a burden?

Dr. EDWARDS. That is correct.

Senator Moss. How could the Office of Product Safety Regulation prevent the stockpiling of products by manufacturers after a standard is promulgated but before it becomes effective, a practice which is cited in the flammable fabrics area?

Secretary RICHARDSON. Well, I take it, Mr. Chairman, that a determination that a product is not safe could result in a directive to take it off the shelf or to prohibit its being marketed, so that a manufacturer who undertook, in effect, to stockpile the product before the standard was promulgated, knowing that one might be promulgated, could find himself stuck with no recourse.

Senator Moss. Do you believe that he would be on notice when the proposed rule was announced and before the order came out?

Secretary RICHARDSON. Yes, exactly. And beyond that, Mr. Chairman, an order can in any event be retroactive in the sense that it is applicable to products previously manufactured whether or not there was any such awareness at the time of the manufacture. This is true now, of course, as applied to the various standards that we presently enforce, and in that sense, of course, the manufacturer is always on notice that if his product is found to contain inherently unsafe features or to have unsafe consequences in any respect he may be prevented from marketing it.

Senator Moss. Mr. Secretary, in your prepared statement you say that in regard to protecting the public from imminent hazards, the administration bill is more simply constructed than the Commission's bill. I would like to compare the procedures.

As I understand it, under S. 1797 the Secretary would ask the Justice Department to initiate a proceeding in court in order to prevent the marketing of a product which is an imminent hazard. In that court action the Government would have the burden of proving that the hazard was imminent; is that correct?

Secretary RICHARDSON. Well, I think a word needs to be said on the burden of proof issue. We would be confident that in going to the Justice Department with evidence that a product is an imminent hazard that the Justice Department would move right away. They would seek a preliminary restraining order against the marketing of the product.

A judge, faced with a showing that a product is imminently hazardous, could issue a temporary order pending a further hearing to establish definitively that the product is indeed imminently hazardous. At that point, to be sure, there would be a burden of proof resting upon the Government. But at the preliminary stage the issue, in effect, would be that of the persuasiveness of the preliminary showing that serious risks could follow continued marketing of the product. And this, of course, is the case which applies now in connection, for example, with the seizure of products violating the food and drug laws.

We can and do get courts, constantly all over the country, to take preliminary action pending later determination of the relative seriousness of the risk in order that the public not be subjected to the hazard in the meanwhile.

Senator MOSS. Besides the dependency of having the Justice Department move rapidly, the Government also assumes the burden of proof on the imminent hazard. On the other hand, the Commission bill, S. 983, allows the Commission to declare a product to be an imminent hazard prior to the completion of any standard-setting procedure, and when declaring a product an imminent hazard the Commission could establish appropriate interim standards. An effective party challenging the Commission action would have the burden of proof of showing that the Commission acted arbitrarily and not in accordance with the law. So there would be an ability to act much more quickly under the Commission's bill; is that right?

Secretary RICHARDSON. I do not think so, Mr. Chairman, except to the extent that the Commission would be empowered to establish interim standards, but it would take longer to establish interim standards, which would then become applicable to the product marketed, than to prevent its being marketed entirely through a court order pending a determination of the degree of hazard. Indeed, under our proposed procedure, the product could be kept off the market entirely until the standards were set.

Senator MOSS. Do you really think it is faster to go over to the Justice Department and to educate all those lawyers and to get them to move to file an action rather than having the Commission itself act?

Secretary RICHARDSON. We do this, Mr. Chairman, with respect to products presently deemed imminently hazardous to health. This is a standard, or a concept which exists already in other provisions of the law, and it is not hard to grasp the risks inherent in a danger of this degree of seriousness, and in case of doubt I think anyone faced with the issue would be inclined to move rather than otherwise.

Senator MOSS. I like your optimism.

Secretary RICHARDSON. Frankly, Mr. Chairman, I do not see any other way, of giving the Commissioner, or the Administrator of the proposed agency, unilateral authority to take a product off the market.

I do not know of any other area of the law in which, actually to stop the sale of a product, it is possible to do otherwise than to go to court in effect.

Senator Moss. What about the Toy Safety Act? Do we not follow a procedure very similar to this in S. 983?

Secretary RICHARDSON. Well, no. The procedure, as I understand it—the Commissioner may want to correct me in this—but, as I understand it, in the Toy Safety Act, what we can do is essentially what we proposed in our bill, namely, that in the case of an imminent hazard there is authority to go to court.

In the case of something short of an imminent hazard we can proceed by more deliberate steps, including court proceedings which actually lead to a determination on the matters, and even in these cases we have been able to proceed on the basis of something like 15 days.

Commissioner?

Dr. EDWARDS. That is correct, Mr. Secretary.

Senator Moss. You have the authority to go to court, but you may withdraw the article without going through a court procedure, is not that correct?

Mr. Jensen, is not that correct?

Dr. EDWARDS. That is correct. We can. But the court can still interject itself in our procedure. We can ban, but the court can still come in and reverse that particular decision on our part.

Senator Moss. Exactly, and that is precisely what S. 983 would provide. The court may then intervene and, of course, any person is entitled to have his matter heard in court eventually. But we are talking about dealing with something that is an imminent hazard and it needs to be stopped immediately. Whether the Commission should be able to act immediately and then have the court proceeding or whether it must go to court and have the proceeding first before it is stopped is what we are really talking about.

Dr. EDWARDS. I certainly understand. I think the Secretary has indicated, and I would certainly agree, that it would be difficult for me to see how any court would not go along with the kind of evidence that we would have to have to initially substantiate such an action anyway. But I understand your point.

Senator Moss. As I said, I do appreciate your optimism on that, but after struggling with some of these instances that go on for a year and a half while we are trying to get through court, I can see some reason for being able to move with the alacrity of the Commission and then have the court act on the matter.

Secretary RICHARDSON. I would just like to say, Mr. Chairman, these are matters in which, of course, we would like to work with the committee in getting out a bill because the bills are pretty close. It could turn out really that if a court were not apt to be convinced by a prima facie showing of hazard the matter could be tied up either way, whether we go to court first or are taken to court immediately. The result could be essentially the same.

In any event, the point I was addressing, with my understanding of S. 983, was that it required the establishment of interim standards before the product could be taken off the market, and that, it seems to me, is slower than going to court for a preliminary injunction. It is

certainly slower than what I now understand you to say would be possible under S. 983, which is immediate action by the agency without waiting for it to promulgate standards.

Senator Moss. The Commission would promulgate interim standards without the full process of a final order, and then that matter, of course, would be subject to challenge in court by any manufacturer or retailer who felt that he had been unfairly treated.

Mr. Secretary, is it fair to conclude from your statement that you think that industry will comply with whatever product safety standards are set and therefore that product certification is not necessary?

Secretary RICHARDSON. No; I do not think what I tried to say is quite that, Mr. Chairman. I do not think we are so optimistic as to assume that all of industry will automatically comply. But it is a question of the relative contribution to the assurance, or the increase of the likelihood of the industry compliance, that would be afforded by the certification procedure, and what we are saying in effect is that if you have civil and criminal penalties and if you have, of course, in any event, tort liability, that the possibility of certification would not add much and would involve a considerable proliferation of independent certifying processes to be availed of presumably by manufacturers who wanted to be able to say that they had their certificate.

Senator Moss. We had the experience with the tire safety standards, in which everyone assumed that the tire manufacturers could meet the low level of standard that was promulgated by voluntary promulgation. But when compliance testing was done the failure rate of tires was about 15 percent. So there is some skepticism as to whether voluntary industry standards without certification would be effective.

Secretary RICHARDSON. It would not be voluntary industry standards, Mr. Chairman. In either case, we are talking about the standards officially promulgated by the enforcement agency. So the question then is whether, as I understand it, a significant degree of likelihood that the manufacturer has complied would be added by a provision for him to get a certificate that he has complied, and we are saying in effect that the sanctions that would be attached to noncompliance are, by themselves, so likely to get him to comply anyway that the provision for a certificate would not add much but perhaps a lot of business to independent laboratories set up to provide certificates.

Senator Moss. Let me ask you a couple of questions about the defect-recall provisions of your bill. What if a product not subject to a standard is found to have a safety defect? Why should not that be subject to recall?

Secretary RICHARDSON. Well, I do not know why it should not, Mr. Chairman. I have to defer to learned counsel here. I would have thought that it should be and that it would be.

Mr. HIRSCH. That, Mr. Chairman, is, I have to concede, a larger policy issue that our bill did not address. We were concerned with assuring that if a manufacturer failed to comply with the standards of other provisions of our bill, then we would have the means under the notification provision to protect the public from the injury that might be caused by that noncompliance.

We did not in our bill address the larger question of whether in the case of a defective product that we are not regulating the Secretary

should, nevertheless, have the authority to go into a hearing as to the nature of the defect and then order the manufacturer to have that product recalled.

Senator Moss. I think the Secretary has answered that he thinks that defective products ought to be subject to recall if there is a safety hazard, even though no standard has been laid down before.

Mr. HIRSCH. Well, you understand, sir, that the question is whether the product is an imminent hazard, and that in that case we would go into court and the court is given expressly the authority to provide for recall, notification, and so forth.

We are talking about in our notification provisions, therefore, only the products which violate the standards under the bill, but not in any event imminent hazards.

Senator Moss. What if it falls below being imminent but there is still a safety defect in the product?

Mr. HIRSCH. We should have a standard for it. If it is then not in compliance with the standard we would hold a hearing under that provision in which the manufacturer or the dealer would be able to demonstrate that we are wrong. If he fails to demonstrate at that hearing that we are wrong we could then, if the hazard causes significant risk of injury to the public, order notification, recall, or repair of the product, or refund of the purchase price.

Secretary RICHARDSON. In other words, I take that answer to mean, Mr. Chairman, that we can recall a product that is in violation of the standard. We can bring about the recall of a product that is an imminent hazard. So the only area in which recall is not provided for under our bill would be a case where a product has not yet been determined to be sufficiently hazardous to justify the establishment of a standard. That seems to me an acceptable distribution of remedies.

Senator Moss. This seems to be the gap in what we are talking about; where a product has a safety defect, but does not quite qualify under the imminent hazard standard, and there has been no promulgation of a safety standard by the Department to deal with the defect.

Should there be a provision requiring the manufacturer to notify the Secretary if he discovers one of his products has a safety defect?

Secretary RICHARDSON. I know this is a provision in the Commission bill not covered in our bill. I think that is a good provision. I do not see any reason why it should not be in the legislation.

Senator Moss. Why have you provided for a formal proceeding before notification of a defect to the consumer? I am thinking of your experience in formal proceedings in trying to ban carbon tetrachloride from the marketplace. Would not a procedure for safeguards for affected persons be more appropriate?

Secretary RICHARDSON. I think this is a question that the Commissioner could answer better than I can, Mr. Chairman.

Dr. EDWARDS. Mr. Secretary, could I have our counsel answer that particular question?

Mr. HIRSCH. All I can say, Mr. Chairman, is this is a matter—remembering again, emphasizing again, that we are not talking about the imminent hazard area—this was a matter simply of balance. It is a fairly drastic thing, needless to say, to require of a distributor. Let's pass the manufacturer for the moment because this is one area

in which our notification provision I think should be thought about.

Our notification provision might require that the notification be in fact by a very large distributor who has the resources and also had the misfortune to distribute the product. He may be, for all practical purposes, relatively innocent of the noncompliance. The noncompliance might have been by a small manufacturer that is no longer around.

Now, considering those circumstances, I think it was the feeling that the organization charged with the responsibility of notifying the public be given every opportunity to demonstrate two things: first, that the noncompliance in fact created no significant injury, and there may be many of these cases of no significant risk injury to the public; and, second of all, that there was no noncompliance, that the Secretary's determination was erroneous. This could be done without a hearing, and, indeed, it might well be done without a hearing where the hearing is waived and not requested by the distributor. But if a distributor wants a trial in effect, we feel that he should get one. That does not mean, necessarily, a lengthy proceeding.

Senator Moss. Mr. Secretary, I don't know whether in S. 1797 you preserve the common law tort liability. Wouldn't it be possible to argue that a private suit for injunction to comply with an applicable safety standard is now the only remedy for a consumer who has purchased a product not in compliance with the safety standard?

Mr. Richardson. We don't think so, Mr. Chairman. We intend to preserve tort liability and not in any way to displace it. The legislative history could make this clear. But I don't think that the authority that we would propose to enforce a standard, even by implication, ousts the common law remedy for injuries consequent upon the violation of this standard.

Senator Moss. So your intent is that the tort liability would remain—not be impaired by the law which would seem to give him only the injunction to comply with the safety standard?

Mr. Richardson. That is correct, Mr. Chairman; it would not, in our view, be impaired.

Senator Moss. I have just one final question, and then I will defer to my colleagues who have been waiting a long time. Suppose the manufacturer of consumer product A, which is subject to the Flammable Products Act, product B, which is subject to the Federal Hazardous Substances Act, products C and D, now subject to the new Consumer Safety Product Act—would you prefer to have to work within the framework of each separate act or to be under one uniform statutory scheme?

Mr. Richardson. I think eventually, Mr. Chairman, we should seek to develop a uniform statutory scheme. I don't understand that the kind of analysis required for this purpose has proceeded far enough yet to do it, but I think that it is quite clear, as we look down the road, that there will be problems in the separate enforcement of these different pieces of legislation.

For example, in the case of a given product like, let's say, earthenware, where there is some risk of leaching of lead in food, we have jurisdiction already under the Food, Drug and Cosmetic Act to take appropriate action to warn the public and so on. We can establish

minimum tolerances for the amount of lead that may be used in the glaze and so on, but it is not clear under the Food and Drug Act that we have authority to establish the product safety standards that are contemplated by the legislation now before the committee, in the sense that the standards could embrace the conditions of manufacture and so on, as well as the residues that would be tolerated.

And so we visualize that upon the enactment of this legislation we would supplement what action has already been taken under the food and drug laws in the case of earthenware by the promulgation of this standard.

Well, now, this kind of action, in a number of areas that are covered by the Hazardous Substances Act and so on, can create problems, and I think that we and, I assume, others will and should continue as experience develops to look for ways in which more effectively to accommodate and perhaps eventually to recodify all of these laws into a single, comprehensive consumer product safety piece of legislation.

Senator Moss. Thank you, Mr. Secretary.

The Senator from Kentucky?

Senator Cook. Thank you, Mr. Chairman.

Mr. Secretary, do you have an estimated figure for cost of operating S. 1797 for a 3-year period?

Mr. Richardson. Yes, we do. For a 3-year period, starting with the first full year of the program, fiscal 1973, we estimate a total of $50 million.

Senator Cook. The reason I asked you that is because on page 51 of S. 986, the estimates have apparently been drawn out of a hat, $5 million for the fiscal year, June 30, 1971, $7.5 million for 1972, and $10 million for 1973. Therefore, you would consider those figures to be totally and completely inaccurate and inadequate; is that correct?

Mr. Richardson. That is correct, Senator Cook.

Senator Cook. Also, I might say that none of these figures includes any amount of money for facilities to be constructed as provided under 5(g), which refers to testing facilities. Now, you have testified that there are presently many of the testing facilities already in existence within HEW; is that not true?

Mr. Richardson. That is true.

Senator Cook. Do you feel that there ought to be a separate and individual testing facility as proposed in S. 983?

Mr. Richardson. No, we don't, Senator. We think so far as Federal facilities are concerned, of course, the processes for the organization of structure and so on can be pursued to the extent needed. I might note here, and bearing also on the chairman's earlier question with reference to relationships between HEW and the EPA, that we are jointly developing testing facilities at the Pine Bluff Arsenal as a place for the intragovernmental testing of many substances for environmental and health hazards. We would, in addition to this, of course, continue to call extensively upon the NBS.

As I mentioned in my testimony, and I am sure the committee is aware, the NBS will itself testify on Wednesday. This has been a very fruitful and effective relationship.

As far as outside, nongovernmental testing facilities are concerned, we would not see the need to provide Federal funding.

Senator Cook. Therefore, you feel that, under 5(g) of S. 983, the Commission is authorized to plan, design and construct and operate facilities or facilities suitable for research, development, and testing for consumer products for the furtherance of this act, and this would really be a duplication of many processes that are now in existence.

Mr. Richardson. That is correct.

Senator Cook. As a matter of fact, in relation to our remarks about using outside facilities, it is amazing, really and truly, that we would take the position of wanting to thoroughly reinvent the wheel within governmental processes, because in hearings that we have held here in the Commerce Committee we have been very impressed with, for instance, the safety testing facilities of the insurance industry in regard to automobiles. As a matter of fact, we use them, as opposed to the Government's, and saw many remarkable films right here in this room. This is at least one industry that did a very fine job in portraying the products and problems that are involved with regard to automobile safety.

I might say that we ran into a problem, and I just put this into the record, with the 1966 Auto Safety Act providing for a facility. We have now gotten a report from your departments, calling for a sum of $9.6 million, and we now are faced with a problem of whether to have hearings after we determine that we should have such a facility, or whether it should be farmed out to colleges or universities or other facilities throughout the country. So I just bring that up, because I am wondering why with all of the facilities that are in existence within the Federal Government, we feel that this independent agency should have its own facility.

Let me ask another question, Mr. Secretary. Under section 4 of S. 1797, you provide for collection and disclosure of information on consumer product risks. Will such disclosures be by product names?

Mr. Richardson. No.

Senator Cook. Why would you feel that you would not do it by product names for the benefit of the American consumer?

Mr. Richardson. May I ask the Commissioner to respond to that?

Dr. Edwards. Senator Cook, would you repeat that question, please?

Senator Cook. You provide for the collection and disclosure of information on consumer product risks, in other words, a general risk in regard to a particular field. Now, apparently from the answer of the Secretary, you do not provide that this consumer product risk will designate particular product or brand names. Now, why do you think that this should not be done on that basis, and why do you think that this information should not readily be understood by the average consumer?

Dr. Edwards. Well, I would hope, Senator, that with the proposed epidemiological resource or information-collecting source that we are in the process of now establishing the information that we would obtain would be available to the public.

Senator Cook. I am not saying that.

Dr. Edwards. And understood by the public.

Senator Cook. What I am saying is it is not done by specific item. Suppose that a particular field is dangerous, although somebody within that field complies with all your standards. Won't their sales fall because you have condemned the particular product not by brand name?

Dr. EDWARDS. In other words, you are suggesting that by establishing generic standards we would be in fact penalizing those manufacturers——

Senator COOK. Who complied?

Dr. EDWARDS. Who did comply. That is correct.

Senator COOK. Let me give you an example, because I think we are dealing directly with semantics, and we immediately take cause and effect. We have used the figure that some 20 million injuries occur in households throughout the United States as a result of products and related problems. Well, probably, it is estimated that one-third of these are because people fall downstairs. Now, are you going to impose on the building industry that everybody builds one-floor houses without stairs? The point is we have gotten into a cause and effect situation, and we have come up with a tremendous number of accidents, and that number totally, completely frightens the public. Many of these problems occur because of the individual's use of the facility himself, complete and absolute carelessness, but this builds up the figure to the extent that we say this is something that has got to be done immediately because we have some 20 million injuries.

Somebody leaves a roller skate sitting in the hallway, which happens quite frequently in houses that have as many children as mine. But I must say to you that if we are going to blame a particular product, let's take, for instance, how many accidents occur in the household every year by reason of the use of kitchen knives? Now, this isn't to say that we are going to ban kitchen knives. But if we find a particular product that is inappropriately designed, shouldn't we earmark that product, rather than condemn the entire industry?

Dr. EDWARDS. Absolutely. And I think this is exactly what we are trying to get at by establishing a more comprehensive and meaningful information-collecting system, so we can identify and target in full those specific items that are in fact causing the injuries.

Senator COOK. The point I am getting at is this: We presently do this in regard to products, foods. A good example is the example of the traumatic experience that the country has just gone through. And I am wondering if, in fact, when you talk about the disclosure of information, that you do not talk about the safety hazards as they apply to specific brand names, that you do it in general. And the problem that I have with this is that this faces a manufacturer with a tremendous problem, in which he is erroneously condemned because of the disclosure of a risk within a field, when he, in fact, is in compliance.

Secretary RICHARDSON. Senator Cook, my attention has been drawn to the provisions of section 4(c)(2)(A) on pages 5 and 6 of S. 1797.

Now, the effect of this, as I understand it, is in substance that the Secretary may publish information in a way that does make the product clearly identifiable, and that he may, in other words, use the brand name.

Senator COOK. But the manufacturer must request of the Secretary that it be done on that basis, is that not correct?

Mr. RICHARDSON. No.

I think it is the other way around. That upon the request of the manufacturer, the Secretary shall publish such comments or a fair summary thereof, or a statement to the manufacturer and so on. He

may ask the Secretary to publish information that will, in a sense, protect himself.

And the Secretary shall take reasonable steps to assure, prior to his public disclosure thereof, that information from which the identity of such manufacturer may be readily ascertained is accurate, and that such disclosure is fair under the circumstances, and reasonably related to effectuating the purposes of this act.

If the Secretary finds that in the administration of this act, he has made public disclosure of inaccurate or misleading information which refers adversely to the safety of any manufacturer thereof, or distributor, et cetera, he shall, in a manner similar to that in which such disclosure was made, publish a retraction and so on.

In any event, none of this except the retraction would apply to the proceedings initiated by the Attorney General against violative or imminently hazardous products.

Senator Cook. Now, speaking of this in regard to the Attorney General, because I want to get to one section in S. 983 that causes me a great deal of problems, and I submit this question to our legal counsel:

I refer to pages 19 and 20 respectively of S. 983.

What kind of problem do you think the courts will have in issuing an order whereby the courts are required, under S. 983, to include collection and retention of information on the identity of purchasers, in claims of injuries or hazards, and collection and retention of information on product performance and servicing to the extent it relates to safety, procedures for adequate product design and performance.

Now, how is the court going to handle this manner of issuing orders, at least as you see it, that includes fields of a very technical nature that apparently the court is going to get itself involved in in the issuance of these orders?

Mr. Hirsch. Mr. Senator, the administration bill, of course, does not contain a provision of this complexity.

However, if I had to answer for the Commission, I would suppose that this is no more complex than very many of the proceedings that are in the courts today.

I can't conceive that an antitrust action, or indeed the review of a railway rate proceeding, would be any simpler than this. If a product under either our bill or the Commission's bill were very hazardous, very speedy action could take place.

If much more intricate matters had to be gone into, under the Commission's bill, if the Commission were to go into court for a product that is not imminently hazardous, I presume that there would be more time since the public would be subjected to less risk, and these matters could be gone into.

Senator Cook. Don't you think under the procedures in S. 983 as a matter of fact—for the court to make a determination will take a much longer period of time than the procedures under the other bill?

Mr. Hirsch. Very possibly, yes.

Senator Cook. I might mention—just as a matter of determination, the period of time in which it takes the Federal court, with all of its restrictions, to issue a Federal order under a rate situation within the framework of the railroad system, as regards to the protection of the general public.

As a matter of fact, I can give you the situation under the present rules and regulations under the United States Code that apply to consumer class action, and ask you if any consumer class action that has ever been filed, has ever been brought to a conclusion?

Mr. HIRSCH. I have no idea.

Senator COOK. I will answer it for you.

The answer is "No."

Mr. HIRSCH. Well, I think this may underscore our preference for S. 1797 in this regard.

Senator COOK. Let me ask you another question, because I would think that those who have read the final report of the National Commission on Product Safety feel that the Commission did a rather extensive and pretty good job; did they not?

Secretary RICHARDSON. We certainly feel they did; yes. And as I emphasized in my testimony, Senator Cook, our own proposal builds on and proceeds from the consideration given the subject by the Commission.

Senator COOK. Now, the thing I am getting at is this Commission was empowered under an act of this committee.

These people did an objective job, and I am wondering, under S. 983, about the strictness and harshness under item C of page 4, in which it provides that not more than three Commissioners shall be appointed from the same political party, no person in the employ of, or holding any official relation to any person, firm, association, or corporation engaged in selling or manufacturing consumer products, or owning stock or bonds of substantial value in such a firm, association or corporation, or who is in any other manner pecuniarily interested in such a firm, association, or corporation, or a substantial supplier thereof, shall enter upon the duties of or hold the office of Commission. Commissioners shall not engage in any other business, vocation, or employ.

Now, I have serious problems with who is going to serve on this Commission, and how long it is going to take this committee to approve someone unless they all set up blind trusts. If they happen to have a share of stock, or whether they dispose of it, or whether, for instance, Mr. Young, who is senior vice president of the Southwest Research Institute, gives up his position, gives up his holdings in the institute, and then comes to work for the Federal Government without having at least a prior record of association of research facilities in regard to many corporations throughout the country.

Secretary RICHARDSON. Well, I think these are very real problems that you have identified. I can only say for the administration, that we are, of course, proposing that the responsibilities in issue here be vested in the Secretary of HEW, and delegated by him to the head of the proposed Consumer Safety Administration.

In the event, the concerns expressed, or to which the provisions you have cited are addressed, would be covered by the existing conflict of interest law applicable to the executive branch, and to the regulations of the department thereunder, which we think are quite comprehensive, adequate, and explicit.

Senator COOK. Section 16 of S. 1797 deals with enforcement and penalties.

Section A of this section renders the corporation and any individual director, officer, or agent liable for violations.

Am I correct that you are proposing by statute to pierce the corporate veil and hold both the corporate entity and the individual director, officer, or agent liable?

Secretary RICHARDSON. Yes.

Senator COOK. If so, could the term "agent or officer" include an employee?

Secretary RICHARDSON. Yes.

Senator COOK. Would that include working on a production line that commits a knowing violation?

Secretary RICHARDSON. I scarcely can see that a person working on a production line would be indicted, or made civilly liable, although one might imagine a law school examination question in which the possibility made some sense.

I see no reason, however, in this legislation, as in other pieces of legislation providing criminal liability for violation of regulatory provisions, to exempt any particular group of employees.

As I mentioned earlier, as a Federal prosecutor, I had occasion to enforce laws against employees, where, for example, they were participants in a conspiracy to violate the Federal law, or to defraud the United States and so on. And I don't think that it is necessary to try to write into the law some provisions insulating employees below a given level in the company.

Senator COOK. Well, I think probably you are right. But I would hope that this language pretty well answers the question in this record, because I have visions that in almost every labor contract in the future, if this be the case, a new section will be written that would absolve all the employees, and if any employees were so fined, that the corporation would assume the responsibility, and I have very serious misgivings about this broad determination.

We had it in S. 986, we also had it in the Boat Safety Act, and I would hope that the committee might take into consideration some of the corrected language that we used in those specific acts in this regard.

Now, your subsection B, which is headlined "Injunctions," I notice that you also use the phrase "to enjoin."

Do you envision this to include temporary restraining orders which may be issued without hearings?

Secretary RICHARDSON. Absolutely, on an ex parte basis, and most specifically, as I said earlier, in cases where there is an imminent hazard to the public.

Senator COOK. Well, there is something else that bothers me, because following that in subsection D, you provide for private suits, and it appears to follow the pattern set in the amendments to the Clean Air Act, set for the absence of the provision, really, for a mandamus proceeding.

For the record, can you explain why a provision was not made for a mandamus decision?

I read from this act, under section 3042:

> Citizen suits against the Administrator, where there is alleged a failure of the Administrator to perform any act or duty under the act which is not discretionary with the Administrator.

Do you feel that that might also be appropriate for this type of legislation?

Secretary RICHARDSON. I think it would be appropriate, but, I understand, that is unnecessary.

Federal officials are always subject to mandamus proceedings in the event of their failure to carry on their responsibilities and to write this into the law would not, I think, add anything to the existing jurisdiction of the courts.

Senator COOK. Well, I don't really disagree with you, and I agree with your first premise. However, I think when you get down to the authority to regulate and the authority to set standards and the authority to presuppose that a determination can be made on standards, that you might find yourself in a situation where it is so far removed from the mandamus procedures that maybe in effect it ought to be spelled out.

Secretary RICHARDSON. Well, I can't see any inherent objection to this. As I say, one would want to be careful in writing it out to make clear that the language did not in any sense derogate from existing powers of the courts or the right of its citizens to enforce appropriate standards of governmental action.

Senator COOK. Concerning section 17, which deals with imports. Do you have any idea what the position of the State Department or the Treasury Department is in regard to how Customs will be concerned with this effect?

Secretary RICHARDSON. The State Department certainly would—the short answer is that I don't know.

Senator COOK. Under your proposals.

Secretary RICHARDSON. Yes.

Senator COOK. Do you see any problems under S. 983?

Secretary RICHARDSON. Yes. May I ask Mr. Hirsch to comment on that?

Senator COOK. I think while you are commenting on it, gentlemen, you really ought to comment on the rationale of them as opposed to one another. S. 1787 deals with the importer, imposes the restriction on the importer, S. 983 goes directly to the foreign manufacturer.

Mr. HIRSCH. I have just been informed, Senator Cook, that the State Department, the Department of Justice, and the Treasury Department are preparing reports on this aspect of S. 983, so that will be available in detail for the record, and under those circumstances perhaps it would be best if I did not get into it at this point.

Senator COOK. What kind of agreements, for instance, are necessary in the inspection of foreign facilities in regard to the drug field?

Dr. EDWARDS. We currently, as you may or may not know, have an arrangement in which foreign manufacturers of all drug antibiotics are examined by the FDA. We do not have this kind of arrangement in the food field. We are, however, working closely to try to develop some meaningful activities in the inspection area for large foreign food manufacturers. But this is about as far as it goes at the moment.

Senator COOK. What type arrangement do you have now with the drug manufacturers?

Dr. EDWARDS. All foreign antibiotics have to be certified if they are going to be sold within the United States, so in the process of certification we have to obviously know about the manufacturing processes.

Senator COOK. You have a right to inspect those foreign facilities, do you not?

Dr. EDWARDS. Yes. Well, we have the right if they are going to be certified to sell in this country.

Senator COOK. They request certification?

Dr. EDWARDS. That's right.

Senator COOK. And the procedure is to either certify or not certify?

Dr. EDWARDS. That is correct.

Senator COOK. If we got into the entire field of manufacturing in this, would you consider this to be a workable program, or would you feel that this Government would be rather severely accused of artificial trade barriers.

Dr. EDWARDS. I think from a practical point of view it would be impossible, in addition to some of the accusations that could be made in terms of foreign commerce.

Senator COOK. In the matter of premarketing inspections and premarketing rules and regulations, is there some concern within the Department that in effect you may be drying up research of new products? I know that even the Commission, during the course of its hearings, said they rejected premarketing clearance of a broad range of products because of the expenses. From the standpoint of this procedure being too costly, wouldn't you also be put in a position where you may well seriously curtail the enthusiasm for new products?

Secretary RICHARDSON. Yes, I think this is true, Senator Cook, as I noted earlier in my testimony. We would be concerned about the chilling effect upon the development of those products, that they might be tied up in a period in which it was necessary to obtain clearance, and we think therefore it would be preferable to rely upon some evidence that there was a potential hazard or risk inherent in their marketing, and rather than requiring preclearance. There are perhaps hundreds of new products of some sort marketed each year. There would be definitional problems as to what is new.

Senator COOK. Do you think you then might get into the field of authorizing premarket testing, for instance? This goes on quite frequently.

Secretary RICHARDSON. That would have to, in effect, be a corollary of a clearance requirement, as it is already, of course, in the case of drugs. But drugs are designed for ingestion into the human body, and there are inherent risks in the very use of a drug that don't apply to most other consumer products, and so we think there are justifications there for requiring preclearance, for food additives and drugs. Food additives, for example, are subject to a pretesting requirement and have to be shown to be safe before they can be used. But it is essentially a practical issue, turning upon primarily the differences in the likelihood or degree of risks involved in the type of product question.

Senator COOK. Mr. Secretary, I want to thank you. I only want to make one more comment. We discussed a while back, within the field of agency, the presence of law school rhetoric, and I can only refer you to item J on page 51 of S. 983, which says, "Use of the singular includes the plural wherever appropriate." I might suggest to you that I don't know where this language comes from, but I wonder who is going to make the determination that it is appropriate.

Thank you, Mr. Secretary.

Senator Moss. The Senator from Alaska.

Senator STEVENS. Thank you, Mr. Chairman.

Mrs. Knauer, could you tell us what the relationship of your office would be in the event that the committee followed the recommendations of the Secretary and the President?

Mrs. KNAUER. Senator, we would continue to work very closely as we do now with HEW. We certainly think this is the rational, sensible way to quickly get a product safety bill in operation once Congress passes it, by putting it in HEW.

Senator STEVENS. I note that the administration's proposal does not include the consumer advocate's role within the administrative organization suggested by the Secretary. Would your office continue to perform that type of function with the organization if it is in HEW?

Mrs. KNAUER. Yes.

Senator STEVENS. Mr. Secretary, with regard to your suggestion: I take it that the people who are presently in the field of regional offices, the FDA and your existing people, would be utilized in this administrative present organization. Is that correct?

Secretary RICHARDSON. Yes, it is, Senator Stevens. What we visualize is an expansion building upon the present structure, rather than its demolition or replacement. This means, therefore, that we would continue to rely upon the capable people we now have.

Senator STEVENS. If the committee decides, or Congress decides to go the other route, and take S. 983, I assume this would mean we would have to set up sort of a competing bureaucracy working under the independent agency. Is that your understanding?

Secretary RICHARDSON. Yes, it is, and that is, therefore, a major reason why we think that the public would be better served by building upon the existing structure, the past experience of the personnel of the FDA. I would like to add that there is, as I mentioned earlier, a degree of complementarity between the functions involved in protection of public health and safety in the areas of food and drugs and other consumer products.

Senator STEVENS. In order that we might have it in the record, could we have a breakdown of the people who are involved in the existing structure at HEW, who are in the field of the regional areas?

Secretary RICHARDSON. Yes. We would be glad to provide this.[4] I might add, too, Senator Stevens, that in addition to the people who are direct employees of the Federal Government in the FDA, there has developed over the years a cooperative working relationship with State public health and food and drug enforcement agencies. They vary somewhat in effectiveness from State to State, but these relationships do represent an asset that could be maintained and strengthened under the proposed legislation. There have been developing, too, in recent years State offices of consumer protection. I served as attorney general in Massachusetts, and one of the first things I did upon taking office was to create a consumer protection division in the office. We have been and would continue to strengthen relationships between food and drug personnel and these offices in every State where they exist.

Senator STEVENS. I gather that the principal direction of this bill, as far as what we have been talking about so far, is toward products

[4] See p. 901.

safety as opposed to safety of use of the product. Is that right, or am I misunderstanding the direction here of what you intend to do?

Secretary RICHARDSON. I believe the legislation is directed toward both, Senator, if I understand you. In other words, we are concerned with safety in the sense that the product be manufactured in a way that is inherently safe; that is, that it not be prone to fly apart or to shatter, in circumstances of stress that should have been anticipated, but we also have in view considerations of safety in the sense that it is designed in a way to minimize risks inherent in its use, for example, a lawn mower, where the blade with its propensity to throw objects that it strikes, would have to be shielded. The applicable language in section 5 refers to product safety standards relating to performance, composition, or properties, including the product's compatibility with systems or environments in which it is intended to be used, or relating to two or more of such factors.

Senator STEVENS. I think, for instance, we have been informed recently that there is a health hazard related to use of our automatic typewriters by our secretaries if they are exposed to the noise too long. Now, how would your reorganization deal with a product, the use of a product, which is not inherently dangerous, but one in which the overexposure or the utilization of the product would be dangerous? This same thing occurs, as I understand it, with regard to snowmobiles. It is a noise-pollution health hazard concept. What is the relationship between this product safety concept and the existing health responsibilities of HEW today.

Secretary RICHARDSON. I don't know of an authority to the extent that the Hazardous Household Substances Act might include, that would cover the type of thing you are talking about. I don't see how it would reach snowmobiles, for instance. Snowmobiles could be reached depending upon the desirability or justification for the sort of standard you refer to. In other words, the question of whether or not it is in the public interest to promulgate such a standard would not be restricted by the legislation. It is broad enough to do it.

May I ask Mr. Jensen to comment further on that?

Mr. JENSEN. Mr. Secretary, Senator Stevens, I think you are exploring a very interesting point, one that is not specifically authorized by the proposed legislation, but certainly is not prohibited, and that is the specific development of use standards which would not be mandatory from the standpoint of the Federal Government, but which, with cooperation with State and county governments and business and industry, could be brought into full effect. I do believe that simply the development of a product, designed to the manufacturer's standards, may not be sufficient to provide countermeasures to be provided by the legislation.

Senator STEVENS. I was thinking of the last comment that the Secretary made concerning the statement of Dr. Coleman, that the need for engineering procedures to be built into fail-safe designs. I really don't know that either act addresses itself to the problem, that either bill addresses itself to that problem.

Secretary RICHARDSON. I am sorry to disagree, Senator. The proposed act is quite sufficiently broad to cover this, first to a product's performance, composition or properties, including its compatibility with systems or environments with which it is intended to be used.

I think the phrase, "which it is intended to be used," anticipates the situation in which, overtime, heat stress, for example, or compression strain builds up in a product so that it eventually breaks, shatters, or flies apart, and the use has brought this about.

Now, for example, take the leaking of radiation. It may be that in the short run it doesn't hurt anybody, but if you are working around the product over a period of time, it has a characteristic that does cumulative damage to the individual using it. Lest there be any question, I am sure that all of us sitting here would endorse clarification so as to eliminate any question on the point at all.

Senator STEVENS. I have one last question. Section 31 of 17(a)7 defines consumer product and excludes those now covered by separate acts. Does this exclusion also exclude refrigerators, highway devices, standards already covered by existing law, and the Federal Boat Safety Act that is now awaiting action here in the Congress?

Secretary RICHARDSON. I think so. Refrigerators are regulated under the act of August 7, 1956, referred to at the top of page 3.

Senator STEVENS. What about the Federal Boat Safety Act? Should that also be excluded?

Secretary RICHARDSON. If the Federal Boat Safety Act is passed, it would then be the medium through which boats are regulated. I think we would say that the provisions of that specialized bill are perhaps more adequately directed toward that subject.

Senator STEVENS. Do you intend by that provision, though, to exclude the areas where Congress has already spelled out specifically regulations of product safety?

Secretary RICHARDSON. Yes; and we think we have enumerated them.

Senator STEVENS. Thank you.

Senator Moss. Thank you, Senator.

Mr. Secretary, there is still such a thing as lateral transfer in the civil service, is that right, as far as quality standard going to Interior, and now to EPA?

Secretary RICHARDSON. Yes.

Senator Moss. So there wouldn't necessarily be a buildup of personnel with a new department providing functions which were taken over from some other departments that were in existence?

Secretary RICHARDSON. I am sure that is true, Mr. Chairman. And I assume that if the Congress saw fit to establish a wholly individual agency and the President signed the bill, many of the people, if not most of them, now in the Bureau of Product Safety of the FDA would be transferred. I think the issue really turns, however, not upon the wholly duplicative creation of the structure side by side with all the people now in the FDA, but rather the problems of the inherent duplication that would arise out of the attempt to carve the safety of products, other than food and drugs, out from the jurisdicion presently exercised by FDA and make that a separate function, because to do so would, to a significant degree, overlap the kinds of functions and capabilities that substantially are involved also in the safety of foods and drugs.

Senator Moss. Thank you.

Mrs. Knauer, I have just one final question. You point out that $5 billion a year is lost because of product-related injuries, and you also

remind us that there may be some costs associated with achieving greater levels of product safety. Has your office analyzed the cost-benefit ratio of S. 1797 or S. 983 to calculate how much money each year might be saved?

Mrs. KNAUER. No; we haven't.

Senator MOSS. If you have such a calculation and could supply it for the record later, I would appreciate it.

We have kept all of you very long, and I appreciate your response. There may still be some questions that we would like to submit in writing, and if so, I am sure that you will all be glad to respond. We are taking a long time this morning, because this is the opening testimony on this bill. But we may have some additional questions, and we would appreciate the responses to them.

Secretary RICHARDSON. We would be very glad to furnish them.

Thank you very much, Mr. Chairman, and members of the committee.

Senator MOSS. Thank you, indeed.

(The following information was subsequently received for the record:)

THE SECRETARY OF HEALTH, EDUCATION, AND WELFARE,
Washington, D.C., September 7, 1971.

Hon. FRANK E. MOSS,
Chairman, Subcommittee for Consumers, Committee on Commerce, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Subsequent to my appearance on July 21 before the Commerce Committee to testify on the Consumer Product Safety Act of 1971, you sent to me several questions which arose during that hearing. I am pleased to submit our responses to those questions for the record, and I repeat the apologies of my letter of August 31 for our delay in responding.

I appreciated the opportunity to appear in support of S. 1797 and again urge prompt action on this important legislation.

With best regards,
Sincerely,

ELLIOT L. RICHARDSON,
Secretary.

POISON PREVENTION PACKAGING

Question No. 1. Explain the procedure from November 18, 1970 to June 1971 which resulted in the Department's promulgation of its proposed standards on liquid drain cleaners?

Answer. On November 18, a proposed banning action on liquid drain cleaners was published in the *Federal Register* under the authority of the Hazardous Substances Act. Individuals were allowed 30 days to comment. The comments were received and were being reviewed for preparation of the final banning order when the Poison Prevention Packaging Act (PPPA) became law on December 30. It was decided that the proposal should be reviewed under the procedures of this new law due to the applicability of its special packaging provision. The Technical Advisory Committee specified in PPPA was formally announced on April 28, 1971, and the first Committee meeting occurred on May 13–14. At this meeting, the proposed regulation was reviewed, and the Committee concurred with the essential elements of the proposed banning action. Processing was completed and the final order banning a liquid drain cleaner with sodium and/or potassium hydroxide in concentrations of 10 percent (by weight) or more was published in the *Federal Register* on June 10. The banning order provided an exemption in cases where the drain cleaners are packaged "in accordance with a standard for special packaging of such articles under the Poison Prevention Packaging Act of 1970."

Question No. 2. Could you tell us why it took the Department almost five months to select the Technical Advisory Committee?

Answer. The Act became law on December 30, 1970. The Committee was announced on April 28, just under four months later. During that time, we tried to

find the most qualified individuals in each of the six categories of people designated by Congress to be included on the Committee. A review was made to verify the background of those persons recommended and to insure that those selected did not already serve on other HEW Committees. Upon selection, concurrences had to be obtained from each prospective member. All normal clearance and processing (addresses, background, etc.) preceded the formal announcement on April 28.

Question No. 3. Please supply the Committee with the names of all individuals and groups who were asked to provide recommendations for membership on the Technical Advisory Committee, together with dated copies of your letters of request.

Answer. Recommendations for membership on the Technical Advisory Committee were received from the following:

S. C. Johnson & Son Inc., January 1, 1971.
American Pharmaceutical Association, March 25, 1971.
Kerr Glass Manufacturing Corporation, February 25, 1971.
The Proprietary Association, January 25, 1971.
American Can Company, March 25, 1971.
Wheaton Plastics Corporation, March 23, 1971.
Sunbeam Plastics Corporation, January 30, 1971.
Hayes-Albion Corporation, December 30, 1970.
Economics Laboratory Inc., January 4, 1971.
Booz-Allen Public Administration Services, Inc., February 4, 1971.
McConnell Inc., February 11, 1971.
Cook Chemical Company, March 18, 1971.
Insilco, March 12, 1971.
American Flange and Manufacturing Company, March 15, 1971.
National Paint, Varnish and Lacquer Association, January 25, 1971.
Captain A. W. Borsum, USN (Retired) (Inventor of Safety Closures).
President's Adviser for Consumer Affairs, January 9, 1971.
Mold Craft Inc., January 27, 1971.
FDA District Directors.
National Pharmaceutical Council.
Deputy Assistant Secretary Consumer Services (HEW).

Requests were made via telephone and no formal letters were prepared.

Question No. 4. Among the issues to be considered by the Technical Advisory Committee will be a review of the "classification of hazardous substances including the matter of identity by generic or trade name." Hasn't HEW already considered this matter? The reports and information available from the National Clearinghouse for Poison Control Centers already list the frequency of accidental poisonings in various categories.

Answer. The National Clearinghouse for Poison Control Centers collects reports of ingestion and sickness when a substance is accidentally swallowed and the event is reported to a poison control center for treatment. The National Clearinghouse provides information on treatment, and reports are prepared even if the product is harmless. But this information alone is not adequate to satisfy the provisions of the Poison Prevention Packaging Act. The Act requires that we establish the degree or nature of the hazard to children, the technical feasibility, practicability and appropriateness for requiring special packaging for specific products, the nature and use of the substance, the available scientific, medical, and engineering data concerning special packaging and concerning childhood accidental ingestion, manufacturing practices of affected industries, and the reasonableness of the packaging standard. Hence, additional research is usually necessary before we can submit a product to the Technical Advisory Committee for its consideration. To date we have submitted appropriate substantive data on thirteen types of preparations and on the several thousand drugs and dosage rates subject to the Comprehensive Drug Abuse Prevention and Control Act. A proposed regulation on protocol, defining appropriate test procedures, was published in the *Federal Register* on July 20. Additional regulations, modified to reflect the Committee's advice are in the last phases of preparation.

Question No. 5. There is an imminent hazard provision to the Poison Prevention Packaging Act, and in the seven months since it was enacted, HEW has not acted under this provision. Does the Department feel that there are no products on the market at the present time which fulfill the definition of an imminent hazard under the Poison Prevention Packaging Act?

Answer. The Poison Prevention Packaging Act does not contain an imminent hazard provision. If such action were deemed necessary, i.e., a hazardous substance was of such nature that its immediate withdrawal from the market was necessary, such action would be taken under the imminent hazard provision of the Hazardous Substances Act.

Question No. 6. How many children are estimated to have died and how many have been hospitalized since January 1, 1971, from poisoning by the substances which will eventually be packaged with safety closures under standards issued by HEW?

Answer. Statistics on the number of accidental ingestions by children resulting in death or hospitalization since January 1, 1971 are not available. The latest data available from the National Center for Health Statistics, Division of Vital Statistics, covers the year 1968. Reported during that year were 284 fatalities to children under five from accidental poisoning. For 1969, the Poison Control Centers reported hospitalization of 3,844 children under five from ingestion of chemicals. It should be noted that deaths of children from ingestion of toxic substances have been decreasing regularly with the development and wide utilization of the system of Poison Control Centers.

Question No. 7. Under the testing procedure for setting standards, what percentage of openings in child tests do you anticipate being used?

Answer. Our present plans are to require that packages must be unopenable by 85 percent of 100 pairs of children before demonstration and 80 percent after demonstration.

Question No. 8. What justification is there for not setting the standards at 95%–100%?

Answer. The law recognizes that the perfection of a closure or container which would prevent every child from opening would be technically impossible. Section 2(4) specifies that "the term 'special packaging' means packaging that is designed or constructed to be significantly difficult for children under five years of age to open or obtain a toxic or harmful amount . . . but does not mean packaging which all such children cannot open or obtain a toxic or harmful amount within a reasonable time."

Question No. 9. Will you propose uniform standards for all substances which you would require to have safety closures under the Act? If not, why?

Answer. It probably will not be feasible to require uniform standards for all substances. The Act specifies a host of factors that must be considered including the degree of the hazard, the technical feasibility and appropriateness of safety packaging for the particular substance, and the nature (solid, liquid, or aromatic) and use of the substance.

Question No. 10. Is the speed with which you have acted on Poison Prevention Packaging indicative of the priority you have assigned to the problem?

Answer. Once the required Technical Advisory Committee was appointed, it met within two weeks, following which (to date) 14 recommendations were submitted to the members. Actions are being prepared on a continuing basis. It should be noted that in FY 1971 all allocation for PPPA came from reprogramming of existing resources. For FY 1972 Congress has approved $700,000 for this activity.

Question No. 11. Overall, how would you rate your performance on Poison Prevention Packaging?

Answer. Considering all constraints and the limitation of resources, performance on Poison Prevention Packaging has been quite good. Operations now are increasing rapidly.

HAZARDOUS SUBSTANCES ACT

Question No. 1. Under the Hazardous Substances Act, what is the definition of a hazardous substance?

Answer. Under the Federal Hazardous Substances Act, a hazardous substance is defined as:

1. (A) Any substance or mixture of substances which (i) is toxic, (ii) is corrosive, (iii) is an irritant, (iv) is a strong sensitizer, (v) is flammable or combustible, or (vi) generates pressure through decomposition, heat, or other means, if such substance or mixture of substances may cause substantial personal injury or substantial illness during or as a proximate result of any customary or reasonably foreseeable handling or use, including reasonably foreseeable ingestion by children.

(B) Any substances which the Secretary by regulation finds, pursuant to the provisions of section 3(a), meet the requirements of subparagraph 1(A) of this paragraph.

(C) Any radioactive substance, if, with respect to such substance as used in a particular class of article or as packaged, the Secretary determines by regulation that the substance is sufficiently hazardous to require labeling in accordance with this Act in order to protect the public health.

(D) Any toy or other article intended for use by children which the Secretary by regulation determines, in accordance with section 3(e) of this Act, presents an electrical, mechanical, or thermal hazard.

2. The term "hazardous substance" shall not apply to economic poisons subject to the Federal Insecticide, Fungicide, and Rodenticide Act, nor to foods, drugs, and cosmetics subject to the Federal Food, Drug, and Cosmetic Act, nor to substances intended for use as fuels when stored in containers and used in the heating, cooking, or refrigeration system of a house, but such term shall apply to any article which is not itself an economic poison within the meaning of the Federal Insecticide, Fungicide, and Rodenticide Act but which is a hazardous substance within the meaning of subparagraph 1 of this paragraph by reason of bearing or containing such an economic poison.

3. The term "hazardous substance" shall not include any source material, special nuclear material, or by-product material as defined in the Atomic Energy Act of 1954, as amended, and regulations issued pusuant thereto by the Atomic Energy Commission.

Question No. 2. Under the Hazardous Substances Act, can you reduce the harmful components of a product by proposing to list it as a "banned hazardous substance" if it contains more than a certain amount of a hazardous component?

Answer. We can specify the level of these substances at which the product becomes a banned hazardous substance. With this specification, the manufacturer may reduce the level of these substances voluntarily so that the product may continue to be marketed.

Question No. 3. Let's look at a hypothetical example. Acetaldehyde which is an irritant has a safe limit of industrial exposure of 200 parts per million, and carbon monoxide has a safe limit of industrial exposure of 100 parts per million. If someone were to market a bronchodilator spray for asthma which gave off carbon monoxide in relatively high concentrations, for example, 1,000 parts per million CO, and 1,000 parts per million acetaldehyde, would you have the authority to deem the product a banned hazardous substance in view of these high levels of acetaldehyde or carbon monoxide?

Answer. No, not in this particular example, because use as a bronchodilator is a drug which would be exempt from the Federal Hazardous Substances Act. A new drug application, specifying the safety and effectiveness of the product in its intended use would have to be filed. Only upon verification of the safety and effectiveness for its intended use would the manufacturer be allowed to market the bronchodilator spray.

However, if such a product were marketed as a household substance subject to the Federal Hazardous Substances Act, we would have authority to declare the product a banned hazardous substance. In such a case, we would have to establish the maximum exposure permissible, which may or may not be the same as the 200 ppm acetaldehyde and 100 ppm carbon monoxide you cite as these are industrial standards set for an 8-hour exposure day. The hazard under condition of household use must be established.

Question No. 4. By administrative action, can HEW effectively reduce the level of these substances if the manufacturer desires to continue marketing his product? Is this similar to the approach followed last November in the proposed listing as a banned hazardous substance of liquid drain cleaners with a concentration of sodium or potassium hydroxide of greater than 10 percent?

Answer. See No. 2 above. The limit set for liquid drain cleaners was based upon the best scientific evidence available.

Question No. 5. If a product has more than 20,000 parts per million of carbon monoxide and 3,000 parts per million acetaldehyde, would it qualify for investigation and research to determine whether it conforms to the criteria under FHSA?

Answer. Yes, since any household product except those exempt by the Act is subject to investigation and research to determine if it is hazardous and requires action under the Federal Hazardous Substances Act. The standard for exposure would depend upon the condition of use, however.

Toy Safety

Question No. 1. The Child Protection and Toy Safety Act of 1969 was signed into law November 6, 1969 and became effective January 6, 1970. Please supply the actions and dates of actions and the toys against which these actions were taken from January 6, 1970 through Christmas Day 1970.

Answer. FDA Toy Safety 1970 Activities involved contact with companies to correct defects in toys which could be dangerous for children. In most cases, corrective action was undertaken voluntarily by the manufacturers. Products include:

Product and manufacturer	Problem	Action
(1) Rubber hedgehog: Creative Playthings, Princeton, N.J.	Squeaker button in toy could be dislodged and swallowed by child.	Squeakers removed.
(2) Weiner whistle: Oscar Mayers, Madison, Wis. (distributor).	Small promotional whistle which was of a size capable of choking a child.	Ceased distribution of this and all future small items.
(3) Patio crib No. 1432: Jackson Furniture Co., Jackson, Tenn.	Netting could be torn by child allowing child to fall out.	Increased strength of net by 40 percent.
(4) Toy clarinet: Harmonic Reed Corp., West Conshocken, Pa.	4-in. metal pin with sharp point could tear flesh.	Point made blunt.
(5) Plastic fish with metal tack in nose: Wittenberg Toy Co., Cincinnati, Ohio.	Metal tack in nose could be removed by child.	Ceased sale.
(6) Specs 'N Things: Topper Toys, Elizabeth, N.J.	Lenses in toy sunglasses were strong enough to cause vision alteration.	Ceased distribution.
(7) Poweride automobile: Elden Industries.	Battery-driven, sit-on, toy auto which could catch fire.	Redesigned to eliminate hazard.
(8) Rapco wood burning product kit: Rappaport Brothers, Inc., Chicago, Ill.	Pen tip exploded when plugged in	Redesigned tip to eliminate hazard.
(9) Etch A Sketch: Ohio Art Co., Brian, Ohio.	Breaking glass on surface of etching board.	Redesigned with additional plastic shatterproof cover.
(10) Zip strip toy: Kenner Products, Cincinnati, Ohio.	Racing track strip for toy autos could cause cuts.	Terminated manufacture.
(11) Play Doh Fun Factory, Jr.: Rainbow Crafts, Inc., Cincinnati, Ohio.	Equipment designed so as to possibly injure child's fingers.	Being redesigned.
(12) Sentinel 8 pistol: Knickerbocker Toys, New York, N.Y.	Sound hurt child's eardrums	No longer sold.
(13) Baby chime rattle: Stahlwood Toy Co., New York, N.Y.	Sharp metal points in rattle dangerous when exposed and encased in breakable plastic shell.	Redesigned in hard plastic tube.
(14) Cuddly dog: Rushton Co., Atlanta, Ga	Removable plastic eyes and nose with barbed teeth.	Discontinued this type of eye and nose.
(15) Begging rabbit: Genie Toys, St. Louis, Mo.	Wire in ears could become exposed	Redesigned ear to eliminate hazard.
(16) Seven dwarfs xylophone: Laramie Toys, Baltimore, Md. (distributor).	Sharp edges on metal sound pieces could cause cuts.	Firms asked Tokyo manufacturer to eliminate sharp edges.
(17) Merry "Lectric Shave"; Merry Manufacturing Co.	Pseudomonas contamination of bottled toy "lectric shave."	Firm retained microbiological laboratory to sample future lots and test product to eliminate problem. FDA monitoring.
(18) Baby rattle whirl: Sifo Co., Wausau, Wis.	Glued parts coming apart that could be swallowed by children.	Firm stopped distribution November 1969.
(19) Skill craft chemistry set: Skilcraft Co., Chicago, Ill.	Blanket warning statement against misuse of chemicals and requiring parental supervision omitted from labeling.	New labeling being prepared (FDA seized).
(20) Slap Jack suction toy: Marlin Toy Product, Inc., Minneapolis, Minn.	Doll contained marble in doll's hat which could be detached and swallowed.	Production method being altered to eliminate hazard. FDA monitoring.
(21) Craddle gym: Childhood/Alan Jay Interests, Rosello Park, N.J.	Plastic strap breakable	Production method change to eliminate hazard by instituting new strap-sealing method.
(22) Playpen: Hopkins Manufacturing Co., Lake City, Pa.	Playpen bottom flexible, potential hazard	Redesigned with extra wooden and steel supports.
(23) Winnie the Pooh mobile: Dolly Toy Co., Tipp City, Ohio.	Breakable support for suspended mobile characters caused injury.	Redesigned to make support capable of holding 9 pounds.
(24) "Baby Sitter" pool floating seat, Kranse Manufacturing Co., Inc., San Francisco, Calif.	Sharp prongs in styrefoam seat cause injury.	Wooden dowels now used.

The first broad regulation for toys in implementation of this Act was published in the *Federal Register* on November 17, 1970 for comment, and in final form on December 19, 1970. The regulations affected toy rattles and dolls having internal or external components which have a potential to cause lacerations, puncture wound injury, etc. In addition the regulations covered noisemaker components which can be easily removed and subject to ingestion, lawn darts and similar sharp pointed toys, and certain caps intended for use in toy guns.

Question No. 2. Have any actions been taken under the concept of imminent hazard?

Answer. There has not been action to ban articles under the imminent hazard provisions of the Federal Hazardous Substances Act. The FDA filed on December 8, 1970, a proposed Statement of Interpretation and Policy which defined "imminent hazard" and established the procedure for implementing an action. The final statement was published in the *Federal Register* on July 1, 1971. As of this date, no actions have been taken under the concept of "imminent hazard."

Question No. 3. If so, were any of those actions taken under imminent hazard provisions previously opposed by FDA in the Consumers Union court suit last December, or were they part of the petition filed by Consumers Union on November 18, 1970?

Question No. 4. If any imminent hazard actions were taken did they apply to any toys discussed at the April 1969 hearings in this committee at which the Toy Safety Act was considered?

Answer. Since no actions have been taken under the imminent hazard provisions, questions 3 and 4 are not applicable.

Question No. 5. From the time of proposing a toy as a banned hazardous substance, how long does it take until it is removed from the market, not including extensions which might be granted through court injunctions?

Answer. The length of time it takes to withdraw a toy from the market subsequent to a banning order varies because of several factors such as the number of items on the market, the number of distributors, and whether the product has regional or national distribution. Thus, no specific time interval can be given. However, when our examinations reveal that a product is a banned hazardous toy, we immediately request that the firm cease distribution and recall any of the products that are in distribution channels.

All of these recalls are monitored by our field offices to check on the effectiveness of the recalls. We do not have the resources or the personnel to check every distributor, but an "at random" selection is made from the list of distributors supplied by the firm. If our field offices find that a recall is not effective, the firm is notified and is expected to remedy the situation. If this is not done satisfactorily, we may resort to seizure of the product in distribution channels. For example, there have been six recent seizures of lawn darts because the firms' relabeling procedures, as required by our banning order, did not proceed as rapidly as we believe they should.

MISCELLANEOUS

Question No. 1. Please provide an analysis of how the Administration bill, S. 1797, coincides with the criteria for Federal consumer product safety legislation as outlined by Howard Heffron in the study he conducted for the National Commission on Product Safety.

Answer. In response to each of Heffron's seventeen recommendations, we make the following response:

Recommendation No. 1. The statutory definition of the class of articles covered by consumer safety legislation should be broadly drawn to permit administrative flexibility to deal with newly developed or discovered problems. All the programs studied have shown that the initially defined scopes of coverage were inadequate.

Answer. The definition of "consumer product" in the Administration bill has been broadly drawn to provide a broad base for investigation of product-related injury and for the establishment of standards shown to be needed to prevent such injuries. The advantage of the Administration approach over that of the Commission is that it avoids subjecting a single product to multiple regulations reflecting regulatory policies of different laws and different agencies.

Recommendation No. 2. Consideration should be given to requiring appropriate preclearance procedures to minimize the risk that hazardous products will be marketed for lengthy periods prior to administrative identification of the hazard.

Answer. The Administration bill does not provide for preclearance of new products because despite the frequency of accidents caused by careless or improper use of household products, the extent of injury traceable to defective product design, or fabrication remains uncertain. Thus the need for the expensive and elaborate administrative mechanism that such clearance entails has not been demonstrated. In view of the countless numbers of new products introduced each year, the implementation of any such requirement would, we believe, be a misallocation of limited resources.

Recommendation No. 3. Adequate consumer representation in the regulatory process should be provided by Congress.

Answer. The Administration bill does not provide for a consumer advocate, but instead would insure the fullest opportunity for consumer groups and individual consumers to participate in and be heard during the standard-making process. Moreover, the bill provides for financial assistance to consumer and other groups who need it in order to develop standards, thus enhancing their capacity to contribute to the program.

Recommendation No. 4. A wide range of enforcement tools including criminal and civil penalties, injunctions, and seizure should be included in legislation.

Answer. The wide range of enforcement tools recommended is included in both the Administration and Commission bills. However, the Administration bill is more specific in the area of civil and criminal penalties, since it stipulates imposition of a penalty for the commission of "each such (prohibited) act" rather than for each violation.

Recommendation No. 5. Consideration should be given to legislative creation of a system of private rights and remedies for violations of consumer safety legislation and regulations and safety standards issued thereunder.

Answer. In the Administration bill, private suits are authorized to enforce a product safety standard to enforce any order declaring a product a banned or imminently hazardous consumer product and to obtain injunctive relief. The bill also authorizes the award of attorney's fees to successful private litigants.

Recommendation No. 6. Safety standards should be left for agency formulation rather than specifically defined by law.

Answer. The Administration bill provides this authority. Our standards-making activity will be predicated upon a system of priorities directly related to the injury data gathering and analyses work authorized in the bill, and not on a predetermined list of target products.

Recommendation No. 7. Informal rulemaking procedures under the Administrative Procedure Act (APA) should be used by the agency in its standard-setting function.

Answer. The informal rulemaking procedures under the APA are generally followed in the Administration bill.

Recommendation No. 8. A consumer safety regulatory agency should compile a file of documents relevant to any of its proposed regulations, which is made available to the public as soon as the proposal is published.

Answer. The Administration bill generally allows access to these data, but also provides authority to refuse disclosure of information in cases where unfair competitive advantages might result.

Recommendation No. 9. The agency should be authorized to require the manufacturers to keep records and disclose data which will assist in furthering the purposes of the act, and have general subpoena power.

Answer. The Administration bill requires manufacturers and distributors of consumer products to keep records and make such reports as might be required concerning the conformance of a consumer product safety standard. Authority to conduct necessary inspections under the bill as well as authority to issue subpoenas is provided.

Recommendation No. 10. Agencies should have their own research and test facilities.

Answer. The Administration bill would locate the new product safety program in HEW which already has scientific laboratories as well as medical and technical experts in the area.

Recommendation No. 11. Close coordination and exchange of information among all interested Federal, State, and local agencies should be established.

Answer. The Department has a long and successful history of working with other Federal agencies and with the States and their political subdivisions. We certainly would continue and expand on these relationships as we move forward under this Act.

Recommendation No. 12. Agencies with responsibilities for product safety should monitor product liability suits for possible violations of the statutes they administer.

Answer. Extensive authority is provided in the Administration bill for the collection of injury data. As a source of such data, product liability suits could be monitored and we expect to explore all means for the collection of meaningful data.

Recommendation No. 13. Consideration should be given to the prompt establishment by internal order of public counsel within agencies with consumer safety regulatory responsibilities as a stopgap measure pending enactment of legislation providing a permanent system of consumer representation.

Answer. See answer to Recommendation No. 3.

Recommendation No. 14. Consideration should be given to administrative requirements authorizing consideration of joint comments submitted by a trade association in behalf of the members of an industry only where all the facts and circumstances which led to adoption of such comments and a full statement of any dissenting views are also filed.

Answer. Under the Administration bill, all parties are entitled to submit comments and have them considered. Background information on the validity or merit of any comments or the lack thereof would be given consideration when weighing such comments. Any comments received in response to a *Federal Register* proposal are available for public inspection and the documents in support thereof.

Recommendation No. 15. Consumer interests should consider use of petitions for rulemaking for prodding agencies to initiate appropriate regulatory actions. Agencies should maintain a list of all petitions for rulemaking, actions taken thereon, and publish lists of such petitions while they are pending in the *Federal Register*.

Answer. Under the Administration bill, the right to petition and for the Secretary to act thereon would exist. The bill requires that a proceeding to promulgate a product safety standard be initiated by publication of notice in the *Federal Register* which must include a summary description of the data upon which the Secretary has found a need to initiate the proceeding.

Recommendation No. 16. Agencies should not be required by law to conduct informal administrative proceedings as a prelude to the issuance of administrative order for defect notification which will not become enforceable until enforced by a court following a *de novo* court proceeding.

Answer. An order requiring notification of defects pursuant to Section 13 of the Administration bill would be subject to an opportunity for hearing under the Administrative Procedures Act. Judicial review of such an order would not be *de novo*.

Recommendation No. 17. Agencies should be granted emergency powers, in appropriate circumstances, to ban the distribution of unsafe products pending the completion of administrative proceedings.

Answer. The bill authorizes immediate action through a request to the Attorney General to file in Federal court an action to prohibit the shipment of a consumer product that is an imminent hazard without regard to procedures outlined in the bill for establishment of standards. Action by the court will be in force during the pendency of such proceedings.

Question No. 2. By your own estimates, FDA currently is authorized to regulate products on which 38 percent of the consumer dollar is spent. If the Congress places jurisdiction for regulation of consumer products covered under S. 983 or S. 1797 in the Department of Health, Education, and Welfare, what additional facilities and monies would be required to adequately do the job?

Answer. If the Congress places jurisdiction of S. 1797 within the Department of Health, Education, and Welfare, we estimate that the following monies would be necessary:

Fiscal year:	
1973	$14,000,000
1974	16,000,000
1975	20,000,000
1976	21,000,000
1977	21,000,000

No separate requirement for facilities can be specified at this time.

These estimates represent simple projections of cost expressed in constant dollars at prices existing at the time the estimates are prepared. They are not intended to predict future economic conditions, and do not reflect possible changes in the scope or quality of the proposal which might result from experience gained in actual practice. Further, the resources which might appropriately be applied in later years will require a re-examination of the relative priorities of this and other Government programs, in the light of economic and other circumstances then prevailing. Thus, the estimates do not represent a commitment as to amounts to be included in future budgets.

Question No. 3. Unlike the Magnuson-Moss bill, the Administration bill does not specifically authorize the planning, design, construction, or operation of facilities suitable for research, development and testing of consumer products. In what ways does this exclusion place a different emphasis on the activities of a product safety program in HEW versus that proposed in S. 983?

Answer. Such authority is not included in the Administration bill because it is unnecessary. One of the substantial advantages that the Administration bill (S. 1797) presents is that implementation would be obtained by expanding our current facilities for research, development and testing consumer products. The Department already has authority to lease such laboratory facilities as the program demands dictate.

Question No. 4. How would the lack of technical facilities constrain or limit a product safety program in the Department of Health, Education, and Welfare?

Answer. Technical facilities are needed for two fundamental purposes: (1) to develop test methods for standards; and (2) to test products for compliance. FDA's Bureau of Product Safety already has entered into an interagency agreement with the National Bureau of Standards to develop test methods for children's products. This arrangement could be considerably broadened (Section 20 of the bill specifically authorizes use of facilities available in other Federal agencies). FDA also has numerous laboratories in the Field which could serve this new program. In addition we could use the extensive facilities already available in the private sector (e.g. the Franklin Institute, Illinois Institute of Technology, Battelle Memorial Laboratories, and Cornell Aeronautical Laboratories). No constraint on this part of the product safety program would be anticipated.

Question No. 5. Secretary Richardson stated before the Commerce Committee on July 19 that "the cost of monitoring the private independent laboratories that would conduct the Commission's certification program would be high." Would you please supply for the record a cost-benefit analysis substantiating this statement?

Answer. The monitoring of private independent laboratories would require three kinds of activity: (1) the establishment of "standards" for laboratory facilities, equipment, personnel, and performance, (2) the evaluation of the individual laboratory to determine whether each qualifies under the "standards," and (3) the development and operation of a reference standard system under which the actual conduct of each laboratory could be continually monitored.

We do not have a cost-benefit analysis at this time. Such an analysis would be expensive and time consuming because we lack fundamental data such as the numbers of new products that would be involved and the number of laboratories that would request certification. The Secretary's statement was based upon management judgment considering the potential magnitude of the task.

In an attempt to be of maximum assistance to the Committee, we have obtained some information on the Australian laboratory certification program for comparison. (This is the only "national" program we know of.) The Australian National Association of Testing Authorities evaluates only the discipline capability of laboratories (Activity 2 in first paragraph). It administers to approximately 800 laboratories, and considers 60 new ones each year. It utilizes 500 voluntary accessors (from industry and universities at no cost), has a staff budget of $140,000 and recertifies every three years. Australia has only about 8 percent of the population of the U.S. and about 3 percent of the GNP. The laboratory program does not include reference sample evaluation (activity 3).

Question No. 6. Secretary Richardson stated that he was opposed to the premarket certification provisions of the Magnuson-Moss bill. What are the various different types of premarket certification and to which ones are you opposed?

Answer. The different types of premarket certification and our analysis thereof are as follows:

1. Require that manufacturers and importers of all products within the jurisdiction of the bill submit those products to the Government for clearance before they can be entered into commerce.

Such a broad requirement would mean that hundreds of thousands of products would have to be thoroughly tested or evaluated each year by a very competent technical staff. Although we do not have exact information on the number of products which would be involved or the size of staff which would be required, it would be very expensive to implement, perhaps approaching $1,000,000,000. The majority of products would be readily cleared, but all would have to be thoroughly checked. Manufacturers would be encouraged to submit less developed and poorly researched products to "see how they fly," thereby resulting in a significant increase in products rejected.

2. Require that manufacturers and importers obtain a "seal of compliance" from a private laboratory which has been accredited by the Government as having the skills and resources necessary to test for compliance with the standard.

The accreditation of laboratories for the purpose of identifying those that have the skills, the resources, and the proven experience and desire to competently and honestly test certain products to determine conformance or nonconformance to published standards is a matter that has been under serious discussion for some time. Such a system has been used successfully for cement, concrete, and bituminous products. This system has the advantages that a small manufacturer can receive technical services equal to those of his large competitors, a seal or logo can be authorized to upgrade public confidence in products and the program, and the producer bears the expense of product testing.

However, there would be certain necessary expenses in the establishment of a system of laboratory accreditations and product certification, and then minimum maintenance costs for collaborative references to test the performance of the accredited laboratories. It would be extremely burdensome to accredit laboratories and to ensure that all accredited laboratories achieved the same quality of test results. With lab accreditation and subsequent product certification, the public would tend to assume full and complete product safety. This could be giving greater credence than such a system could furnish, since any product certification plan must be backed up by a sound quality assurance program by each manufacturer.

3. Require manufacturers to state, on the product or its packaging, that such product meets specific standards (self-certification).

Most reputable manufacturers now do this kind of certification as a minimum although they do not specifically identify the applicable standards. Given the range of criminal and civil penalties in both bills, manufacturers would have considerable incentive to take steps necessary to assure that their products meet the tests prescribed by the applicable standards. Accordingly, requiring them to certify compliance may offer no additional guarantee of conformity of their products but instead may lessen the diligence of the distributor who chooses wholly to rely on it.

Senator Moss. We have one more very important witness, and I am sorry to go right on through, but my schedule is such this afternoon that it is going to be necessary to continue and complete this hearing this morning.

Mr. Arnold B. Elkind, Chairman of the National Commission on Product Safety, will be our next witness, and Dr. Henry Hill is here with him, a member of that Commission.

I am delighted to welcome you, Dr. Hill and Mr. Elkind. We appreciate your appearance and apologize for the long wait we have had in getting you to the table. We look forward to your testimony.

STATEMENT OF ARNOLD B. ELKIND, CHAIRMAN, NATIONAL COMMISSION ON PRODUCT SAFETY; ACCOMPANIED BY DR. HENRY HILL, PRESIDENT, RIVERSIDE LABORATORIES

Mr. Elkind. Mr. Chairman, I want to thank you for the opportunity to be here and present this statement.

My name is Arnold B. Elkind, and I served as Chairman of the National Commission on Product Safety from March of 1968 to September of 1970.

Sitting next to me is Dr. Henry Hill who is president of the Riverside Laboratories in Haverhill, Mass. I invited the other Commissioners to be here. Unfortunately, they were not able to do so.

I would like to say preliminarily, sir, that Senator Magnuson and Senator Cotton have certainly carried out their promises to the Com-

mission that this would be one Commission whose report and findings would receive attention.

As you know, sir, the National Commission on Product Safety was authorized by Public Law 90–146. The seven-member bipartisan Commission was appointed in March of 1968, and transmitted its final report to the President and Congress on June 30, 1970.

I hope that by this reference I may incorporate as part of my submission, Mr. Chairman, the report of the Commission, the report on Federal consumer safety legislation prepared for the Commission under the direction of Howard A. Heffron, and the three volumes of supplemental studies of the Commission since I think they are germane.

Senator Moss. They will all be incorporated in the record by reference.

Mr. Elkind. The Commission has identified and described a serious social deficit in our economic arrangements. The core of our learning was that a significant number of injuries and deaths each year could be avoided by channeling our technology toward the goal of hazard reduction in consumer products.

Our gut estimate was that the laissez-faire approach to consumer products costs the American public about 20 percent of the overall toll that the public pays in injuries or deaths for the privileges of enjoying consumer products. This translates into 6,000 lives, 22,000 permanent cripples, 4 million injuries, and $1.1 billion in treasure that could be saved each year by an effective system for making products safe to use. Parenthetically, it also means that 16 million injuries and 24,000 deaths may occur annually from using consumer products regardless of the care, skill and best efforts of our society.

Senator Cook. Mr. Elkind, and Mr. Chairman, I don't mean to interrupt you right here. I will just excuse myself and go vote and then the statement can continue, and I will come back immediately so the chairman could do likewise.

Senator Moss. If you would, I would appreciate it.

Senator Cook. I will excuse myself and be right back.

Mr. Elkind. In our report and studies we have analyzed the reasons why competitive private industry cannot be expected to take the initiatives essential to hazard reduction.

In the year that has passed since the publication of our report no one has challenged our observation that the competitive marketing imperatives are eye appeal and cost as opposed to safety.

The consensus principle which dominates voluntary standard-making gives aid and comfort to those in an industry who are reluctant, for one reason or another, to move to a higher plateau of safety for their product.

Finally, even where a standard has been adopted by an industry on a voluntary basis, there is no legal compulsion to dissuade a departure from that standard by either a member of the trade association sponsoring the standard or by a new entrant into the competitive arena.

The need for intervention into this problem area by the Federal Government is generally acknowledged by all men of good will who have considered product safety and its implications to the consumer.

I might add at this point, Mr. Chairman, if I may, and it is not in my remarks, that I have been furnished with a copy of President Nixon's

letter of July 19, 1971, in which he states that Secretary Richardson, with his approval, will create within the Department of HEW a new Consumer Safety Administration.

I want to say, sir, that apparently there is a lack of agreement between the administration and the Commission as to what our findings were and what the philosophy of our report actually is. We are concerned with a catch-up game. We see this problem as one that has come about by—chiefly by inaction over a number of years, and so that we see the need here for a task force operation. Something that will be over and above the usual bureaucratic procedures.

Now, the suggestion that the President is making and has made is premature in my judgment. It may very well be that after the interim function that we are concerned with has been carried out and standards have been developed, that then the regulations from that point on can well be carried on within HEW under this kind of a setup.

But we are talking about a serious problem that is not all comprehensive. It doesn't pervade all of industry. It is confined actually to a number of categories of products, and we believe that government by paying attention to it in a task force sort of way, whether it be a commission or what-have-you, but as a task force with a focal point of attention, of the public and the President and Congress, to do a job, can correct it and then it will have served its purpose. It doesn't seem to me to be appropriate to use—this is not what we intended, sir—that to use our findings, which indicate an emergency situation and then use that as a means or a device to add on a $50 million budget to HEW, which is already extremely large and unmanageable, so far as I can observe, and so far as has been reported to us.

Senator Moss. Would you say that is somewhat analogous to the EPA which the President has kept out, and as a separate agency because it is a catch-up operation as we begin to develop standards on environment which very well later may be put into a Department of Natural Resources, or into Interior, if Interior continues, but not for that initial 3 or 4 or 5 years, whatever it is, until we do begin to catch up.

Mr. Elkind. It is precisely analogous to that, Senator.

Senator Moss. Thank you.

Mr. Elkind. The Commission, of course, supports S. 983. S. 983, is, in fact, the proposed Consumer Product Safety Act recommended by the Commission in its final report. I wish to be extremely frank and forthright with this committee in expressing my views with regard to S. 1797, which I understand is the administration's substitute proposal. I do not like the administration's proposal, and that dislike is not arbitrary nor political but is grounded on the lessons which the Commission learned in the course of its work.

One of the duties assigned to the Commission by Public Law 90–146 was, and I quote:

> A review of federal, state, and local laws relating to the protection of consumers against categories of such hazardous products, including the scope of coverage, the effectiveness of sanctions, the adequacy of investigatory powers, the uniformity of application, and the scope of enforcement.

Pursuant to this mandate to learn of the quality of enforcement of Federal consumer safety legislation, we commissioned a study by

Howard A. Heffron, the first Chief Counsel of the Federal Highway Administration and former professor of law at the University of Washington. We asked him to give the Commission the benefit of an in-depth analysis of the structure and operation of the automobile safety program, the flammable fabrics program, and the Federal program dealing with hazardous substances, including toys. In the Commission's draft our undertaking was to profit by the errors and omissions, the defects and shortcomings which were exposed to us by the Heffron report.

It is crystal clear to me that the drafters of S. 1797 have either not read the Heffron report, or, if they did read it, they have deliberately decided to build into the Consumer Product Safety Act many of the weaknesses which have afflicted previous efforts to legislate for consumer safety. Without the benefit of the Heffron study, the administration's bill looks pretty good on paper. That was my first personal reaction to it, because the powers are there.

There is the power to ultimately set standards, the power to prosecute through the Attorney General for violations, the liability for fines and imprisonment for violations on individuals.

But what does not show from a reading of S. 1797 is that the legislation creates a paper tiger. It would be as though the Government were to fashion, like Dr. Frankenstein, a man with beautiful sinews, long arms, and piercing eyes, with just one weakness—an inability to hear from the consumer and respond to his needs.

The first step in creating a paralytic consumer protection function is to place it deep in the recesses of the already overburdened and unsuccessful HEW. This has appeal to the unsophisticated, since this would seem to be the traditional department for protecting the consumer's health.

To some extent the announcement by the Secretary promises that at least it wouldn't be reduced to a tertiary function, but I know that in response to your questions, Mr. Chairman, that the Secretary of Health, Education, and Welfare said that the budgetary requests, and hence the allocation of manpower and money will come from the top, and we found, frankly, during the course of running our study that the problems of product safety do not have great public appeal. One condones with product safety problems and is concerned with them at the moment, but after the heat of discussion is over, and the smoke is cleared away, everyone feels protected, psychologically, by their concept that it will happen to someone else and not to them, and that risk taking is a part of our everyday life.

Hence these problems of safety, dominant though they may seem to you in the discussions that took place here this morning, when the smoke of battle clears away they will not be as much of an imperative to the Department, I am afraid, as one might suspect, and this is no reflection on the individuals involved. This is the nature of the activity that the administration will be concerned with. When I say the administration, I mean HEW.

Last week the New York Times ran an expose on the failure of the FDA to utilize the powers given by the Toy Safety and Child Protection Act of 1969, which was sponsored so as to purge dangerous toys from the marketplace. And this confirms that the weaknesses in the FDA in enforcing the Hazardous Substance Act persist.

Heffron studied the record of FDA in enforcing the Hazardous Substances Act. Less than 1½ percent of funds and personnel in FDA is allocated to this activity.

In S. 1797 Congress proposes to delegate to FDA powers which are compatible with the regulatory problems involved in making a product safety system work. But, based on the history of previous delegations, and that is all we can go by, the program would predictably fail to be effective in raising the quality of consumer protection from product hazards.

As Mr. Heffron said:

> While Congress has committed vast paper power to agency discretion, it has failed to provide agency resources commensurate with the regulatory problems presented. The facade of consumer protection programs but not the reality has been created. Only one full-time employee within the FDA's Bureau of Compliance has been responsible for enforcing the banning or labeling of thousands of potentially hazardous products regulated under the Hazardous Substances Act.
>
> Congress appropriated no funds to implement the board, new flammable fabrics program during its first year; indeed, the budget of the enforcing agency, the Federal Trade Commission, was actually cut. The National Highway Safety Bureau has never been provided the funds to construct its own research and test facilities. As a result, the Bureau is far too dependent on the automobile industry for data needed to develop standards and on cumbersome contracting proceduces and dispersed private facilities for compliance testing and defect discovery.
>
> The agencies have also contributed to their own ineffectiveness. For years, the Food and Drug Administration failed to make open and public demands for adequate appropriations to implement the hazardous substances legislation. The Department of Commerce has seemingly bent over backward to erect cumbersome administrative procedures for the promulgation of flammable fabric standards, which have been conducive to delay.

It is frustrating to find that the administration desires to bury this new consumer activity with the very people who have had such a poor track record except in the area of premarketing clearance of products then there would be some logic to the proposal. But this is a fresh, new pioneering venture for Government, and there is every reason to assume that such a program would have a low profile, a low priority on appropriations, and a low assignment of productive manpower. In our report we wrote:

> The federal role is to encourage movement and active concern with respect to safety, to promulgate and oversee compliance with safety standards, and to regulate those who unreasonably violate their duty to produce safe products—all this without upsetting the creative and innovative forces of the free enterprise system.
>
> The proposed Commission should have an independent status, concerned exclusively with the safety of consumer products. If it is subordinated to a larger agency administering other equally comprehensive programs the emphasis on consumer safety is certain to suffer. Protection of the public interest will be strengthened if the agency has authority to make its own final decision, free of restriction by a parent agency, and if its funds are sufficient and its activities highly visible.

It was because of the teaching of the Heffron report that the National Commission on Product Safety recommended a highly visible operation to deal with product safety programs, such as a presidentially appointed commission. But if that is not feasible, then some statutory means of transfusing vitality to the program must be written into its charter. If not, Congress will again have created a facade of a consumer protection program but not the reality.

Under S. 1797, the administration bill, the Secretary of HEW has the sensitive judicial assignment which he says he will delegate of balancing the equities of industry with the obligations he owes to the consumer.

Because of the quasi-judicial function, the National Commission on Product Safety recommended as an imperative that there be appointed an advocate or, if you will, an ombudsman who would take up the cudgels in house on behalf of the consumer. The need for this kind of in-house advocacy is eloquently summarized in the following quotation from Mr. Heffron's report:

> As if instinctively, the agencies approach problems so as to seek accommodation with the regulated industry and to avoid major conflict with it. Ironically, the timidity with which the agencies approach their task seems endemic to the administrative process established for consumer protection.
>
> The financial, technical, and legal resources of the regulated industries are far greater than those of the agencies. Administrators aparently fear that a major conflict in rulemaking or enforcement would tie up so much of the agency's resources that its ability to press its program would be hamstrung. They fear also that the entrenched economic interests they regulate could retaliate through the legislative process, particularly through appropriations, since legislators with a direct constituent interest, such as a particular manufacturing plant in their district or state, may be more responsive to such local economic interests than to generalized consumer interests. Then, too, administrators running these programs find that their agencies, due to lack of resources or inadequate staffs, cannot provide them with the backup data they regard as necessary to withstand challenge from the regulated industry. Like many laymen, they seem to be wary of lawyers and fear a court test of their policies.
>
> Continual communication with representatives of the regulated industries causes agency preoccupation with the economic burdens and dislocations that specific safety standards would impose. The government penchant for multiple layers of review preceding final decision produces conflicting interests within the agencies, which may create a stalemate and allow industry representatives to probe for the soft spots receptive to delay. In sum, the consumer safety regulatory process in fact has too often been a dialogue between government and industry, with informal communications not open to public scrutiny.
>
> One consequence of these conditions is that contrary to broad public expectations, urgent problems of product safety are not being handled effectively. If these conditions persist, the agencies will serve mainly to insulate resistant industry from legitimate public demands for safer consumer products.

The presence of the consumer spokesman hovering over the activities of the consumer product safety program is a sine qua non for substantive effectiveness. And that is so, sir, even though Mrs. Knauer will have the function of carrying on her responsibilities as an advocate for the consumer. What we are talking about is someone in the agency, in the house itself on a day-to-day basis. The independent voice should be heard before specific proposals are published and later when proposals have been formulated.

The quality of protection given the consumer would unquestionably be improved as a result of an in-house consumer advocate. There may be some who deplore the concept of an ombudsman on general principles, but in this unique, specialized area a good consumer spokesman could be the difference between an effective and ineffective program. Hence, in our report we wrote:

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

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

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

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

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

Another area in which the administration bill falls short of attaining the objectives of the recommendations of the Commission is in connection with public information. The Commission's proposal was that publication of information would be authorized providing two criteria were met: (1) that the publication be in the public interest, and (2) that it would not give unfair competitive advantage to any person. Of course, trade secrets would be respected except if their disclosure was necessary to carry out the purposes of the act. The administration bill, however, seeks to throw an absolute mantle of secrecy over such things as trade secrets, formulas, processes, costs, methods of doing business or other competitive information not available to the public, or the names of ill or injured persons and, indeed, products themselves.

During the course of administering the National Commission on Product Safety we learned that the power to issue a public statement concerning products or categories of products is an important implement. It not only improves the understanding of the consumer and enhances his capability to use products wisely and safely, but it is as well a valuable deterrent against manufacturing irresponsibility.

If, indeed, the news media could be depended upon to publish governmental releases concerning individual products, there would be few occasions to resort to other sanctions and penalties. One of the great strengths of our democratic institutions should be their openness, and the confidentiality of the public's business should be as anomalous in fact as it is semantically.

As I have noted, the administration bill specifically creates a privilege on formulas, processes, costs and methods of doing business. At first blush these may seem to be traditionally private matters. However, if a manufacturer's processes do not include an adequate final inspection or effective quality control; if the formula for a toy in the marketplace discloses that the plastic will fracture into lethal shards on impact; if the low cost of a shower door is based on the fact that it is made of plate glass; then those processes, the formula, that cost differential, and those manufacturers' methods of doing business have become a matter of great public interest and concern.

I think the public has learned to disrespect the labels that one puts on categories of information. It is essential to our society that we have access to the information that affects us in our everyday lives. If a product represents a danger to the consumer the public has a right

to be told about it by the Government, and the Government should not be permitted to conceal that information from the public because it has been labeled trade secret, or a formula, or a process, or pertains to a method of doing business. Only by being informed can the public make intelligent and informed choices in the marketplace.

Over and above the principle involved, it would be most salutary for the manufacturing community to recognize that their decisionmaking processes on questions that affect the safety of their product can be exposed to, and reviewed by, the eyes of the public.

I consider the effort to muffle Government statements on the safety of products the most serious flaw in the administration bill, and urge that the language recommended by the Commission and found in S. 983 be incorporated in the final legislation.

Now, the administration bill does authorize private litigation to enforce a standard or an order or an application for injunctive relief and authorizes an attorney's fee to the prevailing party. In all candor, this idea in this particular form had not occurred to the Commission in the course of its deliberations and was not considered by the Commission as an alternative to the ombudsman feature. However, it is my personal reaction that the concept of private litigation to protect the public is workable and beneficial to our society.

The Chief Justice recently made a discouraging observation with regard to the prospects of improving our social condition through private litigation. If the Chief Justice is correct and that has not occurred, perhaps the fault has been that legislation has not invited the bar to participate on behalf of the people, and I am most gratified to find this innovation in a bill emanating from the administration. I hope that the law in its final form will include this additional check on administrative lassitude.

The private lawsuit, however, should not be a substitute for the in-house advocate recommended by the Commission. The Commission has felt strongly that a workable system must have a built-in mechanism to fuel a sense of dynamics in product safety activities, and there is no substitute for the in-house advocacy feature.

We want to generate contretemps, if we can, within the organization to make it work.

I would observe that the in-house advocate is compatible with the authorization of private litigation to enforce standards and orders and for the injunctions against offending manufacturers.

There are a number of other features in S. 1797 which, in my judgment, weaken the Commission's proposals. For example, the omission to make the informal procedures of the Administrative Procedures Act applicable, and the omission to authorize testing facilities for the conduct of the program.

I might say here that the Commission had in mind not an elaborate, all-inclusive testing facility. We had in mind a small, moderately expensed laboratory that would permit the Commission to develop information that it needed quickly.

The problem with relying on other agencies, as we understand it, is that the laboratory facilities in other agencies are frequently in use at the particular time that it is necessary to make an appointment and get in line before an outside agency can have the opportunity to use it.

Now, when it comes to major scientific issues, requiring an expensive and prolonged investigation, scientific investigation, well, that will be fine. That could be done through an outside agency, or through one of the other governmental laboratories. But what we are talking about is something that would permit the agency to act quickly and expeditiously in the public interest where——

Dr. HILL. I would like to say also, Senator Cook, as a scientist, part of what went into our deliberation here, for a man who is trained in science to maintain—remain with the development, he feels he has to have a laboratory facility. So if we had agents and had people who were in touch with their discipline, there would have to be laboratory facilities available.

I would like to cite two instances of what happened during our experience. One was with respect to refrigerated car facilities. We had to go from the north end of Massachusetts to Austin, Tex., to find a group that had the capability of taking this refrigerator and subject it to analysis, and I think it cost us in the order of $10,000 in order to have anything done.

In another instance, one of the findings that we had was with respect to the flyback transfer motor in colored television sets which were causing, in our judgment, an inordinate number of fires, and here we were able to approach another outside organization, which had that capability, and they in very short order came back to us with a response which was better than what the industry was able to develop as a means of curing the problem.

Now, in order for the proposed Consumer Products Agency to know where to find these people, they would have to have a staff of people, which I don't think is possible at the moment, because we could not find within the Federal Government someone to carry on these functions for us.

Senator COOK. I think this is very interesting, because, as a matter of fact, I am concerned about the fact that you talked about a small, immediate facility, as you put it. One of the criticisms of S. 1797 is the omission that would make the informal procedure of the Administration Procedures Act inapplicable, and I am wondering how you are going to make these informal intermediate restrictions and rules and regulations, if you only envision a very small laboratory that really is not going to do any major tests as such. I think, in essence, this becomes a tremendous inconsistency.

Mr. ELKIND. I don't think so, Senator. The two concepts are not mutually inconsistent. What we envisioned was a small, in-house testing facility that would be able to carry on a limited type of testing, and also the utilization of Government laboratories and outside testing facilities as well. So that, depending on the situation, you might very well have a situation where the Commission could not go to court and would not have—it is possible that it would not be able to go to court without the consultation, advice, and report of an outside laboratory. But it is also conceivable there are many situations where an imminent hazard could exist that could be verified on the basis of in-house testing facilities, and at least the people would be ahead of the game to that extent.

Senator Cook. Well, after your testimony I want to give you a situation in which the Federal Government moved into a company and in essence shut it down and, in its failure to have proper testing facilities, it caused the corporation to almost go out of business, and it is now faced with a very serious action on the part of this corporation. The action that it took in the first place was not warranted and could not be established, and the reason for it not being able to be established was not the act under which it performed, but that it failed to have the testing facilities that were necessary to prove its point.

So I merely want to say to you that I would like to discuss that with you, because in that instance, the Federal Government is open to a very serious charge of putting a major corporation in one part of the country almost totally out of business.

Mr. Elkind. I recognize that as a very serious problem. Contrary to what was said here earlier, my understanding of the Federal rules of civil procedure today is that the days of going in and getting a temporary restraining order (TRO)—ex parte—are gone. The Federal rules now require that there be notice to the other side. It may be an informal hearing.

Senator Cook. I want to discuss that with you when the question-and-answer period time comes, because I am concerned that you restricted your hearings to 553 and haven't included 556 and 557 as a matter of promulgating regulations. But we will get to that at a later time.

Mr. Elkind. Very good.

I am almost finished. Let me come to the conclusion of my remarks, and I will be happy to answer your questions and learn from you, sir.

About the bills, both S. 1797 and S. 983, do substantially delegate the necessary powers with appropriate safeguards to theoretically stimulate the manufacturing community toward a goal of hazardous reduction.

S. 983, however, not only delegates the necessary powers, but assures, given the proper funding, that there will be a significant reduction in product-caused injury. Those same powers delegated to a low-profile office in a department without a consumer spokesman obligated to keep a wide range of data on a confidential basis, could be perverted into a mechanism for reducing competition in violation of the antitrust laws and would be an ultimate disservice to the consumer.

I strongly urge the adoption of S. 983.

Senator Moss. Thank you very much, Mr. Elkind, for your incisive analysis of the legislation, and I again want to commend you for your thorough and dedicated work as Chairman of the National Commission on Product Safety, as well as Dr. Henry Hill who is here with you and served so well on that Commission.

You will find the report of the Commission and its recommendations are a valuable aid to us in considering the product safety legislation which is currently before us.

I have two or three questions that I would like to ask, and then I know Senator Cook has some questions. We will try not to be lengthy because of the lateness of the hour.

In your opinion, is the collegial structure or single administrator approach more desirable for regulatory agencies?

Mr. ELKIND. I listened to former Commissioner Elnan of the FTC speak on that subject in St. Louis, and I was persuaded on what he had to say in his observations that probably the single administrator with exclusive responsibility where he has to stand up there and take it is probably the most efficient type of administrator, and we also had the fellow who has responsibility for product safety programs in Canada call on us and tell us of his experiences, and he has to stand up there and take it. He is the only man. He is the man who has the responsibility for the program. He knows it, and if he makes a mistake he gets the ax, and that seems to be an effective operation.

Senator MOSS. It is better to have regulatory authority in one place than diffused; is that what you are saying?

Mr. ELKIND. I am persuaded that way.

Senator MOSS. Recently the distribution of free razor blades caused an uproar due to the hazards to children. A similar public reaction resulted from the doorknob sampling of a detergent at University City in St. Louis.

What is the law with respect to liability and manufacturers in the free distribution of products, and should jurisdiction of a Product Safety Agency extend to include the power to promulgate standards to cover the distribution products?

Mr. ELKIND. Well, I think that the tort laws, principles, as they have developed in recent years, the fact that there has been a sale, or whether or not there is a sale doesn't make any difference as far as liability is concerned. The distributors of the safety razor in the newspapers, I believe, have been sued for both compensatory and punitive damages, and I would think that that would be a valid lawsuit of some substance, depending on the injury that is suffered.

Now, the Commission—my thinking would be that the agency, whether it be the Commission or HEW or whoever, should certainly have the power to regulate distribution of products, whether there be a sale involved or not.

Senator MOSS. Then you think there is common law structure, that is, ordinary tort law structure available, but you think also that there ought to be some regulation in the Commission?

Mr. ELKIND. Yes, because they respond to different problems, Mr. Chairman. The tort law remedy is an after-the-fact remedy. It is after the damage has been done. And what our concern should be, it seems to me, is to eliminate the damage in the first instance. That is where, I think, we have to operate.

Senator MOSS. You indicated that you support the administration bill, which authorizes private litigation to enforce standards. The Commission bill contains a provision for private remedies, but in addition, it states:

> Compliance with consumer product safety standards, regulations, or orders under this act shall not relieve any person from liability at common law or under state law to any other person.

Now, returning to the administration bill. Would the section pertaining to private suits supersede any other private law or State law statutes with respect to liability?

Mr. ELKIND. I listened to Secretary Richardson's response to that question when he said he did not think it would. I certainly would hope it would not, and I would strongly recommend that, if there be any question about it, that there be some saving clause written into the legislation to make it perfectly clear that common law remedies will survive, No. 1, that does not affect the common law, and No. 2, I would hope that there would be some safeguard written in to protect an injured consumer who was confronted with the defense that the product that injured him complies with a Government established standard, because that can have tremendously persuasive impact on the jury or fact-finder that is passing on a question of negligence.

Let me take the Flammable Fabrics Act for example. You all know that that standard is totally inadequate. Yet, when a lawsuit comes along, the manufacturer is able to develop in the course of the trial that the garment involved did comply with the Government standard.

Many lawyers won't even take a flammable fabrics case because they sent the fabric to the laboratory and had it tested and the report came back that it passes the Government standard, and regardless of the injury to the child, the lawyer may turn down the case and feel that it is hopeless to pursue the matter further. It happens not to be true, but this, as a practical matter, is what usually does occur.

So, I would hope that there would be something written in the legislation to protect the injured consumers—that is, consumers who are injured by a product that meets Government standards—from the overwhelming impact of introducing that fact to the trier of the issue.

Senator Moss. Thank you.

Both of these bills ignore the problem of stockpiling of products after safety standards are promulgated but before it becomes effective. For what reason was this done, and what do you suggest that we do to prevent this problem from existing?

Mr. ELKIND. I frankly don't know how to meet that problem except on an ad hoc basis. I think there should be some power in the agency to deal with it. It is an oversight, and yet you can't be specific without being possibly terribly unfair to manufacturers under certain situations.

In other words, there are hazards and hazards.

Senator Moss. If the Congress should adopt the administration bill and establish a Consumer Safety Administration in the office of HEW, what factors of independence would you recommend be given to this office?

Mr. ELKIND. Well, if it does turn up in HEW, I would want to see the man who is delegated the responsibility as the administrator have control over his budget, his allocation of manpower, and I certainly would hope that there would be the in-house advocate, that is, the ombudsman, if it is in there, to give it additional visibility and vitality.

Senator Moss. At least that much to give it some degree of independence to operate?

Mr. ELKIND. Yes, sir.

Senator Moss.In its interim report, the National Commission on Product Safety proposed the adoption of the Child Protection and Toy Safety Act. Has this act been implemented to your satisfaction?

Mr. ELKIND. No, sir, it has not.

Senator Moss. Is the failure attributable to the legislation or lack of sufficient manpower and funding to devote its implementation and enforcement by FDA?

Mr. ELKIND. It has not had enough manpower, funding. It has not had the priority that it deserves, and that is why the situation is still unsatisfactory. The legislation is there.

Senator Moss. In your testimony you state that $1.1 billion could be saved each year by an effective system for making product safety used.

Did the Product Safety Commission make an estimate as to how much it might cost to increase the safety level of consumer products to achieve this saving and avoid 4 million injuries per year?

Mr. ELKIND. Well, it was impossible to do that on an across-the-board basis. In fact, the estimate that I have quoted is more or less of an emperical figure. It is not valid statistically either. But we did learn, Mr. Chairman, that many products could—many hazards could be eliminated at a minimal increase in cost.

For example, let's take the house, because houses today are selling from $20,000 up, and the patio doors, the glass patio doors that are made with plate glass, could be changed to tempered glass, an increase of maybe $10 per pane. It is an infinitesimal portion of the price of that house. And I think that there are—that of the many things that we went through, during the course of the Commission hearings, there weren't any that I can think of offhand, as I sit here, that required a great increase in costs to the consumer.

Senator Moss. Does increasing the safety level of a consumer product always imply an increase in retail costs?

Mr. ELKIND. It is fair to say that it does, but you might be talking about a very, very small amount, and then after the turnover, that is, after the production line is changed around, and the manufacturing procedures go long over a period of time, it is possible that the cost would vanish, absolutely vanish.

Senator Moss. What you are saying is that cost is nearly always a factor in making a change in production procedures, but over the long course it may not necessarily cost more to produce the unit after that initial cost?

Mr. ELKIND. That is exactly right.

Senator Moss. I certainly appreciate your testimony, your familiarity with the legislation in the long period of time you have spent on the study. It gives you a background that is probably unequaled by any of the witnesses who have come before us, and so I am pleased to have you here. I do apologize for having held you so late, right through the noon hour.

Senator Cook is making a telephone call. I don't want to preclude his opportunity to ask you a few questions, if he has some, but I did want to tell you how much I appreciate your appearance and your testimony, and also Dr. Hill, too.

Mr. ELKIND. Thank you, Senator.

Senator Moss. We didn't call on you specifically for any statement, Dr. Hill. Did you have anything you wanted to say into the record?

Dr. HILL. I didn't prepare a statement, Senator, because the Commission was essentially unanimous in its conclusions of last year, and although there may be some question about the lawyer's rhetoric, Mr.

Elkind has written his own testimony, and it may not read the same way if I had written it, but we are certainly essentially in agreement with it.

I would like to point out two things which I think are important. One was a question of exports. We felt that we shouldn't send junk to our friends overseas, and we also feel that they shouldn't send junk to us, and as I understand, in the Safety Act of 1966, that all motor vehicles and all equipment parts that are imported to this country at present conform to the consistent standards set by the Department of Transportation.

Another point that was brought up this morning, the question of inventory we have faced, and I mentioned this as a member of the Motor Vehicle Safety Advisory Council, because the seats for children in automobiles have been subject to a standard, and we now find that there is an existing inventory of these unsatisfactory and unsafe seats, and what we are asking here is the Secretary of Transportation to issue what is called a consumer advisory, simply saying that these are unsafe products, buy them at your own risk. I think we will have to have something of this nature in our proposed legislation so that we would be able to deal with the inventory problem by advising the consumer not to purchase it.

Thank you.

Senator Moss. Thank you very much.

I am glad you called our attention to the fact of the automobile safety features, that we require imports to meet standards that have been laid down for automobiles in this country when there is no reason to believe that that should not be done with any other consumer products coming in.

When we were dealing with the Meat Inspection Act, we provided that meat being imported had to be either inspected here or be inspected there under conditions that were certified to be equal to the inspection to which it was being subjected here.

Mr. Elkind. Did I understand, correctly, Senator, that Commissioner Edwards had testified that it would be impossible to inspect the factories overseas in connection with the administration program?

Senator Moss. I think he testified that way, and it was put in such a broad thinking, that if everything had to be subjected to inspection, it would be impossible to administer because of the size of it, and I don't visualize it that we would have to go and inspect everything.

If the product didn't meet a certification of the standard, then there would be a problem. But with certification, I don't see why we couldn't have imports continuing to meet our standards.

Dr. Hill. I think a further point there, just from personal experience, one can buy a television set now just put in the carton, packaged overseas and brought right up to the retail, and at that point it bears a label of certifying laboratories in this country, which in some States it must have in order to be sold.

So that some of our independent agents at these underwriters laboratories have means worked out for determining compliance with their standards before the product is imported to the country. This is done regularly.

Senator Moss. Well, Senator Cook has gone to vote. Maybe we can just stand in an informal recess. It shouldn't be more than 3 or 4 minutes until he is back, and maybe I can start making my tracks over to vote, too. But I wish you would remain until Senator Cook has had his chance to ask questions.

We are in recess temporarily to the call of the Chair.

(Recessed at 1:15 p.m.)

Senator Cook. Thank you for your patience.

I apologize. I expect we are going to have quite a few votes this afternoon.

Mr. Elkind, does your statement bear the approval of all the members of the Commission? In other words, do your views here really reflect those of the Commission's as a whole, do you feel?

Mr. Elkind. Well, it is very difficult to say because I haven't spoken to the other Commissioners on the subject since last year. We had our last meeting in May of last year. I haven't spoken to them or cleared my remarks with them. At the time that we made our final report, my understanding was that the only Commissioner who desired to express some views that weren't in the report itself was Commissioner Ray.

Senator Cook. Well, I want to get that in the record. There is one other thing that I did want to correct. In your statement, in quoting from Mr. Heffron, Mr. Heffron states:

> The National Highway Safety Bureau has never been provided the funds to construct its own research and test facilities. As a result, the Bureau is depending on the automobile * * *.

This is part of your argument that the Government is not responsive or the Congress is not responsive, and that when it gets into the field of bureaucracy, somehow it never gets done. I would really like to correct that, and not only for yourself, but for Mr. Heffron, because it wasn't until June 8 of this year that this committee received a letter, addressed as follows:

> The purpose of this letter is to request Congress to authorize appropriations in the amount of $9,600,000 for the design, construction, and equipping of a compliance test facility. A prospectus of the proposed facility is enclosed as required by Public Law 91-265, dated May 22, 1970.

So the amendment was put in there in 1970, in May. They have submitted their plans, they have submitted their specifications, and as a matter of fact, there is an executive committee meeting of the Commerce Committee tomorrow morning to consider the recommendation and to prepare a resolution to approve the $9,600,000 fund.

So I really would like to get that into the record, because Mr. Heffron gives the impression that somehow or other it is somebody else's fault, other than just a matter of time before plans and specifications, located in a community in Ohio, along with testing facilities, could be found, and I just wanted to get that in the record, because I believe it gives a wrong impression.

Mr. Elkind. I understood the focal point of his criticism was not toward Congress. He felt that Congress, I believe, and this is my understanding of his report, that Congress has given the powers and has backed up the Agency on their reasonable requests, but his concern, and it seems to be borne out by what you just put in the record, Senator, that the agencies themselves do not make the requests.

Senator Cook. Let me tell you the unfortunate part about this, which can happen to your bill or any other bill, as far as thinking a month proposal could be a millenia. I don't know of any other instance in Congress, and I have not been here this long, I guess, that an agency is faced with the problem an agency is faced with in regard to a resolution to build a facility, because Congress in its great wisdom, which will be doubtful, wrote into that act that it had to have a resolution of approval from the Senate Public Works Committee, the House Public Works Committee, and the House Committees on Commerce and Foreign Relations, so I might suggest to you that somehow or other the Department of Transportation in its great wisdom had to figure out how on a given time to get the approval of four committees of the Congress before it could even get the funds and proceed to build it, so I can only say to you that that also could happen to your bill.

Now, let's get down to some of the things in themselves, because I have some problems.

Now, from reading 983, section 9, sustaining an interim standard, "Unless the party, ascertaining its invalidity, establishes by clear and convincing proof that it is arbitrary;" section 14(c), sustaining Hazardous Products, "Unless the product ascertaining its invalidity established by clear and convincing proof that the order is arbitrary," section 16(c), the burden of proof being on the manufacturer, 18(d) authority of the Commission to disclose trade secrets, if it determines that it is necessary to carry out the purposes of this act.

Now, an apparent conscious effort seems to have been made with the Commission to make a substantial shift of the burden of proof. Now, if so, what evidence did the Commission have to totally and completely shift the burden of proof?

Mr. Elkind. Well, in the instance of the carbon tetrachloride case, where the Government had the burden of proof, it took 2 years before the FDA was successful in having that removed from the marketplace, and there is a product that was generally acknowledged by all scientific men as being hazardous. But with the complexities of legal procedures and the need to get supporting evidence, which I understood was later developed through depositions, it took a long time to obtain, and people continued to be exposed for an unreasonable length of time, by my standards, to the hazards of carbon tetrachloride. Unreasonable, because everybody knew 2 years before it was finally banned.

Senator Cook. It is on that basis that you felt that this should apply to the entire industrial concept of product safety?

Mr. Elkind. So as to avoid continued exposure after risk is known, and identified.

I think then the Government should be unhampered and unfettered.

Senator Cook. What do you think its responsibility should be if in fact it does this and in fact it shifts this burden and it is determined the actions of the Government were erroneous?

Mr. Elkind. I think the Government should be liable.

Senator Cook. Should this be built into S. 983?

Mr. Elkind. I think it should.

Even if it is not in there, the Government would be liable.

Senator Cook. How long do you think that case would take to try?

Mr. ELKIND. A long time.

Senator COOK. Now, another thing, what is the rationale for the variety of hazards which you set forth in your bill?

I am really not going to ask you what each of them means, but let me give you examples, because I think that we are laying open to interpretation many, many facets of language, and I am going to give them to you.

A–1—hazards which can be eliminated or minimized; A–3—unreasonable death in the future; A–5—unsafe products; A–7—unreasonable hazards; B–1—unreasonable product hazards. Section 7, A and B, 8A, risk of death or personal injury. A multitude of sections where you use unreasonable risk or death, or personal injury.

Section 16, substantial risks of personal injury to the public; 31A, unreasonable risk of injury to the public; section 9, imminent risk to the public health or safety; section 14, imminent hazards to the public health.

I am wondering whether there is some way that we can sit down and come up with substantial similar language in all of these so that we won't subject tremendous sections of the bill conceivably to different legal interpretations.

This is merely semantics——

Mr. ELKIND. I think that is an excellent observation, and I think that could be done. There are too many phrases in there that are subject to differing interpretations.

Senator COOK. Seems to me if we could get down to a standard phraseology in all of these sections, then we would not be subject, under our hearing procedures, an allegation of a different interpretation of each one of these, by reason of the fact that differing phrases themselves were used.

Mr. ELKIND. I think that is correct.

If they are analogous situations, the same language should be used.

Of course, there is a difference in "unreasonable" and "imminent."

Senator COOK. I am not saying we can get them all down to the same, but it seems to me that some 15 or 16 different ones, that we could at least come down to one or two or three.

Now, I will ask you the same question that I asked counsel for HEW, and that is, under section 13, injunctive relief, do you really feel, for instance, that the court can take on such tasks as orders and procedures for product design and performance, testing and inspection, and procedures for adequate quality control?

Mr. ELKIND. Oh, sure.

Senator COOK. You don't think this presents any problem?

Mr. ELKIND. No.

I think today the courts are accustomed in dealing with technical matters. After all, the U.S. district courts are concerned with patents and patent laws, and I don't know of anything more technical than that. And there is expert testimony, I am sure, that will be admissible on these.

Senator COOK. Their orders usually wind up being the language that has been submitted to them by legal counsel.

Mr. ELKIND. Right.

Senator COOK. Now, again one of the problems I have, and I ask this question and I could even go further.

Let's take 3(c)——

Mr. ELKIND. Of the Commission's bill?

Senator COOK. Right.

Could you qualify to be on this Commission?

Mr. ELKIND. I suppose I could.

Senator COOK. Would you have to divest yourself—I consider yourself to be a tremendous advocate of this field. I consider yourself to be very learned in it. But I am wondering with all the language that is in that section, whether you, as chairman of the committee that wrote this report, have any securities or have anything that in any way, or anything in your law office that in any way involves you with any manufacturer, with anybody that could in any way be interested, that you could not qualify to be a member of that Commission?

Or, whether you would have to get yourself prepared to be qualified?

Mr. ELKIND. In one or two respects, I think I would have to prepare myself.

Senator COOK. The reason I asked you is because when you create your position of Consumer Advocate, you set out no qualifications for him whatsoever. You merely say that there shall be in effect an ombudsman, and you set out what he can do and what he can't do. But you set no qualifications whatsoever as to how he shall fulfill his position, or whether he should or should not be connected, or whether he should have any interest, or whether he should not be the chairman of a board, or whether he should not be president of a consumer group.

Mr. HILL. The term is limited to 7 years.

Senator COOK. Well, I know, but you can freeze in a bad appointment as well as a good appointment.

Mr. HILL. But the idea was that it would be a one-time proposition to which the person could not be reappointed and that he either makes money before or after the job, but while he was on the job——

Senator COOK. I don't think it says he cannot be reappointed.

Mr. HILL. I am not looking at the language. I am looking at the intent.

The intent was it would be a single 7-year term.

Mr. ELKIND. By 7 years, the job ought to be done.

Senator COOK. Sir?

Mr. ELKIND. In 7 years, the job should be done.

Senator COOK. That is a very interesting point, because that presupposes that somehow or other the job will be totally done, and that nothing after 7 years will be considered a new product that might be hazardous, or there will be no development of new products, and I can't see how that you could conceivably think with at least, I hope, that the ingenuity that this country possesses, to invent and to create, that you would say this job would all come to a conclusion within 7 years.

Mr. ELKIND. Comparatively speaking.

Mr. HILL. The first 7 years would be the most difficult.

But if you look at section 4, it does say the term will be limited to 7 years.

Senator COOK. I think what that means, it would be limited to 7 years, but would you want the language in there that he cannot be reappointed?

Mr. HILL. We intended that; yes.

Senator COOK. Well, now, suppose you get an outstanding Consumer

Advocate, who knows this entire field, who is fully and completely aware of this. Would you merely want to take this individual out of that position and put somebody in who is not familiar with it, and who would not take the position that an Advocate who had 7 years experience would have had?

Mr. HILL. I don't have the number, but we have a number in the Constitution that does that to the Presidency.

Senator COOK. Yes.

Well, I hope we put the President of the United States in a different position that we put an ombudsman.

I know a lot of newspapers that have ombudsmen, but I never really thought that they really represented the subscriber, or somebody who they write about in their newspaper.

Mr. HILL. I think the concept we had in mind was going to be a person who would be as independent in his relationship with the consumer and consumer's welfare as the President would be in the welfare of the entire country.

Senator COOK. I won't argue the point any longer.

Mr. Elkind, don't you feel there is an inconsistency in applying no qualifications to the Consumer Advocate, and tremendously restrictive qualifications to the members of the Commission?

Mr. ELKIND. Our rationale, Senator, was that the Commissioners would have a peculiarly sensitive quasi-judicial function to perform, quasi-judicial, and because they would be passing on equities between consumer and manufacturer, that they should be above suspicion and above criticism in order for people to have confidence in them.

Senator COOK. But you also feel under that section you would not be qualified to be a member of that Commission?

Mr. ELKIND. No. I would have to divest myself.

Mr. HILL. I would have to get rid of some stock. And I own a small company.

Senator COOK. But you consider yourself an extremely strong advocate for consumer protection, and you consider yourself an extremely strong advocate of S. 983.

Mr. HILL. We were attempting to bridge the gap to solve the problem that the regulatory agency does not become captive of the industry it regulates, and we felt by putting in these requirements, stipulations in, at least there would be a period of 7 years when the Commissioner was serving when he would be free and clean from any kind of encumbrance.

Senator COOK. In section 17A, product certification is required to show that the product conforms to all applicable safety standards, and shall specify such standards. That is pretty broad language.

Does "all" mean that Federal, and if applicable, State and local standards?

Mr. ELKIND. No.

It would only apply to Federal.

Senator COOK. Only Federal.

But you do feel that under S. 983, where basically product safety is concerned, that the State filed would pretty well be preempted, do you not?

Mr. ELKIND. I think it should, and this is what we intended.

Senator COOK. Then where applicable, you would preempt it?

Mr. ELKIND. Yes.

Senator Cook. And that would mean Federal and, if applicable, State and local standards?

Mr. Elkind. Right.

Senator Cook. 18C. In this section, are not the recordkeeping requirements there somewhat onerous?

What I am talking about, not only are they all encompassed, but a 5-year period is necessary.

Now, does this seem pretty long to maintain records?

Why such a broad requirement?

Also, since section 21E makes this apply to foreign manufacturers, how will they view this, and can we actually impose this on them, other than to restrict their product in the United States?

Mr. Hill. May I answer this in this light.

There was an advertisement which appeared in a national magazine of a refrigerator manufacturer suggesting to the housewife that she could take her 1948 model down in the cellar and use it to store her roses and buy a 1969 model, which had an icemaker.

That implied to us that this device was going to serve for 21 years, and they asked the record be kept for 5 years on the device, which the manufacturer suggested it was going to be useful for 21 years, and did not seem to be successful.

Senator Cook. How many 1948 refrigerators are available to be put in the basement?

Mr. Hill. He was boasting that he must have had many of them around.

Senator Cook. Maybe that is a question for the FTC.

Mr. Elkind. I think, Senator, if I may add to the answer to the question, that evidence on quality control defects and claims for 5 years preceding a given date is a fairly substantial measuring stick to determine the hazardous or nonhazardous propensities of a product, whereas 1 or 2 years might not be adequate for that purpose.

Senator Cook. Now, let's get to section 20, where the Commission is authorized to obtain from any Federal department or agency, such statistics as it may deem necessary.

Now, do you consider this permissive authority or mandatory authority upon such departments or agencies to comply upon such request?

Mr. Elkind. We used the same language as Congress gave to the National Commission on Product Safety. That was the source of that language.

Senator Cook. Would you want this record, then; to show that this would be—this would be mandatory, or it would be——

Mr. Elkind. Whatever it was, we were satisfied with the cooperation that we got from other governmental agencies.

Senator Cook. The reason I asked this, because I am wondering whether this would apply to the Defense Department, and I am wondering what problems it conceivably could get us into.

Mr. Elkind. I have no comment on that.

Senator Cook. We can take the definition from hearings that have already taken place.

Mr. Elkind. Yes, sir.

Senator Cook. In section 22. Exports unless waived, must comply with standard.

Now, in a way I kind of agree with you, but I am wondering what

the philosophy was to impose on foreign countries standards that they may have under existing statutory authority in their countries that are less than or different than ours?

Mr. ELKIND. Well, we felt that option should be given to the foreign countries. We felt that if a foreign country wanted to take our substandard merchandise, that was their business, but that we should not just dump it on them without giving them any opportunity to say yea or nay.

Senator COOK. As I say, I am not sure that I don't agree with you, but I am wondering whether, if those countries—suppose they had standards that were higher than ours? This would be a manufacturer's problem, would it not, that he has to comply with?

Mr. ELKIND. Yes.

Senator COOK. In regard to 28E and F, and subsection E, do you feel conceivably you could have two actions at the same time, one in Federal court and one in State courts?

Mr. ELKIND. It is not spelled out, but I do not think that the Government should bring actions in both the State and Federal Government.

Senator COOK. Let me ask you another thing, subsection F concerning transcripts.

You don't exclude trade secrets in there, and I merely bring this out because we face a situation right now of a transcript that was filed in a criminal case, whereby information that was requested that be held by all parties concerned, was not excluded from the transcript when an order had to be filed in the District court, which included a copy of a transcript, and a great deal of information got out that conceivably could be detrimental to the trial of the case.

And I am wondering if you would mind that this section might be enlarged, and, let's say that rational authority would be given to the Commission and the advocate to determine whether such trade secrets, at a particular point in a hearing or in a case, would be excluded from the transcript of testimony?

Mr. ELKIND. I think that would be appropriate.

Senator COOK. Now, I have got problems with the one section, and the chairman will probably grin when I ask you this, but this is one we had with S. 986, one we had with S. 3201 last year, and that is that in 8I, the informal rulemaking provisions of title 53 of the Code, are mandatory for all proceedings involving consumer product safety standards.

Now, doesn't this a little bit trample on fair play, or due process in a rather heavyhanded manner, so as to leave any hearings at the discretion of the Commission?

I only use this in regard to sections 556 and 557, as to the right of the hearing, as to the right of examination, as to the right to interject into a hearing.

Isn't the route of section 553 with an advocate, as you put it, really depriving under the rulemaking procedure, any real opportunity for—in this instance, for a defendant to present a case before the commission?

Mr. ELKIND. If you are talking about theoretical fair rules of combat, fair rules of play, I agree with you. But lurking in the background here is a party, which is the public, and while the parties are acting out their charade in going through these formal procedures, people continue to be injured.

Now, something has to give way, and in that situation, our judgment was that the thing to give way would be the rules of combat, so to speak, and that the informal procedures should apply so that the Government can move quickly and expeditiously.

Senator Cook. Would you advocate the repeal of sections 556 and 557, then?

Mr. Elkind. Certainly not. I certainly would not.

But as it applies to the products safety problem, I think that the Government should have the option of going either route. If the Government feels that the informal procedure should be followed, that it is in the interest of the consumer to do that, they should have that prerogative.

Senator Cook. Would you be amenable to including also sections 556 and 557 if you would allow the Commission to have injunctive relief to enjoin a sale?

Mr. Elkind. I don't feel the same way about injunctions as was expressed here earlier today.

I think the courts are loathe to give injunctive relief. Most judges feel that an injunction is a very drastic remedy, and that they will only give it on a strong showing of probability of success, and where the applicant for the injunction is able to make out a fairly good case right at the threshold of the lawsuit, and where there is inadequate remedy at law.

Judges don't give injunctions very easily, except in labor cases.

Senator Cook. Isn't it just a serious situation to deprive due process at the rulemaking level?

Mr. Elkind. I don't like it, as a lawyer, as an advocate as one who likes to fight a battle with fair rules, you know, that protects me.

But in a health situation, I didn't like the *Carbon Tet* case. See, these things bother me.

And when something has to give, even though I am a lawyer, I say health comes first.

Senator Cook. I agree. I am not disagreeing with this at all.

But what I am trying to do is combine the two where at least temporary injunctions, or, for instance, such as the Agriculture Department, where under its meatpacking provisions, it can physically lock up a plant, it can require that all products be taken off the market. And yet, under the rulemaking procedures, it still authorizes section 556 or 557 in regard to the rulemaking to at least impose the basic theory of due process.

And I am wondering if the same kind of language and the same authority based on tests, because after all, as the gentleman indicated this morning, if they are going to take a product off the market, they have got to be safe, when they move to take it off the market, particularly since under this section it seems to me that we have totally turned around the burden of proof.

Mr. Elkind. Well, if the burden of proof situation is as set forth in the Commission's recommendations, that is a very important tool for the Government in these cases.

Senator Cook. Also I notice—this is my last question under section 983—that you would not be—you would not object to any act that a citizen might well take in a matter of mandamus against the Administrator?

Mr. ELKIND. Certainly not; providing there is an acknowledgment that the citizen has a standing in court.

Senator COOK. Absolutely.

Thank you very much.

Senator MOSS. Thank you again, Mr. Elkind, and Dr. Hill. We appreciate it very much.

Mr. ELKIND. It is very heartwarming to see the familiarity of the committee with the proposed legislation.

Senator MOSS. We are in recess until Wednesday morning at 9:30.

(Whereupon, at 2 p.m., the hearing was recessed to resume at 9:30 a.m., Wednesday, July 21, 1971.)

(The following information was subsequently received for the record:)

ARNOLD B. ELKIND,
New York, N.Y., July 20, 1971.

Hon. MARLOW W. COOK,
Old Senate Office Building,
Washington, D.C.

DEAR SENATOR COOK: At yesterday's hearing on consumer product safety legislation you expressed concern regarding the provision in S. 983 that informal rulemaking administrative procedures (5 U.S.C. 553) should apply to all proceedings for the purpose of establishing, amending or revoking a consumer product safety standard or other regulation pursuant to the Act.

You questions stimulated me to examine the Report of the President's Advisory Council on Executive Organization to determine that Commission's observations on the usefulness of formal administrative procedures.

I would expect the Administration to rely heavily on the conclusions of this distinguished panel but its teachings are not reflected in S. 1797, which opts for formal procedures.

The Ash Commission came down strongly in favor of utilizing informal procedures and seems convinced that much of the ineptitude found in the regulatory process can be traced to the over-judicialization of agency processes. The rationale is summarized at page 52, wherein the Ash Commission Report states:

"The discharge of this quasi-legislative function can be impeded by undue deference to judicialization. Resolution of policy matters requires a type of flexibility that is unknown in our traditional common law judicial setting. Administrative agencies were established for the very purpose of placing technical expertise in a single forum and channeling to it problems which require that expertise for resolution. The judiciary, by design, does not share this characteristic with administrative agencies. Thus it is appropriate to apply considerably more stringent evidentiary rules in judicial than in administrative proceedings because care must be taken to protect jurors from matters which have not been subjected to the rigors of cross-examination and expert opinion. Administrative agencies, however, enjoy a degree of technical competence in their areas of expertise which permits them to receive and evaluate submissions that have not been subjected to protective common law procedures. Indeed, such regulatory objectives as encouraging the broadest possible public participation and the expeditious resolution of issues can seriously be frustrated if agencies are overly concerned with rigorous judicial procedures and attitudes."

Nor is this an obscure reference in the Report. You will find the same theme restated at pages 21, 22, 34, 35 and 49. The Ash Commission found that a formal proceeding deciding an issue on an ad hoc basis generally does not provide a precedent and hence there is no *anticipatory* value to the formalized operation. A regulatory agency must be enabled to anticipate problems without the need for, and long before, the culmination of protracted proceedings.

You, as a former Judge, and I, as a trial lawyer, are troubled by this problem but the Ash Report gives me philosophical comfort that the trade-off of procedural safeguard involved is worthwhile—particularly when lives and health are at stake.

Respectfully yours,

ARNOLD B. ELKIND.

CONSUMER PRODUCT SAFETY ACT OF 1971

WEDNESDAY, JULY 21, 1971

UNITED STATES SENATE,
COMMITTEE ON COMMERCE,
Washington, D.C.

The committee met, pursuant to recess, at 9:30 a.m., in room 1202, New Senate Office Building, Hon. Frank E. Moss, presiding.

Present: Senators Moss, Hatfield, and Stevens.

Senator Moss. The hearing will come to order.

Today we resume hearings on product safety legislation. Secretary Richardson, Mrs. Knauer and Dr. Edwards spoke in behalf of the administration bill, S. 1797, and proposed the reorganization of the Food and Drug Administration. Under that plan, a new Consumer Safety Administration would be established composed of an Office of Drug Regulation, an Office of Food Regulation, and an Office of Product Safety Regulation, The Secretary indicated that the final authority for standard promulgation would be delegated to the administrator of the new unit.

Mr. Arnold Elkind, chairman of the National Commission on Product Safety, spoke on behalf of the Commission bill, S. 983. Mr. Elkind underscored the importance of establishing an independent agency with clear channels of accountability and visibility, an independent budget and commissioners with fixed terms of office. He also criticized the administration bill for lacking a provision for a consumer safety advocate and for creating burdensome guidelines on the release of information obtained under the act.

As a result of our session on Monday, this committee is in a better position to resolve differences between the two bills to try to come up with a strong Federal product safety program that would guarantee independent accountability. I look forward to receiving the views of other witnesses who will help us to resolve the remaining issues before the committee.

We have several very important witnesses to hear this morning, and we will try to proceed with as much speed as possible. The Senate will be in session early this morning, and there is always the possibility of interruption. So we would like to move along as rapidly as we can.

Our first witness will be Dr. Lewis Branscomb, Director of the National Bureau of Standards, and we'll ask Dr. Branscomb if he will come forward and introduce his associates that are accompanying him to the stand this morning.

STATEMENT OF HON. LEWIS M. BRANSCOMB, DIRECTOR, NATIONAL BUREAU OF STANDARDS; ACCOMPANIED BY MALCOLM JENSEN, DIRECTOR, BUREAU OF PRODUCT SAFETY, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE; MEL PYERSON, CHIEF, PRODUCT EVALUATION TECHNOLOGY DIVISION, NATIONAL BUREAU OF STANDARDS; AND WILLIAM ANDRES, MANAGER, ENGINEERING STANDARDS

Dr. BRANSCOMB. Thank you, Mr. Chairman. With me on my right is Malcolm Jensen, Director of the Bureau of Product Safety in HEW; on my left, Dr. Mel Meyerson, Chief of the Product Evaluation Technology Division of NBS, and over here on my far right, Mr. William Andrus, who is the Manager for Engineering and Information Processing Standards at the NBS.

Senator MOSS. Thank you. We welcome you gentlemen all to the table.

Dr. BRANSCOMB. Mr. Chairman, it is a privilege for me to appear before this committee in support of the Consumer Product Safety Act of 1971, S. 1797.

The President has expressed his deep concern over the multitude of problems being confronted by the consumer in the purchase and use of products of all kinds. The growing complexity and sophistication of many such products make it increasingly difficult for the untrained or uniformed consumer to evaluate and guard against hazards which may be present in a product or which may develop with use. Accordingly, the President has submitted proposals to the Congress aimed at establishing a buyer's bill of rights. S. 1797 is designed to respond to that portion of the overall bill of rights which deals with product safety. It would do so by giving the Secretary of Health, Education, and Welfare the authority to fix minimum safety standards for products and to ban from the marketplace those products that fail to meet those standards.

Our society is said to be affluent. The price in health and safety exacted by technology for our affluence may seem dwarfed by the extraordinary contributions of technology to general health and longevity. Nevertheless, we are told that in the United States an estimated 30,000 people die and perhaps 20 million people are injured in accidents in and around the home each year. The public is increasingly unwilling to accept injury and death from the products it uses, particularly when the hazard is concealed in a new or unfamiliar product or technology. On the other hand, the size of the accident toll itself may reflect a public reluctance to pay the full bill for safety. People still smoke cigarettes in spite of fateful warnings on the package. Others, and I am one of the most enthusiastic, buy skis for the deliberate purpose of an exhilarating experience that cannot be freed of all risk. No one expects all products to be foolproof. But the buyer has the right to assume that product design contains all of the economically feasible features that can be made to reduce hazards in use, and a right to know the nature of the hazards to which he may expose himself, his family, and his neighbors. The enactment of S. 1797 would provide a big step toward these goals.

It is not my purpose, nor do I feel qualified to discuss the many detailed features of the legislation that is before you. I would prefer to concentrate on two points which I believe should be fully understood in your consideration of any legislation that would authorize the establishment of mandatory consumer product safety standards. First is the need to recognize that the development of effective, yet economically feasible safety standards can be a very difficult technical endeavor which can make heavy demands on even the most talented scientists and engineers. Second is the importance of utilizing fully the reservoir of such talent that is potentially available through the numerous private organizations that produce voluntary standards in this country. In addition, I shall comment on the ways in which the National Bureau of Standards contributes to product safety in cooperation with other Federal agencies and with the private sector, and is preparing to expand its capability for this cooperation.

The technical sophistication required to produce a product standard is not obvious to those who are not engaged in standard production or use. I regret to say that even within the scientific community there are many who tend to underestimate the difficulty of good standards development. A brief description of a standard that is in the final stages of development through the Voluntary Product Standards Procedures of the Department of Commerce may serve to illustrate my point. The product being standardized is a polyethylene plastic container, commonly known as a jerry-can, used to carry gasoline or other petroleum products in the back of an automobile or boat, and for storage around the home. This appears to be a relatively simple product; yet the technology involved in its standardization is complex. Moreover, most of the critical characteristics of jerry-cans relate to safety because of the highly combustible nature of the petroleum products they normally contain.

The standard is a technical document that defines and explains in unambiguous terms the various requirements which the product should meet. A good standard, particularly one that ultimately may become mandatory, should be sufficiently precise in its language to withstand legel scrutiny and at the same time effectively communicate technical instructions which may be relatively complicated. The jerry-can standard includes requirements concerning the plastic material from which the container is made, its capacity and increments of size, stability to avoid tipping, conditions of the pour opening to permit easy pouring and positive sealing, handles that permit firm gripping and resist breaking under load, easily seen colors, high container strength, low permeability to petroleum products, resistance to chemical attack by petroleum, suitable and standardized markings, and proper labels in accordance with existing laws.

The standard also describes the inspection and test methods to be used by manufacturers and inspectors to establish conformance of the product. The formulation of these particular test methods required the skill and knowledge of plastics scientists and engineers, mechanical engineers and chemists. These people, drawn from industry as well as NBS, surveyed and considered test methods in existence to select any that would be appropriate for a particular characteristic. Where none existed, new test methods had to be developed. In all, this relatively

simple product requires 10 different test procedures. These involve requirements for conditioning of test specimens; determination of the softening point of the plastic to assure serviceability in warm places, and of the brittleness temperature to avoid cracking in cold temperatures; a closure test to insure a tight seal; a handle strength test; a drop test to insure that the strength is adequate to withstand rough handling; a tipping test to insure stability on inclined surfaces; a hydrostatic pressure test to insure against rupture if the contents should become heated and generate increased pressure; a permeability test to insure no undue loss of fluid through the plastic during prolonged storage; and a petroleum resistance test to fully ascertain that the contents do not chemically attack the plastic.

Fortunately, in this case, appropriate test methods for determination of some important characteristics such as the softening point and brittleness temperature of the plastic materials already existed.

Through the continuing efforts of the American Society for Testing and Materials and other private organizations, procedures for these and many other frequently used tests have themselves been standardized. These well established ASTM test procedures, or appropriate modifications thereof, frequently can be incorporated in product standards with consequent savings in time and effort in test development. However, we must not lose sight of the fact that each such test procedure refererced in a product standard may represent hundreds of man hours of testnical talent contributed through the voluntary standards system to its development and continuous updating. The jerry-can standard I described makes use of five such ASTM standards.

I do not wish to imply that the development of every test method is a major engineering endeavor. Indeed, some of the procedures such as the drop strength test developed for jerry-cans, are quite simple. This consists of dropping the filled container from a prescribed height so that it lands in various positions on a flat solid surface, and examining it for damage and leaks. However, numerous technical judgments are involved in even this simple test. An appropriate distance of fall must be specified, so that vulnerable areas, such as the corners, are exposed. The temperature of the fluid in the container is specified, and two series of drops at widely differing temperatures are required because the behavior of some plastic materials changes drastically with temperature. Such foresight can avert tragedy if a jerry-can filled with gasoline slips from the mittened hand of a winter sports enthusiast and falls on the hot engine of his snowmobile.

For a jerry-can to be made in accordance with the standard I have been discussing, it must meet or exceed the minimum limits set for each characteristic as measured by the prescribed test methods. If it should fail any single test, it would not be in compliance with the standard. All of this is required so that the public can feel assured that any plastic jerry-can made to conform to the recommended voluntary product standard will be reasonably safe. This is a relatively simple product. For products having involved combinations of electrical, mechanical and thermal characteristics safety standard development becomes far more complex.

At the National Bureau of Standards we firmly believe in, support, and encourage the activities of the private organizations engaged in producing voluntary performance and safety standards. I am pleased

to see that S. 1797 seeks the aid of the private standards sector in providing needed safety standards. We have long worked with the private standards writing community and have the highest respect for the technical talent available to most of these organizations. There are some 400 such standards writing bodies. It would be impossible to match in any single Government agency the technical know-how operating in the private standards sector.

Unfortunately, these well established procedures which have generated the thousands of voluntary engineering and commercial standards used in the manufacturing and marketing activities of our country, have in the past seldom been focused on the development of consumer product safety standards.

Consumer products are inadequately covered by safety standards. Only about 15 of the 400 standards writing organizations are active in writing consumer product standards. We know that the system works well when the interested parties, including buyer and seller, are adequately represented. Standards for industrial materials and components, for example, are generated by sophisticated engineers from buying as well as selling organizations. Technical validity then becomes the basis for accommodation of their differing commercial interests.

The missing element with regard to consumer product standards has been adequate technical representation of the consumer interest. It is difficult to find technically qualified independent representatives of the buying public who could afford to pay their own way. Many standards bodies would be unable to provide independent funding for their participation. S. 1797 would seek to mitigate such financial problems by contributing to the cost incurred in the development of a good standard, where such contribution is likely to result in a more satisfactory standard.

Apart from the requirements of the act which would request the private sector to prepare standards, it will create a more general concern and stimulate private sector supportive programs on a broad front. Indeed, the Product Safety Commission report and the fact that product safety bills have been introduced have already stimulated private standards bodies to reexamine their positions and become more active in the production of consumer type standards.

We at the NBS are trying to improve our own participation and our influence on the voluntary system. We are working closely with the American National Standards Institute on a "Guide and Format for Consumer Product Standards," a standard for consumer standards, if you like, to insure that important safety features are no longer overlooked. Legislative attention to the product safety issue has been an important prod, as would the resulting regulatory action. But we see the new national electronic injury surveillance system of HEW and the new systems analysis approaches to safety, that we and others are developing, allowing a new surge of voluntary safety standards work in identifying hazards and finding solutions. We will nurture such a renewed voluntary effort, for we consider the nongovernmental talent for standards development of very great importance in insuring workable standards. But we are also ready to help HEW with its efforts under this bill where the private voluntary standards system does not meet this challenge.

The interest of the National Bureau of Standards in this legislation stems from our considerable concern with consumer product safety, our existing close relationship with the Bureau of Product Safety (HEW), our activities in this area with the private sector, and our own standards writing activities.

We believe that equity in the marketplace is enhanced by mutual trust and respect between buyer and seller. Any assistance given to the buyer and seller to further the cause of informing the consumer and protecting him against unforeseen hazards in products should improve that relationship, as well as offer increased protection to both. At NBS this has long been an underlying objective of much of our technical activity. During the past 2 years, we have given even greater emphasis to strengthening our capabilities and increasing our activities to promote the credibility of the marketplace. We are emphasizing existing programs in fire research, flammable fabrics, standards for safe and healthful buildings, and accurate and fair commercial weights and measures. We are actively reorienting many activities dealing formerly only with industrial products and materials toward performance and safety of consumer end products. Our Product Evaluation Technology Division is refocussing on the development of good test methods for the safety aspects of consumer products and our Office of Engineering Standards Services is increasing its production of consumer product standards. Our Technical Analysis Division is working on the systems approach to consumer product safety.

NBS is also involved in product safety activities of other Federal agencies. This is a service we perform at the request of agencies such as the Department of Transportation, the Federal Trade Commission, and many others. In the past year we have investigated 49 failures in products and systems, most of which involve some aspect of public safety. The products involved range from buildings damaged by earthquakes, and aircraft with failed landing gear, to inadequate firemen's helmets.

In this important area we are starting a failure avoidance program to integrate our work on materials science, structural engineering, and the analyses of catastrophic structural failure. Methods of material selection, performance measurements, and design criteria will be developed that can be incorporated into building codes, bridge and highway structures, and other voluntary or mandatory standards intended to reduce loss of lives and property. Nondestructive testing methods for assurance of material and structural integrity also will be developed, and services to other governmental agencies and the public in failure analyses and avoidance will be provided.

We recently initiated a program to assist the law enforcement standards laboratory of the Justice Department in providing standards for protective clothing and equipment for law enforcement officers. The knowledge gained from this program could very well be extended to providing safety equipment for other segments of the population. We have also had the responsibility for standards for devices for household refrigerators which enables entrapped children to open the doors and avoid suffocation. Last month we approved for publication a safety standard on picnic coolers which should help to eliminate the problem of entrapment of children in these devices.

We have already established an effective working relationship with the Bureau of Product Safety (HEW) in many areas of product safety. Interagency cooperation is facilitated by the fact that the new Director of that Bureau is a recent alumnus of the National Bureau of Standards. Mr. Jensen is well aware of our capabilities and interests in contributing technical support as encouraged by section 20 of S. 1797. We are now cooperating effectively in the execution of our joint responsibilities under the Flammable Fabrics Act, and we have for over a year had an agreement with FDA to provide technical support under the Toy Safety Act. Under the proposed legislation, we are prepared to extend our support of HEW by expanding our activities to other consumer product areas, particularly in the development of test methods and standards for safety in areas dealing with thermal, electrical, and mechanical hazards.

The two major private organizations in this country concerned with consumer standards are the American National Standards Institute (ANSI) and the American Society for Testing and Materials (ASTM). NBS staff members hold more than 250 positions on their technical standards committees, and serve on their policy boards as well as on many of their standards making committees. NBS can exercise influence through participation in these organizations, for example, through NBS staff members on the Consumer Council of ANSI, and on the Committee of Consumer Standards of ASTM. The newly appointed chairman of the Consumer Product Safety Committee of ANSI is an NBS staff member. Our offer to provide the leadership of ANSI committees dealing with the safety of toys for preschool children and with home playground equipment has been favorably received and further reflects our intent to support technically the statutory responsibilities of HEW in the area of toy safety. But we need this legislation if we are to be fully successful in our objectives.

We have recently formed in NBS a new Engineering and Information Processing Standards Council; one of its functions is to insure that the public interest is most effectively represented by each of our representatives on these committees. In all of these relationships, we seek to offer our experience and technical expertise in strentghening organizations engaged in providing consumer standards and thus enhancing their abilities to respond effectively to the proposed legislation. We have appointed a Standards Manager, Mr. Andrus, to insure that our staff understand and execute our policy and feed back to management their experiences at the standards table.

In conclusion, Mr. Chairman, let me emphasize that standards must be written for meaningful Federal regulation of products. It is clearly not enough for Congress to tell manufacturers to make "safe products." I urge you to enact a mechanism for generating standards which will be reasonable and technically precise, and contain reproducible test methods. I believe that the Department of Health, Education, and Welfare, which already has considerable experience and facilities in the areas of product, drug, and food safety, is well equipped to administer a standards generating mechanism, and could operate more quickly and efficiently than any new, independent agency. Under the plan envisioned by S. 1797, HEW would incorporate technical and user experience with products in the standards writing procedure. The

National Bureau of Standards recognizes this essentially interactive and cooperative aspect of standards writing. We are deeply concerned about the consumer aspects of this field and we are seeking to broaden our capability for the development of consumer product test methods. We stand ready to cooperate fully with HEW in implementing a new consumer product safety mandate. May I strongly urge your support for the Consumer Product Safety Act of 1971, S. 1797.

Senator Moss. Thank you, Dr. Branscomb, for your statement dealing with the problems of establishing standards for technical requirements.

You say, "The technical sophistication required to produce a product standard is not obvious to those who are not engaged in standard production or use."

In order to follow this up a little, I wanted to ask you a series of questions about the Department's efforts to develop children's wearing apparel standards, so that I might understand better whether the problems are primarily technical or whether the differing commercial interests that you mention on may have had considerable influence on the development of the standards.

When did the Department of Commerce publish the proposed need for children's wearing apparel standards? Do you know the date of that?

Dr. BRANSCOMB. To give you the precise day, may I ask Dr. Clark to join me? Dr. Clark is chief of the Office of Flammable Fabrics at NBS.

Senator Moss. Certainly.

Did you hear the question?

Dr. CLARK. Yes, sir.

Senator Moss. The date I wanted is when the Department published notice of a proposed children's wearing apparel standard.

Dr. BRANSCOMB. November 17, 1970.

Senator Moss. Was this the notice for need, or was this the notice that there would be a standard?

Dr. BRANSCOMB. This is the notice of the proposed standard.

Senator Moss. I am interested in the notice for need.

Dr. BRANSCOMB. The finding that there may be a need was in January of 1970.

Senator Moss. January of 1970. So that would be more than a year ago. What technical information did the Department have at that time? Can you tell me that?

Dr. BRANSCOMB. With respect to the need, Mr. Chairman?

Senator Moss. A need, yes. Need. And what technical information regarding children's wearing apparel was available.

Did it have any? Had it done some investigation?

Dr. BRANSCOMB. In terms of evidence demonstrating the need to promulgate a standard, this evidence was made available to us by HEW as required under the amended Flammable Fabrics Act law. It was not all that we would have liked, but it was sufficient, we felt, to make the finding of possible need.

In addition to that, we had some research background available to us. This included some significant work that had been done already in the private sector, but which fell far short of what was necessary for a

standard of this character, and a rather modest effort up till that time at the National Bureau of Standards. It was in 1969 and 1970, Mr. Chairman, that we first were able to get sufficient resources into the flammable fabrics program to have more than a scant handful of people at the Bureau of Standards available to work in this field.

Senator Moss. So most of your technical information had come from or had been developed in the private sector, and rather a small amount within the Bureau of Standards?

Dr. BRANSCOMB. At that point in time, yes, sir.

Senator Moss. When you published this need for a standard, what comments did you receive in response to that publication?

Dr. BRANSCOMB. We received very extensive comments, Mr. Chairman, which led to the holding of public hearings in January 1971.

Senator Moss. Is this the need, now, or the standard? I think we're trying to keep the two separate. On the need. Did you get any response at all?

Dr. CLARK. Yes, sir. There were over 200 comments which were received after the November publication of the proposed standard.

Dr. BRANSCOMB. The chairman is referring to comments on the need.

Senator Moss. On the finding that there may be a need.

Dr. CLARK. On the finding that were may be need in January of 1970, they were extensive, but I do not have the exact number in my head. I am sorry.

Senator Moss. No. The January one.

Dr. CLARK. That is the January 1970 one. I do not know that number offhand. I can supply it, of course.

Senator MORSE. I wish you would supply it. And your recollection is that there were several responses?

Dr. CLARK. Yes, sir. There were very many.

(The following information was subsequently received for the record:)

Forty-seven comments were received in response to the January 1970 notice in the Federal Register that there may be need for new standards for the flammability of children's apparel.

Senator Moss. Now, what action was taken after the time period for comments on the notice for need had expired? Specifically, what test methods were available? How actively did those test methods reflect real world conditions?

Dr. BRANSCOMB. Mr. Chairman, there were test methods in existence developed by ASTM and other organizations. I am not prepared to give you, at this time, a detailed description of the evolution of technical events during last year. I would welcome an opportunity to prepare myself to do that.

Senator Moss. Well, I would appreciate it. I understand that being able to recall it in detail would be difficult. And perhaps you could supply answers to what test methods were available? How accurately did those test methods reflect real world conditions? How many technical man hours were devoted to the development of the standard, the proposed standard, and from the time of need to the time of the proposed rule, what technical assistance did you receive from the private sector? And what technical problems or information caused you to narrow the finding of need from children's wearing apparel to a pro-

posed standard of children's sleepwear? Maybe you know that one without reference.

Do you know why that was narrowed down from wearing apparel to just sleepwear?

Dr. BRANSCOMB. Mr. Chairman, I believe that on July 30—that is, next week—Assistant Secretary Wakelin of our Department has been invited to appear before this committee to discuss in detail the children's sleepwear standard. I would suggest that it may be appropriate to go into this in considerable detail at that time. We would welcome such a full exposure of details. I can assure you that the standard will be promulgated prior to his appearance before this committee, so that you will be able to examine the actual standard that is promulgated in the light of the background of technical events leading up to it.

I am not trying to dodge your questions, and I will try to answer all of them that I can right now, but I did want to indicate that we would welcome an opportunity for a full exposure of the problems and difficulties in the development of that standard.

Senator MOSS. I appreciate that, that I understand that you are testifying really on the technical side of the development of standards. And I will try to keep my questions in that area, because that is your area of responsibility.

When you issued your proposed rule on children's sleepwear were you technically satisfied with the technical aspects of the rule?

Dr. BRANSCOMB. We had developed a standard that was as responsive to the requirements as we were capable of developing in an expeditious manner.

It is very important, I think, that proposed standards be published for full comment, because there are problems that are called to our attention after the publication of a proposed standard that must receive serious consideration.

In the case of the children's sleepwear standard, one such problem was the possibility that the special chemical treatments of fabrics to make them less flammable might in fact be toxic if infants sucked on the sleeve of the garment for extended periods of time and dissolved some of these chemicals. In addition, it was suggested that there would be serious dermatological effects.

When some evidence of such effect was called to our attention, we felt it essential to examine it to satisfy ourselves that we could responsibly proceed with a final standard.

This is an example of the kind of problem that can arise when a proposed standard is published, and those who are aware of possible difficulties can see the details and foresee the problems.

(The following information was subsequently received for the record:)

TEST METHODS FOR FLAMMABILITY OF CHILDREN'S SLEEPWEAR

There are several hundred flammability tests. The ones most commonly used are those recommended by voluntary standards organizations such as ASTM (American Society for Testing and Materials), NFPA (National Fire Protection Association), AATCC (American Association of Textile Chemists and Colorists), and ANSI (American National Standards Institute). The most stringent test uses are vertical strip of fabric. The hazard to children is considered by us to be such that a stringent vertical test is appropriate. During the development of the children's sleepwear standard, there were at least eight common variations of such a vertical test:

(1) ASTM D 626–55T;
(2) AATCC 34–1969;
(3) AATCC 34–1970;
(4) NFPA 701;
(5) Underwriters' Laboratories 214–1969;
(6) Federal Specification CCC–T–191b (Method 5902;
(7) Federal Specification CCC–T–191b, Method 5903; and
(8) British Standard 3119.

Each of these test methods had shortcomings in two or more of the following aspects:

(1) humidity for conditioning the fabric prior to the flame test;
(2) orientation of the burner;
(3) gas used in the burner;
(4) time of exposing the fabric to the burner;
(5) control of air drafts in the test cabinet;
(6) method of evaluating thermoplastics;
(7) laundering test for durability of flame-retardancy; and
(8) criteria for accepting or rejecting a fabric as non-flammable or flammable.

Therefore, even though these basic tests provided appropriate solutions to some "real world" hazards, no existing individual test was sufficient to assure reasonable protection to children.

Level of Technical Effort and Assistance

Proceedings were instituted for development of the children's sleepwear standard by the January 1970, finding that there may be need for such a standard. At that time, there were 10 members of the technical staff of the NBS Task Force on Fabric Flammability.

In November 1970, the proposed standard was published along with the finding that there is need for a standard. At that time, there were 13 members of the permanent technical staff of the Office of Flammable Fabrics.

In July 1971, the final standard was issued. At that time, there were 18 members of the permanent technical staff of the Office of Flammable Fabrics.

We estimate that some 50% of the technical staff was involved in efforts aimed specifically to this standard. The other 50% was engaged in lower priority projects, including tests for mattresses, blankets, carpets, rugs and general wearing apparel, analysis of accident information, and supporting research.

Technical assistance received from the private sector is not so readily measured in numbers. Innumerable technical discussions, exchanges of technical information, participation in scientific meetings, and reviews of the technical literature significantly assisted us in developing the standard. Furthermore, the technical background of test methods in voluntary standards provided a base for development of the children's sleepwear standard.

Children's Sleepwear, Dresses, and Underwear

In January 1970, we published a finding that there may be need for new flammability standards for children's sleepwear, dresses and underwear. The limited accident information available to us indicated that these garments were involved in an unexpectedly high proportion of apparel fires. Further research and accident information did not clearly indicate whether underwear was, in fact, protective or damaging to the skin. In some cases, it seems that underwear is involved simple because of its being worn at the time an outer garment catches fire; in other cases, the presence of underwear beneath the burning outerwear may increase the severity of burn damage to the skin. More information is needed to determine the need for flammability standards for children's underwear.

With respect to children's dresses, accident information continues to point to unusually frequent involvement in apparel fire. However, there is no technology known to us today for producing acceptable flame-retardant thermoplastics and very light weight cottons at a reasonable cost to the consumer.

Senator Moss. This question of whether the dissolved chemicals would be toxic, was this after the standard had been limited to sleeepwear or was this on all garments?

Dr. BRANSCOMB. The principal concern here was with infants, whose skin is more sensitive, and whose behavior with respect to the use of the garment is obviously less controlled than that of an adult.

Senator Moss. And is this in all types of garments, or just certain types of textiles, that this problem was apparent?

Dr. BRANSCOMB. The concern that was raised was with respect to the special chemical treatments of those textiles that require chemical treatment to enable them to pass a flammability test.

Senator Moss. And on what basis had you drawn the acceptable line? Did this call for a policy decision or a technical judgment?

Dr. BRANSCOMB. By "acceptable line" I assume you mean the sum total of the severity of the standard with respect to its requirements for certain performance under ignition. That turned out very early to be a technical issue in the sense that one must make a careful evaluation of the nature of the risk, as revealed by HEW's evidence on actual injury cases, and then determine what sort of test method can be used to minimize that risk. We looked at the injury data in great detail to try to discover if there was contained within that data evidence that one particular class of products was involved in accidents more frequently than other products in proportion to their use in the marketplace.

We looked for evidence that the problem might be ignition sensitivity, or might relate to the rate of propagation of flame. Each of these factors had to be considered in order to design a flammability standard that would in fact meet the ultimate requirement, which is the reduction of injury. It turned out in this particular case that a severe standard was necessary to insure that children's sleepwear garments are in a general sense not subject to the maintenance of a flame. That is, a self-extinguishing requirement was necessary, in effect, and no shortcut to that objective would satisfy the need. And that is basically a technical judgment.

Senator Moss. So that was a technical judgment, you say and not a policy decision where you established a standard line?

Dr. BRANSCOMB. I should clarify that. The Bureau of Standards' responsibility is to evaluate the injury data, in cooperation with HEW, and to develop the proposed test methods and recommend the actual standard that will protect the public in relation to that knowledge about injuries. That recommendation, of course, goes to the Secretary of Commerce, who has the responsibility to promulgate the standards. Our responsibility is to prepare the technical recommendation for the actual standard. That we have done.

Senator Moss. When this notice of need was published what aid was that to you? Did the toxicity problem surface at that time?

Dr. BRANSCOMB. I would like to ask Dr. Clark to respond to that. He is the Chief of our Office of Flammable Fabrics.

Dr. CLARK. If we address the usefulness of the publication in the Federal Register that there is a need for a standard, or, for that matter, the previous notice that there may be need for a standard, what we find is that at that point many people became aware of the problem who had not previously considered it to be in their domain. And, at that point, many issues are raised.

In the particular question of side health effects, such as dermatology, or toxicology, a manufacturer of childrens' sleepwear expressed con-

cern to us both privately and in public hearings by the Department of Commerce in January of 1971 on the possibility that dermatological side effects would be very, very serious.

This is not a question that had been extensively examined previously.

Senator Moss. Were these raised in January, then, at the time of the publication of the need?

Dr. CLARK. Yes, sir. And in December of 1970, by their letters following the November 1970 publication.

Dr. BRANSCOMB. Mr. Chairman, I think there is some confusion, because there are two Januarys in the question.

Senator Moss. Yes.

Dr. BRANSCOMB. And because the first step in the process of this standard's promulgation was a finding of possible need, the second step was a finding of need and the issuance of a proposed standard.

Senator Moss. Right. I am talking about the first January.

Dr. CLARK. In January of 1970 a publication was made that there may be need for a standard of flammability for children's sleepwear, dresses, and underwear. At that time we received 47 comments concerning what type of a standard might be needed, what its basis would have to be, what real need was demonstrated, and demonstrable, what the practicability was of filling this need, and all of the side issues both technical and nontechnical. These issues and questions were raised in comments to the Secretary in response to that publication in January 1970.

Specifically, the type of flammability test methods was addressed. For instance, should one place the fabric to be tested, or the garment sample, in a horizontal position, as has been used, for instance, by the Department of Transportation in auto flammability standards? Should it be placed in a vertical position, which is generally a most severe test, which is the one that we ultimately decided on? Or should it be at some intermediate configuration, such as a 45-degree angle, which is used for all wearing apparel and has been used since 1953.

That was a fundamental question.

Then, having once decided that simple question of the configuration, the question is: What does one measure? And that is really where the expertise of the NBS lies, in making those measurements in a simple and precise manner.

So all of those issues were raised following that January 1970 publication in the Federal Register.

Senator Moss. When did this question of toxicity arise? Was it part of this notice of need? That is what I asked.

Dr. CLARK. As part of that specific notice of need it was not. It was raised in December of 1970 following the November 1970 publication that there is need, and the proposal of a standard. It was raised approximately 1 month later.

Senator Moss. What was the reason for the delay between the original notice of need and the final publication of the finding of need?

Dr. CLARK. Between January and November of 1970, extensive laboratory work was done in the Office of Flammable Fabrics of NBS. That is when we had to answer these issues of the orientation, the type of measurements, and the testing conditions that were most appropriate.

The dermatology issue was not raised until December of 1970, following the second publication in the Federal Register.

Senator Moss. When the proposed standard was published what responses did you receive? And did those responses address themselves to technical aspects of the standard, or more to the policy decision?

Dr. BRANSCOMB. Many of the responses dealt with the technical aspects.

To take one example, a very serious problem will be faced by the many very small manufacturers of garments for children. A large fraction of the children's sleepwear garments are assembled by businesses with a handful of employees. Many of these are in the New York garment area. Because these small companies may not have facilities for testing finished garments a lot of effort was expended to try to determine whether or not the safety that is desired could be achieved by controlling only the fabrics out of which the garments were made. The issue then arose, just exactly what has to be done with respect to the testing of a finished garment to insure that the way the product is designed will not render an otherwise safe fabric unsafe, and in what manner may that test be carried out to insure that the manufacturer doesn't have to destroy his entire production in the process.

Senator Moss. Was their objection, then, to the technical feasibility of meeting the standard from the industry?

Dr. BRANSCOMB. Yes, indeed, there were such objections. There were also people who brought us additional evidence of the urgency of the need for a standard.

Senator Moss. And are all of the sleepwear garments on the market meeting the standard, as far as you know, at this time?

Dr. BRANSCOMB. No, sir. First of all, the standard has not formally been issued. And, second, the fraction of garments now on the market that would meet, let's say, the proposed standard of last October, is infinitesimal. It is less than 10 percent, in any case.

Senator Moss. Practically none of them are meeting the proposed standard today, then?

Dr. BRANSCOMB. That is right, sir.

Senator Moss. But your testimony is that the standard is technically feasible so they could meet it if the standard became final and if it were endorsed. Is that right?

Dr. BRANSCOMB. When the Secretary promulgates the standard, his act will be a determination by him that a standard is practicable and that manufacturers will be able to meet its requirements. Or, let me say a sufficient number of manufacturers will be able to meet its requirements to provide the public needs, which is the matter at issue.

Senator Moss. And there still is very considerable resistance by industry to the standard? That is, the industry hasn't voluntarily gone over the adopt the technical aspects of the standard, and they are still resisting it, then, I take it.

Dr. BRANSCOMB. The industry, Mr. Chairman, is not a monolith, and it would be a mistake to generalize. Many segments of the industry have particular technical problems, with the standard, that they have talked to us about. They have other procedures that they would like to see in the standard. In some cases, some parts of the industry would like to see the standard made more rigorous in certain respects.

But the manufacturers of different classes of fabrics are not

unanimous in their feeling about the way the standard should be designed, because obviously this standard will have very heavy market impact in this industry. So, I have to make it clear that they are not a monolith. However, the industry representatives that I have talked to agree that a standard must be developed; that the problem must be solved, and there is a very great deal of effort going on in the chemical and textile industry at the present time to find new technological solutions which will ultimately be the best solution of this problem. They obviously have a market incentive to do so.

Senator Moss. Would it be fair to say, then, that procrastination of the Department in promulgating and finding the standard doesn't stem from technical problems, but stems mostly from policy problems with the industry? Is that not correct?

Dr. BRANSCOMB. I think the time that it has taken us to get a standard out, does indeed rest very substantially on the technical problems. We had to give consideration to a broad gamut of technical problems that had been brought to our attention. I could not, Mr. Chairman, agree that the word procrastination is the right noun to describe the delay. It has been, however, a very regrettable delay.

Senator Moss. Well, it has been 18 months at least since the notice of need was published.

Dr. BRANSCOMB. It has been 18 months since the finding that there may be a need, yes, sir.

These last 6 months, Mr. Chairman, have been consumed with a tremendous technical effort going on in the Office of Flammable Fabrics. We have not been idle at the Bureau of Standards during a period when the Department was considering promulgation of a standard.

It has taken the preponderance of this winter and spring to deal with the information brought to us when the proposed standard was published, and to assure that the standard that we recommend to the Secretary is sound and practical.

Senator Moss. Our hearings on flammable fabrics were held back in 1967, and we are now halfway through 1971. We still do not have a standard. You can understand some of the feeling of frustration here in this committee, can you not, that we cannot come to grips in 4 or 5 years with a problem as acute as our hearings indicated on flammable fabrics, and particularly on children's wear. And we are still not up to a standard, an enforceable standard. And that is what I am trying to inquire about.

Why? Why does it take so long?

Dr. BRANSCOMB. The basic reason it has taken this long, Mr. Chairman, is twofold: First, in this particular case, we are not in the position as a nation of being able to use a legislative authority to select from among the products available to us on the marketplace those which can be deemed to be safe and to reject those which are deemed to be unsafe.

What is necessary to meet the public's desire to have fabrics which are less susceptible to fire is to develop new kinds of fabrics, and new ways to manufacture them. The fabrics on the market at the time this act was passed will not suffice. There is today, for example, no way that I know of to manufacture a man's wrinkle-resistant shirt that

will meet the market desires of the public and which will pass any severe flame test. It is going to take new technology to do that.

The other reason that this has been a long and frustrating period for us as well as for the committee is that the resources required to do this job are substantial. It has been a very slow and difficult period for us to get the necessary resources to put a team together. We now have about 25 permanent people at the National Bureau of Standards who are available to carry out our work in this area, and I think they have made excellent progress, considering the magnitude of the task that they face.

Senator Moss. Are you satisfied technically with the proposed standard that has now been developed, but not as yet been promulgated?

Dr. BRANSCOMB. I am satisfied technically with the standard that we have recommended to the department.

Senator Moss. And is it feasible for the fabric manufacturers to meet that standard?

Dr. BRANSCOMB. In the way in which the standard is written, it will become feasible to meet that standard when the standard takes effect.

Senator Moss. The ultimate question then is why not promulgate it? If it can be met, if it is technically feasible, why not promulgate it? That is the whole point of this entire line of questioning. Why the continued delay?

Dr. BRANSCOMB. Let me make it clear that there has, first of all, been delay during a period of very hard work in order to determine what the standard should be and how it can be implemented. Secondly, there will be the period of time that is required for the industry to provide on the market products that will meet the standard.

Senator Moss. Is that not a competitive problem within the industry whether the fabrics can be supplied by all manufacturers or just a few?

Dr. BRANSCOMB. It is a market problem for the public. It does little good to promulgate a standard whose results would be to clean the shelves of available products. This would simply force mothers to buy goods by the yard and sew their own garments, and would raise again the question of whether they had adequate protection.

Senator Moss. Do we not do essentially that in some of our other safety programs? With vehicles and elsewhere, for example? If they do not meet the standards, they are not on the market.

Dr. BRANSCOMB. Yes, sir. This standard will also have that characteristic.

Senator Moss. You indicated in your testimony that there was some question about lack of facility, or personnel, I would guess it was—manpower—to do the job.

We have just gotten information about the failure of FDA to inspect a soup plant that has received a lot of publicity recently. Is that attributable, as far as you know, to a lack of personnel to conduct the inspections?

That is not in your department, but it is almost the same thing, it seems to me. It would appear we are leaning on the same kind of excuse.

Dr. BRANSCOMB. I wouldn't call that an excuse, but I would certainly say that there is a cause and effect relationship between the investments that are made in solving the problem and the expeditious-

ness with which it can be solved. I believe that is just as true for toy safety as it is for flammable fabrics.

Senator Moss. Of course, I must acknowledge that there is a relationship if the personnel and facilities are not available. But I am just very concerned about the long period of time it takes to promulgate a standard after the technical aspects have been resolved.

You have testified at some length on the technical aspects, but these are indications that the standard is being held up for policy matters after the technical problems have been resolved.

That is my conclusion at this point.

I do appreciate your response, Dr. Branscomb, Dr. Clark, and the others.

My colleague, Senator Hatfield from Oregon, may have some questions.

Senator HATFIELD. Thank you, Mr. Chairman.

Dr. Branscomb, I'd like to go further into this matter of capability of the Bureau of Standards to provide for testing of physical characteristics of products in order to determine their safety.

For instance, do you feel that the Bureau of Standards provided any testing for the Commission on Product Safety?

Dr. BRANSCOMB. Yes; in at least one case that I am aware of.

Senator HATFIELD. Would this be then an exception rather than the rule?

Dr. BRANSCOMB. No, sir; it is my impression that the Product Safety Commission did not engage in a very extensive testing program. We did provide consultative assistance to them on several occasions.

Senator HATFIELD. Can you briefly describe the quantitative and qualitative factors in your facilities and your capability of making such tests?

Dr. BRANSCOMB. Yes, sir; the NBS is a laboratory with a staff of about 3,400. It has a very broad gamut of responsibilities, the primary one of which is to maintain a compatible and thoroughly accurate measuring system for the science and technology in the country. But we also have a parallel responsibility for the development of good test methods and related standards.

We do not engage in any routiue compliance testing of consumer products or other products. That is an activity which, I believe, is more appropriately performed in the private sector, under Federal cognizance if required by law.

We do, however, provide special test services to the FTC when they need our expertise. In addition, we work with literally dozens of other agencies of Government developing good test methods for them to use in their programs.

Approximately 43 percent of our technical activity in the National Bureau of Standards is funded by these other agencies for whom we do this work and with whom we cooperate.

Senator HATFIELD. Do I gather then that you do not feel that a separate test facility would be a necessary part of any product safety legislation regardless of whether we follow the independent agency or the HEW approach?

Dr. BRANSCOMB. If the legislation that the Congress enacts calls for a Federal compliance testing organization, then such a facility, or a system for being able to use private laboratories for this purpose, would need to be established.

With respect to the development of test methods that go into standards, the Bureau of Standards could respond to a very substantial part of this need. If the administration bill is enacted into law, and one recognizes the technical capabilities that already reside within the present FDA, I believe a combination of the present FDA and NBS, given the necessary financial resources, could do the job. We do not have those resources today.

Senator HATFIELD. Perhaps on page 6, in the second paragraph, we really get to the heart of my question, when you say, in the last sentence, "It would be impossible to match in any single Government agency the technical know-how operating in the private standards sector."

Do you not feel that word "impossible" is a little defeatist?

Is it a question of impossibility, or is it a question of not having the resources to accomplish this at the present moment?

Dr. BRANSCOMB. It would be more accurate of me to say that no single Government agency today possesses in house the technical know-how to match that which can be brought together by the private standards sector.

I would like to remind you, sir, that the 400 standards-writing bodies to which that sentence refers cover all of the industrial and commercial standards, and involve perhaps 100,000 engineers in the private sector. There is certainly no Government agency that has access in-house to 100,000 engineering personnel. However, in the area of the development of sophisticated test methods, and, more importantly, in the development of such test methods in an environment free of commercial influence, I can, with proper modesty, say that the NBS has as good a capability in that field as any single organization anywhere.

Senator HATFIELD. So with sufficient resources the Government could develop its own capability in this field, do you not believe so?

Dr. BRANSCOMB. Yes.

Senator HATFIELD. Has the Bureau of Standards evaluated safety products at the request of industry in any large numbers?

Let us be specific: Take the rotary lawnmower. Would the Bureau of Standards be able to provide the necessary testing facilities so that a standard could be promulgated for all lawnmowers?

Dr. BRANSCOMB. The Bureau of Standards has the engineering and technical capability to develop in cooperation with other interested parties a standard for safe lawnmowers, yes, sir.

Senator HATFIELD. Who are the other interested parties?

Is this private or public?

Dr. BRANSCOMB. I would imagine that considerable experience exists in the lawnmower industry itself with respect to the engineering alternatives for making safer lawnmowers. I would also guess that other organizations, like Consumers Union and other consumer-oriented organizations, would also be able to make a very important input to such a program.

Senator HATFIELD. So going back to my second question, you are not convinced, then, that a separate Government testing facility, or laboratory, is necessary?

Dr. BRANSCOMB. I think a compliance testing facility may be necessary. I do not believe that a separate Federal laboratory to develop good test methods to put into the standards is necessary.

Senator HATFIELD. You would rely upon the private sector for the laboratories and engineering know-how to assimilate then, and then to review it, and evaluate it by a Government agency?

Dr. BRANSCOMB. Senator, I believe that the agency with the responsibility for administering this legislation could, by utilizing the existing capabilities of the NBS, have the inhouse capability to promulgate the necessary standards. Ths should be done in cooperation with the private sector in order to encourage as much progress as possible from that sector in parallel with the Government's own expeditious issuance of standards. I am suggesting that the NBS has the capability to provide that inhouse support.

In my testimony, I have also urged your consideration of S. 1797 because it would authorize HEW not only to develop its own capability and to use the Bureau of Standards to supplement that capability, but also would enable HEW to assist in providing more adequate technical representation of consumers in the private sectors' standards development process. The private standards writing organizations could then produce a larger number of test methods and standards from which HEW can select, thereby getting the job done quicker and better for less money.

Senator HATFIELD. And yet, in answer to our chairman's questioning on the one product of garments, children's garments, it doesn't give us really much encouragement to follow your proposed route, or line of development, does it?

You are saying to me, when I talk about rotary lawnmowers, or any other product, that we should follow basically the same format that has been followed up to this point, which seriously has not been a very impressive record.

Dr. BRANSCOMB. We have discussed here briefly the Flammable Fabrics Act, and the specific issuance of the children's sleepwear standard under that act. I believe that if you looked into the details you would find that the technical problems associated with flammability reduction in clothing worn by the general public are vastly different, and more difficult, than many other safety standards. We have many examples of NBS support to DOT, with respect to failures in vehicles of various types, in support of HEW in connection with the Toy Safety Act, and others, in which the technical work that we did in support of their regulatory responsibility was very expeditious.

We have in the last 3 years established at the NBS for the DOT a laboratory of about 42 people which has developed the seat belt, brake, and tire safety standards which are promulgated by DOT as mandatory standards. I believe that our technical role in that activity has indeed been expeditious, and also has been of good technical quality.

Senator HATFIELD. Dr. Branscomb, many differences exist between the two bills, S. 983 and S. 1797. One of them is the respect of the burden of proof. As you know, in S. 983, there is a shift in favor of the Government and against the manufacturer as to the burden of proof.

Do you feel that such a shift is necessary in order to get timely compliance for product safety from industry, from manufacturers?

Dr. BRANSCOMB. Your question is phrased in such a way that I am afraid it may involve a level of legal sophistication of which I am not competent as a scientist, Senator.

Senator HATFIELD. Would you like to counsel with your legal assistant and give the committee then later in writing a response to this?

Dr. BRANSCOMB. I would be pleased to do so.

Senator HATFIELD. Mr. Chairman, I have no further questions.

Senator Moss. Thank you.

And thank you, Dr. Branscomb, and gentlemen. One of our problems in this technical field that when the industry exercises a great deal of resistance it is hard to move from the technical establishment onto policy matter, and that may have been largely the problem in this flammable fabrics.

I thank you for your testimony today. We appreciate it very much. The matters we have asked that you supply will be placed in the record following your testimony.

Thank you.

Dr. BRANSCOMB. Thank you, sir.

(The following information was subsequently received for the record:)

GENERAL COUNSEL OF THE DEPARTMENT OF COMMERCE,
Washington, D.C., August 31, 1971.

Senator FRANK E. MOSS,
Subcommittee on the Consumer, Committee on Commerce, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: During the appearance of Dr. Lewis Branscomb, Director of the National Bureau of Standards, on July 21, 1971, before the Senate Committee on Commerce, which was then considering legislation on consumer product safety, Senator Hatfield stated, in discussing the differences between S. 983 and S. 1797, that in S. 983 there is a shift in favor of the government and against the manufacturer as to the burden of proof. Dr. Branscomb was asked whether he felt that this was necessary in order to get timely compliance for product safety from manufacturers.

Because he felt that the question involved legal considerations, Dr. Branscomb was not able to answer it at that time. He has, however, consulted with legal counsel in this matter. Accordingly, I am pleased to furnish the Committee on behalf of Dr. Branscomb and the Department of Commerce my views with regard to Senator Hatfield's question.

The burden of proof under S. 983 for overturning certain actions taken by the Consumer Product Safety Commission would be heavy upon the party seeking to overturn those actions. Thus, the Commission's orders promulgating safety standards or declaring products imminently hazardous may only be overturned if they are shown by clear and convincing proof to be arbitrary and capricious. On the other hand, S. 1797 places the more customary burden of proof on the party seeking to overturn administrative action. Thus, under S. 1797 orders of the Secretary would be sustained by the courts where they are based upon substantial evidence upon the record taken as a whole.

We perceive of no advantage that will accrue by virtue of creating an unusually severe burden of proof to overturn administrative action. If such a provision were to have any effect it would simply be to insulate poor and unsupported standards and other actions from court scrutiny. It would not be in the best interests of consumers, manufacturers, or government to permit such standards or actions to be perpetuated.

Accordingly, we would oppose the placing of the heavy burden of proof on parties seeking to overturn administrative action through court review as set forth in S. 983.

Sincerely,

WILLIAM N. LETSON,
General Counsel.

Senator Moss. Our next witness will be Mr. Don Willner, president of the Consumer Federation of America.

Mr. Willner, will you come forward, please?

You may proceed, sir. We will be pleased to hear you.

STATEMENT OF DON S. WILLNER, NATIONAL PRESIDENT, CONSUMER FEDERATION OF AMERICA

Mr. WILLNER. Mr. Chairman, members of the U.S. Senate Committee on Commerce, my name is Don S. Willner, my address is 900 Corbett Building, Portland, Oreg. I am a practicing attorney in Portland, Oreg., an Oregon State senator, and the national president of Consumer Federation of America.

Consumer Federation of America is composed of about 200 local, State, and National affiliated organizations whose membership includes about 30 million Americans. The policy of our organization is determined by elected delegates at our annual conventions. The CFA policy statement authorizes me to support the recommendations of the National Commission on Product Safety.

I have come 3,000 miles to this hearing room to state the strong support of Consumer Federation of America for S. 983, the Consumer Product Safety Act.

President John F. Kennedy in his consumer message to Congress on March 15, 1962, listed the four basic rights of consumers: the right to safety, the right to be informed, the right to choose, and the right to be heard. Safety was listed first.

At the hearing of the National Commission on Product Safety in Portland, Oreg., on June 17, 1969, a former U.S. Senator from my State, Maurine B. Neuberger, stressed that consumers have a right to expect safe products, just as we now expect safe drinking water. But when 20 million Americans are injured each year in the home as a result of incidents connected with consumer products, we know we are failing in our basic consumer right to safety.

I have followed the work of the National Commission on Product Safety. One of the seven Commission members, Emory L. Crofoot, is a friend of mine from Portland, Oreg. I have written a magazine article about the Commission and studied its final report.

The statistics set forth about unsafe products are a national disgrace; 100,000 Americans walked through glass doors in 1969. The State of Oregon alone had 175 TV fires in 1969. In a 10-year period, 300,000 people suffered severe floor furnace burns; 5,000 to 7,000 injuries from glass bottles are reported annually to the six largest bottlers. Poorly designed bicycles, unstable hot water vaporizers, improperly packaged household chemicals, unsafe baby cribs, poorly constructed household ladders, power tools without necessary double insulation, inadequate protective headgear for sports, hazardous rotary lawnmowers, dangerous toys, unvented gas heaters, and wringer washing machines without proper safety releases, are all stressed in the report as major sources of unnecessary accidents. The report also details specific case histories. As an attorney I have seen many victims of unsafe products. No compilation of statistics can ever be as meaningful as the pain and suffering of one injured child.

How can we, the greatest Nation in the world, explain away the fact that the United Kingdom, Canada, West Germany, Sweden, and Japan have more comprehensive governmental programs to protect consumers against hazardous products than does the United States.

I favor as a philosophical principle, remedial action by individuals and private business ahead of governmental intervention. I prefer local and State action before Federal action. But in this area of product safety, I know that a strong national law is the only answer.

The common law remedy of private lawsuit, even with the aid of the developing doctrine of strict liability, is totally inadequate. No amount of money after the accident can compensate the maimed victim. Every seriously injured plaintiff I have ever represented would gladly give away his jury award if he only could have avoided the injury and the pain. A product liability case cannot be prosecuted for the "walking wounded," or less seriously injured victim, because the expense of expert witnesses is too great.

Voluntary industry codes have not prevented or sufficiently reduced accidental injury. Local and State regulation cannot deal meaningfully with the manufacture of nationally distributed products. Even my State, which according to the Commission report regulates more product hazards than any other State, cannot begin to meet the problem.

S. 983 represents the considered judgment of the National Commission on Product Safety which studied this problem for 3 years.

American consumers need an independent Consumer Product Commission to be established as a Federal agency concerned exclusively with the safety of consumer products. Grafting this function on to our existing regulatory agency would not provide adequate focus on this national need for product safety. I am distressed at the suggestion of the administration that this product safety function be merged with the present Food and Drug Administration. The FDA over the years has been the best friend of regulated industry and has lost much of the confidence of the American consumer.

It took FDA 5 months to appoint the technical advisory committee under the Poison Prevention Packaging Act and still only one standard has been accepted. In the first year of the Child Protection and Toy Safety Act the Department of Health, Education, and Welfare did not remove a single hazardous toy from the shelves.

I would rather give the consumer product safety function to a new independent agency with its own budget, and greater visibility and public accountability.

S. 983 provides for a consumer safety advocate to help prevent this new agency from developing the timidity, and industry coziness of some of the old line agencies. I sponsored an independent consumer counsel bill at my State legislature, and am convinced that the consumer interest is best served by this watchdog approach.

S. 983 provides for valuable cooperation with industry in developing safety standards, yet properly leaves the final decision of protecting the public interest as the responsibility of Government.

Making the results of research available to consumers and providing authority to require clear and adequate warnings or instructions are important parts of this bill. In addition, it is imperative that the Consumer Product Safety Commission have at its disposal at least modest technical and laboratory facilities to conduct testing and analysis of products which are in the marketplace. The Commission bill provides for such facilities; there is no similar provision in S. 1797

and such an exclusion can have serious repercussions on the ability of the safety program to react quickly to emergency situations. It would also impair the ability of the program to conduct in-house research on the development of standards. This helps to give the consumer the right to be informed and will allow him the right to choice.

Unlike the Commission bill, S. 1797 does not require a manufacturer to notify the Secretary if he finds that his product does not comply with the appropriate safety standards. It certainly is not an unreasonable burden to place on the manufacturer to require him to report his noncomplying products, and the benefits to the public health and safety could be substantial.

American consumers are learning that consumer rights are a sham without adequate consumer remedies. S. 983 allows the Commission to issue an immediately effective safety standard enforcable in Federal court. When there is great danger to public health or safety, the expert agency should be allowed to make the standard effective right now, subject to court review and enforcement. The absence of this power to issue an immediately effective safety standard is a major weakness in the bill on the same subject sponsored by the administration. The administration suggests instead that the agency petition the Attorney General to take the matter to court. Where there is an "imminent hazard to the public health" as set forth in the bill, there should be no delay.

Each day, citizens of this Nation suffer unnecessary accidents caused by hazardous consumer products. Three years of study have gone into the development of S. 983. My congratulations to this Senate Commerce Committee and its distinguished chairman from the Pacific Northwest, Senator Magnuson, for holding these hearings. This is vital legislation and requires careful study to make sure that it is workable and fair.

Consumer Federation of America urges you to pass S. 983 without delay. The Consumer Product Safety Act can save the health and lives of many thousands of our citizens. Please give the consumers of America the right to safety.

Senator Moss. Thank you very much, Mr. Willner. We appreciate your appearance here today, traveling across the continent in order to appear here representing the Consumer Federation of America, which, as you have noted, includes membership of some 30 million Americans. That is indeed an important segment of our country that you speak for, and we want to have that testimony before us, because it is very persuasive when such a large body of our citizens makes the effort and expresses its view, through their president, as they have done here before us today.

Your strong endorsement of S. 983 is noted, and you set forth most of the reasons why you think 983 is preferable.

When Secretary Richardson appeared before us Monday, he said that a Consumer Safety Administration would be set up within HEW, and that there would be an Office of Drug Regulation, Food Regulation, and Product Safety Regulation.

Does this move meet the objections that you expressed generally to having the matter in the HEW? Do you believe that this could function appropriately as a consumer safety organization?

Mr. WILLNER. Mr. Chairman, in my opinion it does not meet my objections. I think this function is so important that it needs the focus of a completely independent agency.

Senator MOSS. And the fact that there would be a combination of administration, a collegial structure as it were, would that be equal to having a single administrator charged with the total and final responsibility?

Mr. WILLNER. In my opinon, I prefer S. 983.

Senator MOSS. S. 1797 requires that not less than 30 days prior to its publication disclosure of any information obtained under the act, the Secretary shall provide such information to each manufacturer of the product to which the information applies, and the manufacturer is then given an opportunity to submit his responses to the Secretary, which in turn shall be published with the Secretary's disclosure of the information.

In whose interest do you feel this provision works, the consumer's or the manufacturer's, or both?

Mr. WILLNER. Well, let me say this: I think the bill should be fair. I think we should have two concerns. I think, first of all, we should make sure that in the development of standards there is not undue delay. I think that is important.

I also think that we should try to work or cooperate with industry and with manufacturers in the development of standards. But I do think that the final decision as to the adopting of a standard and the promulgating of the standard must be the determination of Government. S. 1797, as I read it, allows the delegation by the Secretary to an industry group to write the standard. Now, I would disagree with that. Though I do think that in any area of new legislation, industry cooperation is vital, and I hope that there will be provisions in the final bill which will allow a very close cooperation.

Senator MOSS. Section 7 of 1797 requires the Secretary to allow competent parties to develop the standard, but implies that when third parties are developing standards, no in-house development activities can be conducted.

In your opinion, is there any rationale for this provision?

Mr. WILLNER. I cannot justify it. I just finished saying, sir, I much prefer industry cooperation, industry working on standards, but the ultimate decision has to be made by Government. These are standards that are made in the interest of the people, and the interest of the consumers, and the interest of product safety, and so I am not satisfied with the provisions of section 7 of S. 1797, and much prefer the provisions of S. 983, which, though allowing industry to work on the standards, then say that the ultimate standard shall be made by the agency.

Senator MOSS. S. 983 requires the manufacturers to certify that their products conform to all applicable safety standards. This provision is absent in S. 1797. As an attorney, how would this requirement affect the tort liability in case of an injury due to a product for which a standard had been promulgated? The fact that there must be a certification, affect the liability or the proof in the case?

Mr. WILLNER. I think that if admissible—and I imagine it probably would be admissible—it would make the proof a little easier.

I would turn to the other side of that: Not so much the certifying that a product complies, but the aspect of the bill S. 983, which says they must certify where there is a lack of compliance. I think the certification of a lack of compliance might well turn out to be admissible in court as evidence of a defect.

Senator Moss. Admission against interest?

Mr. WILLNER. Yes.

Senator Moss. As president of the Consumer Federation you are familiar with the resources available to private consumer groups. The administration bill does not contain a provision for a consumer safety advocate, as you have pointed out in your testimony.

Does CFA, or any other private organization currently possess the necessary funds and personnel to carry out such a function?

Mr. WILLNER. Senator, I wish we did. Our staff and personnel, of course, consist of two professional people, and one secretary. We are the largest consumer organization in the United States. Obviously, no consumer group could possibly be able to fulfill this function completely—unless probably Consumers Union, one of our constituent members could fill a portion of it.

I would say that it is clear in my mind that one of the most important parts, one of the most valuable aspects of S. 983, is the independent consumer advocate to represent the consumer viewpoint before this agency.

As I mentioned in my direct testimony, I am very familiar with this principle, as I sponsored a comparable bill in my State legislature this past legislative session for independent consumer counsel to represent the consumer viewpoint in Oregon before Oregon State regulatory agencies. Unfortunately, this bill was not passed. But, in preparation of that bill, I did study the principle of independent consumer advocate while it was contained in this bill, and as contained in the Holifield bill and the Ribicoff bills that have been considered in the Congress.

I think it is crucial. I think that without this I fear that in time any agency may lose perspective on what the consumer interest is.

I also feel that one of the independent consumer advocate is that you then bring out the consumer interest in an adversary way in the formal hearings that the agency does hold. I know times like when a regulatory agency holds a hearing, and on one side of the table are the industry and their lawyers, and their economists, people who carry the brief cases for the lawyer, and then you look on the other side of the table and who is there? It seems to me that an independent consumer advocate who can cross-examine industry testimony can try to use the adversary procedure for the benefit of the consumer, will be of great help.

I would consider the bill would be unnecessarily weakened if this feature were taken out of S. 983.

Senator Moss. Would you feel that the Special Assistant to the President for Consumer Affairs, the office that Mrs. Knauer now holds, could effectively represent the consumer before the product safety agency?

Mr. WILLNER. I would think not, for two reasons:

First of all, that agency, of course, is an arm of the Executive. It does not have the necessary independence.

Second of all, the independent consumer advocate would be a skilled professional person, a lawyer, and he would develop substantial expertise in the way of product safety and what is the consumer interest in product safety.

Senator Moss. Thank you very much, Mr. Willner.

Senator Hatfield, do you wish to question Mr. Willner?

Senator HATFIELD. Mr. Chairman, I am very happy to welcome Senator Willner to the committee this morning. He serves very ably in our Oregon State Senate, and with his many other acitvities on behalf of consumers and many other groups. He is also a distinguished lawyer in our State.

I want to commend you on a very outstanding and eloquent presentation of testimony.

Mr. WILLNER. Thank you, sir.

Senator HATFIELD. You have made a very distinct contribution here to our hearing this morning, Mr. Willner, and I am very proud as a fellow Oregonian to welcome you here.

In your testimony, in the first paragraph, you state:

> It is imperative that the consumer product safety commission have at its disposal at least modest technical and laboratory facilities to conduct testing and analysis of products which are in the marketplace.

My question is: Do you mean by this language to place any restrictions upon the kind of laboratory and other technical facilities that would have to be developed according to section 5(g) on page 10 of the bill, where it says:

> The Commission is authorized to plan, design, construct, and operate a facility or facilities suitable for research, development, and testing of consumer products pursuant to the purposes of this act.

Just to clarify the record, I would not interpret your language here to mean that you would place any restrictions upon the language of 5(g); would you? I am referring to the prose "at least modest technical and laboratory facilities" in your statement.

Mr. WILLNER. Certainly not, Senator. I think that subject to budget limitation the greatest technical know-how and laboratory facilities that this commission can have to enable it to better do its job should be provided. I think it would not be a truly independent commission if it has to rely on other agencies of Government for its technical servicing.

I was indicating by that language that I assume there are budget considerations, and how much money can be allowed to this commission, and at the very least they must have some resources. I would hope that if you pass this bill in the Senate, and the House, you would give this commission all the facilities it needs to do its job properly. I most certainly agree with your construction of my testimony.

Senator HATFIELD. Senator Willner, you heard the colloquy with Dr. Branscomb a while ago as I attempted to bring out his thinking on whether or not there should be an independent facility for testing regardless of which direction we move here, and, therefore, I would presume that you support that general proposition, that we can develop the in-house know-how with sufficient resources to have such a program for testing products. Would this be an accurate statement as to your organization's belief?

Mr. WILLNER. Yes, it is; and I agree with the thrust of the question, sir.

Senator HATFIELD. Senator Willner, on that same page, I want to heartily second your comments relating to the role of the Attorney General as it relates to the two different bills or as it is contrasted, actually, in the two different bills. I am not a lawyer, and, therefore, I am asking the question strictly as a layman.

A few weeks ago, we had a class action bill, S. 1222, in which I engaged in a colloquy with Assistant Attorney General McLaren. My understanding of the Office of Attorney General is that much depends on the political philosophy and the administrative and organizational aggressiveness, or lack of aggressiveness, of the man who occupies that role of Attorney General. Therefore, when we engage in, or when we depend upon that man, whoever he might be, and the variations of administration and philosophies, we're really placing almost the full responsibility on a single man's shoulder then rather than upon 1797's approach, which gives to the people the right to move on these things.

Now, is this a correct, valid interpretation of the provision of the two bills that give these two distinct and different approaches, one relying pretty much upon one man's philosophies and one man's viewpoints, and the second giving to the people the right to move on actions of this kind, which would naturally follow through the procedures of the courts and laws, but would not rely upon a single individual?

Is that an accurate interpretation?

Mr. WILLNER. I certainly agree with you, Senator. I would point out to the committee that in this paragraph that you refer to in my testimony we're talking about a situation defined as the imminent hazard to the public health. That's a fairly narrow area, and it is an area where fairly quick action is needed, and the contrast in here between the two bills, I think, is very significant at this point, because we are not talking about any defective product here, we are not talking about any product that may have some design errors, we're talking about an imminent hazard to the public health. And when there is an imminent hazard to the public health, I think the commission ought to be able to set a standard right then, and I think that if the commissioner has to petition some other agency, the Attorney General in this instance, and then another agency has to then petition the court, and the Attorney General, after being educated first by the commission then has to attempt to educate the court on those concerns, a good deal of time will go by and I think there will be a good deal of slippage in terms of enforcement. And I think that in this narrow situation, the public interest demands immediate action, as you have suggested.

Senator HATFIELD. Thank you.

Senator Willner, some time back one of the other subcommittees of Congress, a committee upon which I served, was discussing fish inspection legislation, and we came up to this question and this problem of imports, and the ability of legislating that would require imported objects or products to follow the same standards.

Now, in this bill, on page 36, we have section 21, and I am talking now about S. 983. It relates to imported products. And I would like to just again, for the record, raise certain points that have been used by those who oppose this approach. And, by the way, I fully subscribe

to the idea of developing standards that will be basically uniform for the consuming public, whether it be domestic or imported products. But there are valid and sincere questions that are raised on occasion concerning this part of the bill, and I would like to get your response.

First of all, you are aware of the import quota bill which was before the Senate the last session, or last year, and directly related to many products, imported items.

First of all, did your organization have a position on that import quota bill? Or do you have a position on that today?

Mr. WILLNER. Let me answer it this way: At that time my organization did not have a position on it. My organization, as of April 1971, adopted a policy statement—not dealing with any specific bill, but generally favoring world trade principles.

In the statement adopted in April, we attempted to define some of the concerns of some of the groups, such as job concerns, and then essentially we said that our goal is in favor of world trade, but that we recognize some of these concerns need to be dealt with very carefully.

Senator HATFIELD. In that debate I raised one of the questions—or at least a viewpoint—which has been related into this legislation, too, and that is that I stress the consumer's stake in seeing that the lower cost oftentimes of imported goods were not cut off, especially for those in the poorer economic groups, and inner city residents, the senior residents, and those on fixed incomes.

Do you see a relationship of keeping the cost of products as low as possible, which often are imported products, and the possible cutoff of imported goods from foreign suppliers who cannot make a profit—that is their claim—if subjected to these regulations? In other words, can people use this argument against this kind of proposed legislation we're talking about this morning? That we will price out of the marketplace products that people in the lower income groups particularly have available now, and henceforth would not be able to buy?

How would you answer that charge?

Mr. WILLNER. Senator, it seems to me we are dealing with different problems. Here essentially we are saying that an imported product must meet the same safety standards as domestic products.

Senator HATFIELD. Yes.

Mr. WILLNER. And with that I agree completely. It just seems to me that the safety consideration is paramount.

Senator HATFIELD. I know that. The question, however, is: If we apply these standards, taking a hypothetical case such as products that are not now meeting the standards that we would promulgate under this legislation, and if foreign importers would say "Well, to meet those standards that you now require will increase the price of my product per unit cost, and by increasing that price it no longer is at a cost factor that those in lower-income groups would now be purchasing, and, therefore, we are cutting out from the marketplace some of these products," which people in the lower income groups presently are able to acquire and certainly need.

This is one of the arguments I hear, and I would like to have your comment on that. I would like to get your response to that kind of an argument. I do not support that argument, but that is what we have placed before us.

Mr. WILLNER. I think I understand what you are saying, Senator. Essentially you are saying that if at the present time an imported product is unsafe, and the product safety commission requires a safety standard which would require safety to be built into that product, and that has the result of increasing the cost, is that desirable? And I would say yes.

It seems to me that we are not doing low-income consumers any favor by making available to them imported products that cannot meet the safety standards that are uniformly applicable to all products that should be followed in this country.

Senator HATFIELD. We of course face the same proposition in exporting some of our products to underdeveloped nations with that same argument, that it is better to get something than nothing, you know, and yet I think, as you well point out today, that we are talking about safety standards, and whether we are going to legislate on behalf of the consuming public in a manner that is, whatever we do, certainly going to have to be uniform. We are going to have to apply these standards to any product in the marketplace. Is that not correct?

Mr. WILLNER. That would be my impression.

Senator HATFIELD. We also have an argument used frequently especially directed against those of us who are classified as liberal trade senators, about the various techniques of developing redtape, especially for U.S. exported goods.

This is not in the nature of quotas or other such more definable actions, but these are various bureaucratic regulations and procedures and so forth that tend to inhibit trade and tend to inhibit the flow of goods.

I sympathize with these problems because they are some very valid ones that have been brought to our attention from time to time. My question to you is: Could safety legislation of this kind be used as a disguise to inhibit trade, especially, as an example, the textile industry, to make it bring pressure to exclude imported products under the guise of safety regulations and so forth.

Some questions have been raised—at least with me—on this type of legislation, that we are providing this type of program which can be utilized to really inhibit trade.

Now, how would you respond to that?

Mr. WILLNER. Well, could this bill, if wrongfully used, have the effect of inhibiting legitimate trade? I suppose it could. But I think our jobs is to make sure the law is written very carefully, to make sure that it does not work that way.

Again, I think an independent commission would have the greater public visibility, the greater accountability; it would be easier for the public to make sure that, in the guise of safety regulations, what they adopted did not have the effect of wrongly inhibiting trade. So my answer to your question, Senator, is yes. I suppose it could be misused. I think its chances of being misused are far less with an independent agency, with the public focus this agency will undoubtedly have.

Senator HATFIELD. Especially if you are going to have to depend upon FDA to develop and promulgate all of these standards. Would you agree?

Mr. WILLNER. I am not prepared to depend on FDA.

Senator HATFIELD. I can assure you that having sat on the Small Business Committee hearings on drug pricing, and standard setting, and so forth, the role of FDA has not been terribly impressive, nor has it been in relation to our specific Oregon interests of DMSO, as you are fully aware. And when we see how standardization, and evaluation, and efficacy, and all of the other various tests have been placed on some of the new drugs, and the backlog, and inefficiency there, I have not been overly impressed with their handling of another responsibility on top of what they now have.

Mr. WILLNER. My organization has been trying for months to try to get the FDA to move in the area of stale baby foods on the shelves, and we are not getting very far.

Senator HATFIELD. Once again, Mr. Chairman, I am very proud to have a fellow Oregonian this morning adding to our record and our testimony.

Thank you very much, Mr. Willner.

Senator Moss. Thank you, Senator Willner. It is a pleasure to have you before our committee, and we appreciate your excellent observations. It will be most helpful to us.

Senator Moss. Our next witness will be Mrs. Margaret Dana, counsel of the Consumer Relations, of Doylestown, Pa.

Mrs. Dana, we are pleased to have you. You are a member of the National Advisory Committee for the Flammable Fabrics Act. You perhaps listened to some of the colloquy that has gone on earlier.

STATEMENT OF MRS. MARGARET DANA, COUNSEL, CONSUMER RELATIONS

Mrs. DANA. Thank you, Mr. Chairman and the committee.

I am very pleased to be here. I have been listening, and those of you who know me probably know what my reaction has been to most of the testimony so far.

Senator Moss. We are anxious to have your response.

Mrs. DANA. I appreciate that, Senator. You know, I am probably still arguing about the use of the word unreasonable in any legislation. Nobody yet has been able to define it. But I am not going to bother you with that today, because we have already gone into that.

I do appreciate this opportunity, Mr. Chairman, and members of the committee, to present to you some observations on these two bills dealing with consumer product safety, and to give you some suggestions resulting from my own checking with a sampling of consumers, and from my own many years of intensive experience in the psychological study of consumer attitudes.

Perhaps I should correct one slight mistake: I do not have a council, c-o-u-n-c-i-l. I am a counsel, c-o-u-n-s-e-l. It makes a little difference.

But, you know, I have watched and listened to consumer experiences with product safety for years. They come to my desk by the hundreds. Every year. And I am deeply concerned that we must improve the safety balance of this country.

But what I want to lay before you are some of the ways I believe that this can be accomplished along with, of course, the necessary law requiring broad, impartial, and competent supervision of product safety design.

Let me state first briefly that against this background of my own contact first-hand—and I am not taking other people's opinions; I go and hunt for the information I want from people—I approve the stated purposes of both bills S. 983 and S. 1797. I also feel that the procedures for development and promulgation of consumer product safety standards as outlined in S. 1797 are good and would work in the consumer public's best interest. I do think S. 1797 suggests making better use of existing expertise and already working machinery in the private sector than does S. 983.

But I cannot agree with the proposal for a new and huge separate independent commission to deal with these problems. I consider this an unnecessary extra burden which must inevitably come back to the taxpayer, since already existing machinery—machinery in HEW—could be utilized without overlapping functions. It can be made independent. Independence does not depend upon being separated. It is a matter of policy decision on the part of the Congress. It can be made independent by removing the present Bureau on Product Safety from the FDA, making it a separate division under HEW with an independent budget, which is most important, with independent decision-making and operation.

I am also strongly in favor of premarketing certifications as to the safety of product design involved. But I dissent wholly from the proposal to make this a Government activity as outlined in S. 983. Government, in my opinion, should call on the private sector for this testing and certification, because, again, it puts less burden on the taxpayer.

As I study these bills, and I advise with consumers, and with existing technical groups both in and out of government—I have the highest respect for our NBS as well as for the many good technical groups setting the standards—I see just two possible roads ahead of us in moving toward a higher level of product safety for the public. Just two roads, gentlemen.

One road is oriented primarily toward Government control, Government action to set standards, to test for compliance, to certify, with only the provision that the new product safety commission may call on the private sector for assistance. Even with a large advisory committee this leaves this very important consumer action without the essential checks and balances it needs for true impartiality.

The other road, as I see it, is one of cooperative effort directed by the Bureau of Product Safety under new independence, but under the Secretary of HEW, bringing together competent segments of consumer advice, private industry and the skills of such Government agencies as NBS, GSA, FDA, and so forth. This path seems to me sounder, and more in keeping with our constitutional democracy than does the other road.

And I might state here—interpolate—this much: I look upon the Senate Commerce Committee as a leader in this country to return us to an economic partnership on which the country was based. I feel that the Senate Commerce Committee, as well as the House Commerce Committee, should assume an impartial, good balance, which recognizes that we are an economic partnership in this country, not a couple of battle lines set up to fight each other.

Under such a setup I can visualize certain changes, as have been suggested, for efficiency's sake. Conceivably certain products now handled as FDA safety responsibilities could be, perhaps should be, transferred into such an independent bureau of product safety. Cosmetics might be one of these, because they are not taken internally. And there is a world of difference between safety of something you eat, and something that you use, wear, and so forth.

The Office of Flammable Fabrics might possibly also be transferred to the direction of the Bureau of Product Safety, in order to bypass some of the present structures and limitations it now must face to get new standards set.

Now, as you know, I am entirely familiar with the work of the Office of Flammable Fabrics. I have been on that committee now 3 years. I am familiar with that as I am familiar with the workings of the Poison Prevention Packaging Act and the Toy Safety Act, and I want to make it clear that I consider the charges made against the Department of HEW, such as for dragging its feet, and disinterest in child safety, and of NBS failing to produce satisfactory new flammable fabric standards, Mr. Chairman, I say they are based on lack of real knowledge of how standards must be set to have real integrity and to be workable.

This doesn't mean I condone exorbitant delay. But procedures at the Office of Flammable Fabrics at NBS are often handicapped, not by industry dragging its feet, but by congressional pressure from individuals, as well as from some misguided industry leaders, of course. Now, I am familiar with that. I know where those pressures are, and I am hoping the Senate Commerce Committee will clean it up. But I can see what's happened with these indiscriminate attacks, which are not really based on fact. They are conclusions drawn on half-facts, and I don't like them. Insisting on a new standard in a hurry, to keep people safe sounds awfully noble, until you can see that the ultimate result of the wrong standards, unusable standards, may be to create much greater hazards for the consumer public.

I sit on many boards and committees where standard-making is undertaken, and I pride myself on being a kind of a watchdog, and I expect they all hate me for it, because I am always cautioning, "Don't issue a standard until we know it's the right one which will really do the job."

Many so-called consumer advocates and crusading ecologists have done much damage already by their amateur insistence on action—for instance, on detergents—before the right action was determined.

I would like the Senate Commerce Committee to help Congress avoid this kind of misdirection.

This much of my statement deals with the study made of the proposed bills, as written. I would like now, Mr. Chairman, to address myself to something not included in either bill, something more or less bypassed by the National Commission on Product Safety and its recommendations, in spite of the great work they have done.

What I am talking about is the urgent need for a corollary attack on consumer misuse of products as a greater cause of injury and property loss than product design by itself. Along with correct standards for design safety, nationally and internationally, we badly need a national, hard-hitting, training crusade to inform and persuade con-

sumers of their responsibility for safe use of every tool of living, from foods to automobiles.

The Product Safety Commission did little to research those facts beyond the reports of product safety failure, and perhaps it could not have undertaken this study on the funds allowed it. But it is psychologically a bad mistake, a dangerous mistake, to assume that correction of unsafe design can create safety by itself. It cannot. The best-designed product in the world can become unsafe through ignorant misuse of that product. And believe me, I am thinking of children, too. Yet we have never attempted to have a real crusade for personal acceptance of safe behavior as an individual responsibility.

Now, people often say to me, "But look at the National Safety Council. Look how long they have tried. Where have we gotten? It hasn't had much effect. It hasn't created better traffic safety, has it, and other types of safety?"

Well, as a matter of fact, I think they have done a pretty good job. But not enough. Not in the right places. Not with the right people. Not with the right words.

I believe I know from my experience with people that you can alert them to an understanding of personal obligation to use things safely and prevent children from being hurt because of an adult's ignorance of that safety. I do not consider this a utopian ideal outside the realm of a Product Safety Act. It should go along with it. I propose that a planned, practical national program of intensive consumer education be made part of the Product Safety Act, and its implementation. I have watched for many years the rise in injuries. Over my desk have passed a stream of letters reporting this rise of injuries and damage to all sorts of people, and they assign, as causes, defective products, as they report them to me. Sometimes defective laws. But, look; if you were watching those letters, day in and day out, as I have, for many years, you would see there is something like 80 percent of them where it is possible to read between the lines that consumer misuse, or ignorance, not product design, was the real cause of that trouble. And it's heartbreaking.

For example, the National Fire Protection Association in a recent issue of its Fire Journal discussed causes of electrical fires. They gave five causes, and the most neglected so far as correction was—what do you think? Misuse of electrical equipment in our homes.

Or consider the example given in a recent columnist's diatribe against industry indifference. It was headed, "Government Yawns While Children Burn." Something like that.

Now, that report says the father was awakened early one morning by his 5-year-old son running to him engulfed in fire. He said the small boy had gotten up early, gone down to play with the candle in the living room, which he lighted, and which tipped over igniting his clothing. The father wants a tough flammable fabric law passed to protect children from such things.

Look, this is illogical; dangerously illogical reasoning. This is not product safety or design failure. This is adult failure to recognize the responsibility for making sure that conditions around a child are safe.

I'd rather see a law passed against parents or other adults leaving matches around for children to play with.

Again, misuse, not product design, was the real cause of that injury. Individual recognition of personal responsibility is the real problem here now.

Don't misunderstand me. I believe in and I have worked hard for a higher standard for all flammable textiles, all kinds of textiles. But I am a realist. I know people. I really want the injuries and deaths cut down. And I know, as a psychologist, as a teacher, as a communication bridge for consumers, industry, and the Government, that we must attack this on a parallel front: safer design, along with better surveillance, but, simultaneously, the toughest, most inspired national training program for avoiding misuse of products.

Until a majority of our people fully see the dangers from both poor design and thoughtless misuse, no act of law will really reduce our damage rate by very much. People need to be taught safe behavior from their very first school year, and they need to see what safety is. That's where television may come in.

But let me also suggest that this could be a highly effective incentive to private industry to cooperate in setting and using and certifying standards for safe products with the directions for their use. Because, you see, that could produce a terrific consumer demand for safe products, and that provides the incentive to industry, and, in my opinion, is better than a system of punishments for not creating safeguards.

Plainly, what I am suggesting is that we make this a joint crusade, bringing adults and young people into it to alert their communities, bringing private industry, reputable standards-making bodies of both Government and private industry into it, and letting consumers—consumers—be the real policemen, watching themselves, and their safe use of all products.

Now, can you bring together all these segments in a single drive for safety? I think you can. I have experimented over the years and recently with several community conferences of this nature. For instance, in April I directed a conference on flammable fabrics which was sponsored by the Bucks County, Pa., Consumer Education Committee, with county educators, aimed at students as well as adult consumers. With the generous assistance of Malcolm Jensen, director of the Bureau of Product Safety, Dr. Joseph Clark, chief of the Office of Flammable Fabrics, NBS, Mr. William Rockwell, director of Certification Programs for American National Standards, and Mr. Roger Wilson, representing the American Apparel Manufacturers Association, all of whom presented important facts and figures, we alerted a large community to the flammable fabrics problem. Underwriters' Laboratories sponsored a student poster contest for local art students to design posters to be used throughout the area to bring out the people. They were highly effective. Some 800 students and adults joined that meeting.

Senator, I sent you some pictures of those posters, and I knew you would be pleased to realize that people responded to what those students, those kids in school, worked out as a way to alert people to safety. They were really effective. It was really a great experience. We learned a good deal, too, about how to make the best use of that hunger of young people to have an important part in public service, to do something real, serving somebody, and we learned how to reach them. I do not know if you have already heard about two communities in this country who have recently just started that kind of a community missionary effort. One is Teaneck, N.J., named "Operation

Community Talent," and the other is Minneapolis, named "Community Resource Volunteers." They are doing a terrific job. They have enlisted doctors, professors, teachers, businessmen, all kinds of people, to go out as missionaries to collect in roundtable forums and schools and tell them, "Look, here is what you need to know before you buy. Here is performance, and here is safety. Here are the laws. These are the things you need to know."

And it's been amazingly successful. So it can be done.

But my final point is this—and I am speaking today for the consumer's viewpoint. But at the same time I pride myself on keeping a good balance here in our economic partnership, and I am as concerned about industry as with consumers—my final point is to urge this committee to keep the present Bureau of Product Safety by giving it a new and independent status, with its own budget, freedom from political pressures, and broad powers to utilize all existing machinery in Government and the private sector to bring our national product safety design and consumer use up to a civilized standard.

Do you see why I want that under HEW? Health, Education, and Welfare. Where else should education be?

I also urge that Malcolm Jensen be persuaded somehow to stay on as director, for three reasons: First, the director should have an intimate knowledge of standards-making procedures and an honest respect for a good standard. Too many people really do not know anything at all about this complicated business of setting up a good standard. He ought to be familiar also with industry's realistic problems, and its production line behavior. And, most important, he must thoroughly understand and sympathize with the consumers' needs for the safety they cannot see or evaluate, as well as the safety they can manage for themselves. Now, it is awfully hard to find these in one person. Mr. Jensen happens to have them.

I know my viewpoint will not be a popular one. I have to disagree with my good friend, for whom I have great respect, Mr. Arnold Elkind, the chairman of the National Commission on Product Safety, and I know some of my other good friends will disagree with me. I know many spokesmen for the public say you cannot expect responsible action from the average person. You can't leave it to them; they won't police themselves, it won't work. I say you can, if the right plan, the right words, and the right people make this a mighty crusade.

One last thing: I was doing some research work not long ago, and in going through the archives of the State of Virginia, I came across a conversation reported between Alexander Hamilton and Thomas Jefferson. I think you will like it.

Mr. Hamilton was objecting to the idea of having the people take part in decisionmaking in this country. He said, "The people, sir, are turbulent, changing. They seldom judge or determine right."

And Mr. Jefferson said, "Mr. Hamilton, the years have not enriched your judgment in this matter—I have unlimited faith in the people, in their common sense. I believe human nature is indefinitely perfectable."

Thank you, Mr. Chairman.

Senator Moss. We thank you, Mrs. Dana, for your fine testimony and your long experience in this field. We appreciate having your testimony here on our record. You make a fervent plea for keeping the present Bureau of Product Safety and giving it new and independent

status with its own budget, freedom from political pressures, and broad powers to utilize all existing machinery in Government and private sector, and then plead for keeping it in HEW where it would not have independent status, would not have its own budget, and presumably would be subject to political pressures, such as do exist. So it seems to me that I would like to accept your plea that we have independence, but I am not sure that it would be within HEW.

Mrs. DANA. Could it not be made, under law, an independent section, as independent as Food and Drug is with its own budget, its own decisionmaking authority? Could that not be done?

Senator Moss. No; I questioned the Secretary on that when he was before us, and, of course, the budget must go up in the same way. It must be approved by the Secretary, then it comes back down and it is handed to the division, whatever it is.

Mrs. DANA. But it would not have to be under FDA's budget.

Senator Moss. It would not have to be under FDA?

Mrs. DANA. It could be separate.

Senator Moss. It could be directly under the Secretary, but it would have to go to that extent through him.

Mrs. DANA. Yes.

Senator Moss. But we appreciate having this point of view, and I like your plea for increased education of individuals to use products safely. Unfortunately, when a child is 5 years old, you cannot very well educate him to the fact that his candle will tip over and it might set his nightgown on fire.

Mrs. DANA. No; that is an adult responsibility.

Senator Moss. It is an adult responsibility; yes. But he is sleeping in his bed, you see?

Mrs. DANA. But the matches were left around, Senator.

Senator Moss. Oh, yes. I think you can trace the casual part back, but the part that we can control is that his nightgown would not go up in flames, you see.

Mrs. DANA. That is only a very partial answer.

Senator Moss. Well, it is only part of it. I agree.

Thank you very much. We are very glad to have you come before us, and we do appreciate the fine work you do in the field of safety, and especially in the flammable fabrics area.

Our next witness will be Gov. Howard Pyle, who is president of the National Safety Council. We would like to hear from Governor Pyle now.

Would you identify your associates?

STATEMENT OF GOV. HOWARD PYLE, PRESIDENT, NATIONAL SAFETY COUNCIL; ACCOMPANIED BY HARRY N. ROSENFIELD, COUNSEL; ROBERT CURRIL, ASSISTANT GENERAL MANAGER

Governor PYLE. Thank you very much, Mr. Chairman. I am Howard Pyle, president of the National Safety Council. On my right is our Washington counsel, Mr. Harry N. Rosenfield, and on my left one of the experts in our office, Mr. Robert Curril, our assistant general manager.

The National Safety Council, chartered by the Congress of the United States, has as its only mission the prevention of accidents and the mitigation of injuries and economic loss caused by accidents.

By the very nature of its commitment to the concept of total safety, the National Safety Council has been and continues to be vitally concerned with the importance of preventing accidents that may result from poor design, malfunction, or improper use of consumer products. Thus, the council is in complete accord with the ultimate objectives of the product safety legislation now before the Congress, the idea being to protect the public against unreasonable risk arising out of hazardous consumer products which may result in death, injury, or illness.

The council was in complete accord with the objectives set by Congress in Public Law 90–146 which created the National Commission on Product Safety and so stated in testimony given before the commission. The council applauded the same concept when the late President Kennedy, in listing the four common rights of the consumer, began with: "The right to safety. To be protected against the marketing of goods which are hazardous to health or life."

The council also welcomed the opportunity to go on record in support of amendments to the Federal Hazardous Substances Act (15 U.S.C. 1261 et seq.) which increased protection to children against hazards to their safety and health.

The council concurred in another conclusion that is certainly of mutual interest and concern, to wit: No one has done enough for safety in any of the innumerable ways in which human exposure to undue risk can and does result in accidental death, injury, or illness. The council's dissatisfactions in this regard are endless.

Product safety is of vital concern not only to consumer interests, but to industry in general and to the voluntary safety movement. Such concern stems not only from humanitarian reasons, but also because it is a major factor in retention of consumer confidence for long-term business survival.

NSC PRECEPTS

No object found in nature or produced by man is totally without some risk of harmful interaction with man. A basic National Safety Council precept is that the elimination of all risk of injury will never be fully achieved, even with the simplest of objects. Nevertheless, we must continue to strive to reduce the risk level until it approaches zero. Since we can never achieve absolute freedom from risk under all conditions, we must therefore address ourselves to the degree of safety that can be achieved, recognizing the obvious constraints within our society.

The NSC family believes in and espouses the principle that every practical effort should be made to determine, then remove or control the probability and the consequences of those undesired events arising out of hazards, malfunctions, failures, and predictable misuse, thus assuring optimum safety within the constraints of known technology, resources, and product performance.

Another National Safety Council precept is that none of us, no matter how determined we may be, can long ignore cost-benefit and product-effectiveness factors that are inherent in any proposed change made for reducing the level of risk. Safety, as well as the "ility" fac-

tors, such as reliability, quality, maintainability, compatibility, et cetera, must earn their way through quantitative evidence of effectiveness in terms of costs, benefits, and product performance for the consumer, the manufacturer, and others who interface with consumer products.

In search for ultimate answers, two additional precepts are elemental. The first is that maximum safety of any product is achieved initially in the conceptual phase and ultimately in the design and development phase of the product life cycle unless modifications are made after the product becomes operational. This imposes heavy responsibilities on those concerned with conception, design, development, and production control. The council considers the labeling, instructions for installing and use, warnings, et cetera, and the creation and test of components, mockups, or prototypes as parts of the design and development function.

The second precept is that the change required to eliminate true cause of an accident will not always rest with the manufacturer. While it is essential that the design function must do everything reasonable to mitigate errors or misuse on the part of others, it must be recognized that a safely designed and properly manufactured product can be improperly installed, improperly maintained, and improperly used. Thus, the change required to eliminate true cause may very well rest with others in the system network; namely the wholesaler, the retailer, the installer, the consumer, the serviceman, and the disposer.

CONSUMER PRODUCT ACCIDENT/INJURY DATA

It is tragically unfortunate that precise data on consumer products and their relationship to accidents do not exist. To the extent that product safety can be directly related to home safety, the record shows that since 1912 the number of households has almost tripled and the population doubled, but the number of deaths arising out of home accidents shows little variation from year to year. Thus, in this time span, the accidental home death rate declined 50 percent.

Such a reduction in death rates must be considered conservative since it was accomplished despite changes in other variables such as:

1. The increase in the number and variety of consumer products now found in each home.
2. The increase in the population of the very young and the very elderly among whom home accident fatality rates are the highest.
3. The increase of leisure time at home.
4. The increase in do-it-yourself and recreational activities.

As convincing as this trend is, we suggest that it be set aside since such information is not related to level of risk and is inadequate to conclude any significant or specific relationship between consumer products and accidents. A review of the literature on the relationship between consumer products and accidents leads us to these observations.

1. There is a woeful lack of sufficiently reliable data on the incidence of accidents and injuries, where cause can be directly attributed to hazardous consumer products, to know the true scope of the product safety problem in its broadest terms or what the priorities should be in dealing with the problem as a whole or in its major parts.

2. There is not enough known about the specific circumstances of consumer product accidents/injuries to take all the actions necessary that will lead to a practical solution of the problem.

3. Until such information is reasonably well established, the effectiveness of any broad-scale or long-term action taken will, at best, be uncertain.

The National Safety Council urge that concentrated efforts be directed toward establishing a more contemporary accounting of the level of risk that now prevails with respect to individual or classes of consumer products. The National Electronic Injury Surveillance System (NEISS) currently administered by the Food and Drug Administration should be most helpful in achieving this end.

The council is also convinced that a project designated as the "Household Safety Study" [1] is one of the most comprehensive studies currently being conducted on consumer products and their relationship to accidents and injuries. Unfortunately, a comprehensive analysis of the data generated in the first phase of this study has not yet been completed by the council. Lacking such an analysis, it would be premature to reach hard and fast conclusions as a result of this study at this time. However, the council recommends that every consideration be given to the results of this study as quickly as its findings can be made available, there is little doubt that it will be most helpful in determining a way of going to improve the accident/injury/illness experience as it relates to consumer products.

IS THERE A PRODUCT SAFETY PROBLEM?

In spite of the fact that it is not now possible to quantify the scope or intensity of the consumer product accident/injury problem, the National Safety Council believes that there indeed exists a problem arising out of hazardous consumer products and that something positive and constructive should be done to cope with the problem. It is reasonable to expect that avoidable injuries arising out of hazardous consumer products can be reduced to some degree by constructive action.

Experience in the general safety field indicates that a rational way to go to meet the consumer product safety problem is to accomplish the following:

1. Develop and implement an accident/injury data system which will (a) reveal on a continuing basis the relationship between consumer products and accidents/injuries, thereby identifying levels of risk that are now associated with various products, and (b) assist in the determination of appropriate countermeasures to achieve an acceptable level of risk.

2. Develop consumer product safety standards as mandatory criteria to eliminate and minimize hazards or potential hazards to achieve an acceptable level of risk.

3. Develop and implement education programs to assist in informing consumers and others in the mainstream of the distribution, installation, and maintenance system regarding the value of safe products and the safe use of such products.

[1] A study sponsored by 18 organizations, including the National Safety Council, and conducted by a leading market research organization.

SHOULD THERE BE FEDERAL PRESENCE?

There exist widely divergent views on industry's capability to cope with the consumer product safety problem on a voluntary basis. The council believes that it would be a serious mistake to imply that there has to be an either/or relationship between voluntary safety efforts and Federal presence. Each must be recognized for what it can and for what it cannot do.

The Federal Government can bring about changes in the area of need that would be slow and difficult, if not impossible, by the forces of the voluntary safety movement or by persuasion along—especially in the areas of generating accident/injury data and research. The National Safety Council is convinced that, at best, neither product safety nor any other kind of safety is going to be handed to the American public by legislative enactment or administrative decree. The council is equally convinced, however, that a properly conceived Federal presence in the consumer product safety arena would be constructive and useful. To this end, the council believes that the consumer product safety problem warrants congressional attention.

THE ROLE OF THE FEDERAL GOVERNMENT

The National Safety Council's position with respect to the various legislative proposals now before the Congress does not address itself to all of the major issues of concern, but rather to those issues that have a direct relationship to the council's mission.

The council recommends that any proposed product safety legislation should provide for Federal presence in five major functions:

1. Collection, analysis, and dissemination of accident/injury data.
2. Determination of need, development, and promulgation of standards.
3. Inspection and enforcement.
4. Research.
5. Consumer education.

The council has no preference with respect to where these functions should be placed within Government structure. Instead the council prefers to address itself to requirements in terms of performance which will, in turn, govern where the functions should be placed. The council recommends that the placement of functions within the Government structure be determined by the following requirements:

1. The agency must achieve optimum effectiveness in carrying out the purpose of the proposed legislation.
2. The agency must maintain visibility and status to show that it does, indeed, mean business.
3. The agency must be identifiable and possess a safety orientation.

There appear to be two primary options with respect to placement: (1) a new independent agency, or (2) within an existing agency. If placement in an existing agency is preferred by the Congress, then the legislation should provide for an administration with a designated assistant secretary to accomplish the purpose of the proposed legislation. Further, no matter where the functions are placed, the council

urges the Congress to adopt the principle of internal separation of functions so that such functions can be exercised with independent integrity.

In this regard, I should like to add a further comment. Experience in this administration of Federal safety programs leads us to the belief that a safety regulatory agency should have its own field force and not be required to rely on a generalized field staff with less focused orientation. We learned this the hard way with occupational safety when the safety provisions of the Walsh-Healy Public Contracts Act were administered by the field staff of the Wage and Hour Administration. Now, under the new Occupational Safety and Health Act of 1970, the occupational safety and health program has its own field force in the Department of Labor. The same is true for railroad safety in the Department of Transportation and mine safety in the Department of the Interior—safety requires a field staff possessing special skill and orientation.

Therefore, I hope that this committee will see to it that, wherever the program is located, it has its own field force.

A description of the major functions are proposed as follows.

ACCIDENT/INJURY DATA

A consumer product accident/injury data system should be established and operated by an accident/injury data unit. The overall objective should be to collect, analyze, and disseminate information relating to accident/incident/injury trends, cause, and countermeasures.

The unit should be authorized to enter into contracts to conduct studies to assist in establishing an accident/injury data system. The data system should, as it relates to conumer products, accomplish the following objectives:

(*a*) Yield information on accidents and accident trends, including exposure criteria, to establish priorities for accident prevention activities;

(*b*) Yield information to determine true cause of accidents for the purpose of (1) evaluating the adequacy of existing standards, (2) determining the needs for additional standards, and (3) developing new or special countermeasures; and

(*c*) Evaluate the effectiveness of countermeasures that currently exist and for those that are yet to be developed.

The accident/injury data system should also provide for analysis of such data. The accident/injury data collection system should be structured to facilitate the analysis process. This will require that data input be compatible with electronic data processing equipment. The analysis of the data input should identify areas requiring immediate attention and/or indepth studies. Upon such identification, a cause analysis can yield information to determine the most effective countermeasures necessary to remove or substantially reduce (1) the probability of occurrence of an accident caused by a haardous consumer product, and (2) the severity of the consequences of those accidents that do occur.

As a practical reality, such a system will greatly reduce the guesswork in solving the product safety problem and will generate reliable

information for policy and action decisions by both the private sector and the Government.

The National Safety Council is confident that it has created a data system that is responsive to the objectives cited above. This system is described in appendix I of this statement.

By now it must be evident that the council is purposely emphasizing cause determination with respect to accidents and injuries. Unless the accident/injury data system reveals the true cause of an unwanted incident, then efforts to eliminate such cause can be an exercise in futility. The ultimate payoff in terms of accident prevention lies in eliminating one or more elements in a set of events that, in combination, result in an accident.

Those responsible for the accident/injury data system should also be responsive to requests of others within the agency to conduct special studies and to measure results in terms of change in the accidents/injuries related to hazardous consumer products.

It is essential that the data collection, analysis, interpretation and use of such information be placed only in the hands of competent, reliable, unbiased professionals. The information generated by the accident/injury data system, including cause analysis, should be made available to those responsible for the other functions and to the manufacturer. The statistical output of the system should be made available to the public.

The functions of the accident/injury data unit should not be a function of those who will be judged by the results of such data. The rationale for establishing accident/injury data functions independent of other functions is that such independence is more likely to result in freedom from bias and therefore enhance greater objectivity.

STANDARDS DEVELOPMENT

The National Safety Council believes that both the consumer and the responsible safety-minded producer/manufacturer would be more adequately protected if properly developed and promulgated product safety standards that eliminate or minimize unreasonable risk had the force and effect of law.

Based primarily on information generated by the accident/injury data system and data arising out of a hazard or fault analysis, the latter being especially useful for new products, the function of a standards development unit would be to determine undue risk based on findings of fact, to determine the need for standards based on such findings, to assist in the development of standards, and to call out information for industry as well as Government.

For years the council has espoused the principle that the application of safety logic comes before the failure, malfunction, misuse, or injury occurs. Therefore, the council strongly recommends that undue risk determination need not require any evidence of deaths, injuries, or illnesses. The application of the safety logic principle can be achieved to a significant degree by modifying the framework of the standards development process. A description of risk-based concepts for the development of standards is contained in appendix II of this statement.

Product safety standards should be developed whenever findings show that a safety standard is necessary to remove or reduce unreasonable risk from an identified product hazard. Where there is such a finding, the Federal agency responsible should be required to promulgate an existing consensus standard providing such standard is applicable and adequate to remove or reduce unreasonable risk with respect to the identified hazard. Further, hearings should not be required in order to promulgate such consensus standards.

Where there is no such existing consensus standard, the first step in the standards development process should provide for the development of a proposed standard under the consensus process [1] by a nationally recognized standards producing organization or by any other qualified organization. If this process does not yield desired results within a reasonable time, the standards development unit should develop a recommended standard under a process that enables interested persons to participate. Further, to the extent possible, all standards proposed for promulgation should be written in terms of performance criteria. Specification criteria should be adopted only when it is impracticable to define performance requirements.

After publication of the recommended standard in the Federal Register and after opportunity for interested parties to submit data, views, or arguments with respect to the recommended standard, the Federal agency should, after consideration of such data, views, and arguments, have the authority to promulgate a mandatory product safety standard.

All standards promulgated by the Federal agency should preempt any State standard applicable to the same aspect of performance of such product, except a State should have the authority to require a more vigorous standard with respect to products used by State agencies or local government units, or where local conditions require a deviation from the Federal standard.

Where there is an imminent danger arising out of an identified product hazard for which no promulgated standard is applicable, there should be some mechanism available to deal with such an emergency situation. One alternative is to immediately promulgate an interim standard which eliminates or reduces risk to an acceptable level. Such standard should take effect immediately upon publication in the Federal Register. A second alternative would be to seek relief in the courts (as prescribed in the Occupational Safety and Health Act) for an order declaring a product involving imminent danger a banned hazardous product.

For "new products" (as defined in S. 983) not yet on the market, there should be a provision to require manufacturers to advise the agency of a "new product" 30–60 days before its marketing or marketing testing, and require manufacturers to maintain records that document the safety criteria and test procedures used. Such records shall be made available to the agency for inspection. Such notification will provide sufficient time to invoke the imminent danger provision just described, should such action be warranted.

[1] The consensus process basically involves two principles: (1) securing representation of these groups that would be affected by the standards which, in this instance, includes consumers, and (2) a predominant acceptance by such groups. The consensus process implies much more than a simple majority of those represented, but not necessarily unanimity.

INSPECTION AND ENFORCEMENT

Those responsible for the function of the inspection and enforcement should have the authority to evaluate the final product or its components to determine compliance with the promulgated standards.

When the enforcement unit has evidence of a violation with respect to compliance with applicable promulgated standards, it should issue a citation, a proposed penalty, if any, and an order to remedy the violation. Such citations should describe the nature of the violation, the standard alleged to have been violated, and fix a reasonable time for a remedy. Those cited should have the opportunity to contest the citation or proposed penalty or both via a hearing within a reasonable time after receipt of the citation or proposed penalty. Any person affected or aggrieved by any order of the agency should have the opportunity to obtain a judicial review of such order or penalty.

The council recommends that the enforcement unit have the authority to acquire, by purchase or other negotiation, products for testing by itself or a contracted laboratory. In order to determine compliance that cannot be determined in other ways, the enforcement unit should have the authority to make reasonable plant visits to audit the manufacturing processes pertinent to compliance requirements and to request compliance demonstrations.

The council further recommends that the enforcement unit utilize the output from the accident/injury data system, complaint patterns and other information sources to establish priorities.

The council sees little merit in Federal certification of individual products for compliance with promulgated standards. Instead, the manufacturer should be required to maintain records which describe and document the method to justify his own certification or compliance with the applicable promulgated standards and such methods should be subject to disapproval by the Federal agency. However, the agency should require the use and prescribe the form and informational requirements of labels used by the manufacturer to certify compliance with specified promulgated standards.

The council believes that the enforcement mechanism should be primarily results oriented as contrasted to methods oriented. Such an orientation will tend to eliminate the need for having each and every operational step subject to inspection and approval or disapproval.

RESEARCH

Within the agency there should be established a research unit to conduct basic research and investigations regarding safety of consumer products to supplement information now available, in keeping with the purpose of the proposed legislation. The unit should conduct research regarding the testing of products and develop recommended safety testing methods and testing devices. The research unit should also conduct continuing studies and in-depth investigations of injuries, health impairments and economic losses resulting from accidents involving consumer products.

CONSUMER EDUCATION

The lack of consumer knowledge regarding the installation, use, and maintenance of consumer products is a major part of the consumer product safety problem. Since a part of the solution to the consumer product safety problem lies in the area of consumer education, the agency responsible for the other functions previously described should also assume a responsibility for consumer education.

It is recognized that no Federal agency alone can accomplish the massive consumer education program required to meet the demand. Therefore, any consumer education program must seek cooperation and assistance from those associations or organizations, as well as official agencies at the State and local level, that can help achieve the consumer education objective.

OTHER RECOMMENDATIONS

The council would like to conclude this statement with three additional recommendations concerning (1) an advisory group, (2) congressional review, and (3) funding.

Advisory Group

In the interest of a well-advised, efficiently coordinated approach to workable answers, the council recommends the establishment of a multiinterest group to serve in an advisory capacity. This advisory group might be expected to advise not only on the programing designed to achieve the purpose of the proposed legislation, but also in the evaluation of its effectiveness. The council would welcome an opportunity to be of assistance in this regard.

Congressional Review

So that the Congress will know what has been achieved, what is involved, and what yet needs to be done, the Federal agency assigned the responsibility for carrying out the provisions of the law should be required to report back to Congress within 2 years after the effective date of the proposed legislation.

Funding

While realizing that appropriating sufficient funds for the proposed legislation now under consideration is not a function of this committee, the National Safety Council has repeatedly observed the unfortunate fact that failure to adequately finance safety legislation is raising serious questions of public confidence in the Congress as related to the sincerity of its desire to improve the programs involved. If the Congress declares that a Federal presence is needed to improve product safety programing, such as is contemplated by the proposals now under consideration, and then fails to follow through with sufficient resources to sustain confidence in what has been enabled, it will be increasingly difficult to attract the kinds of cooperation that many must provide if success is to be assured.

To this end, the council urges adequate funding year in and year out, not only authorization, but actual appropriation, to achieve the purpose of the proposed legislation.

The National Safety Council appreciates the opportunity to participate in this most important piece of business now before the Congress. Since safety is our only business, the council will continue to seek and will ultimately achieve a national commitment to all forms of safety, including consumer product safety by the business community, by the public, by voluntary safety organizations, and by government at all levels.

Senator Moss. Thank you, Governor Pyle, for your extremely useful statement that has been worked out with a great deal of thought and which has a lot of background information in it.

I have been able to scan the parts that you did not read, and I find that they are equally helpful, and that you simply shortened it up because of the pressure here today. We do appreciate it, and we know that the National Safety Council, which has as its sole function to prevent accidents and prevent injuries and economic loss, certainly has the information and expertise that will help us here in fashioning legislation which we hope will create a permanent and comprehensive product safety program and overseeing the activities that are established. We welcome your cooperation.

I was particularly interested in the concept of risk-based hazard analysis which is outlined in appendix II here in your statement. If I understand the system, it is preventive in nature and analyzes the causes of future risks based on the potential for hazard with respect to the product design, a means by which the product will interact with people in the magnitude of potential risks. Is such a program suitable for computerized calculation?

Governor PYLE. May I defer to our expert in that field, Mr. Currie?

Mr. CURRIE. It may be necessary to go to computer with a very complex system. But I doubt if it would be necessary to go to that extent with most of the consumer products that are now on the market.

Senator Moss. So you do not think that it will be desirable or feasible to go on to computerized projection?

Mr. CURRIE. Not for the hazard analysis, or to determine the level of risk for the vast majority of consumer products, no, I don't.

Senator Moss. To what extent is this analysis being used now? What method are you utilizing?

Mr. CURRIE. Well, most of the techniques that are now applicable to this method are being used within the aerospace industry. We do not propose that it would be necessary to undertake a sophisticated analysis to determine undue level of risk for a relatively simple product. It may be necessary for a complex one, such as an aircraft, or for the subsystems involved in a NASA space flight. However, we think that the general principles involved in the risk analysis concept, that is, determining the level of risk, would be most applicable to things we are talking about today.

And may I offer one or two other comments?

The National Safety Council staff, within its own house, has kicked around this kind of concept for some time. In addition the concept was arrived at independently by some of the safety professionals from NASA, and all of a sudden two of us now have the same general idea. We are very pleased to see that the same concept arose out of a special study conducted by the National Transportation Safety Board. The title of it is "Risk Concepts in Dangerous Goods Transporta-

tion" and this is where you will find additional information with respect to risk level concepts.

The cost-benefit factor always has to be acknowledged for this kind of analysis. There are going to be products that just do not warrant a complicated analysis.

On the other hand, there will be situations where it would be a great asset to the program to have the authority to go this route.

Senator Moss. Would this system of risk-based analysis supersede the injury surveillance system that is now being used by HEW, or would the two work simultaneously?

Mr. CURRIE. The risk-based analysis concept probably would work extremely well for new products where you have no data with respect to injuries. We think that both should be in place—that is, the risk-based concept should in effect remove unreasonable risk from a product and the surveillance system should be used to affirm success or failure.

Senator Moss. From a new product that is coming on the market?

Mr. CURRIE. New products, or even an existing product.

Now, the proof of the pudding, whether or not it will really work as well as we think it should, would come from the surveillance system.

Senator Moss. So the risk analysis might lead to the promulgation of a standard even before the product was on the market?

Mr. CURRIE. Yes. That is very possible.

Senator Moss. Governor Pyle, in your statement you recommend that the product safety agency maintain visibility and status to show that it does indeed mean business, and that adequate funding be provided on an annual basis.

Do you believe that if a product safety program were to be located in HEW, it should receive its budget directly from the Office of Management and Budget as opposed to going through the Secretary's office?

Governor PYLE. Experience is a dear teacher, and we have many examples in kind that would certainly indicate that it is a harder decision. I happened to be around when the Health, Education, and Welfare operation was put together. It was a high-sounding and noble concept, and to some extent we have put the traffic safety program in the same kind of structure when we moved it over into the Department of Transportation. The Congress has followed this kind of a plan in its reorganization efforts. Now, some suggest a separate agency here, and you can make an excellent case for that position. I think Mr. Elkind's summary of the situation as he saw it was perhaps a little emotional in some respects, because he feels so intensely about this. But I wouldn't throw the baby out with the bath water. I would not abandon the concept of reorganization recommended by HEW simply because we now think we have an exception. I guess I am a little inclined to want to stay with the order of things as dictated by Congress long since. Certainly it is within your prerogative to do as you please about it. But it will mean moving away from an organization concept that you have already established.

Senator Moss. In your prepared statement you said, "No matter where the functions are placed, the council urges the Congress to adopt the principle of internal separation of functions so that such functions can be exercised with independent integrity."

I wonder if you could expand a little on what you mean by "internal separation of functions."

Governor PYLE. The field force operation is the simplest example that I can possibly give you. In this regard our experience under Walsh-Healey was a miserable one. It is also possible to have people in control of strategic divisions of a large entity like HEW who are conceivably so oriented along certain paths as to very often inhibit the directions in which a new operation like this should go. And so we think that if you have an independent operation, that isn't hooked to many factors, you will have a better chance to accomplish the objective.

If you are going to establish a program here that you mean to go somewhere, then constitute it so that it is not going to be hamstrung by considerations that inevitably come into play when you have to borrow from Peter to accommodate Paul.

Furthermore, internal separation of functions aids this kind of independent integrity. For example, if the analysis phase of the data collection function has independent integrity and is not merely a handmaiden of standards development or of enforcement, both the program administrator and the Congress will have more objective evidence for policy determinations. Obviously all five major functions we suggest (data collection, standards, enforcement, research, and consumer education) need strong coordination. But program effectiveness will be enhanced, in our judgment, by assuring—within overall policy guidelines—the professional integrity and independence of those carrying out the five major functions involved.

Senator Moss. I notice that you urge that consumers participate in the development of standards, but I did not see in your proposed list of functions for a product safety agency the position of consumer advocate, which is in S. 983. Do you feel that there is need for such an official?

Governor PYLE. Mr. Chairman, that is a very interesting concept. I am sure that a case can be made for it as well as against it.

As one who has been in government, a former Governor of one of the States, and 4 years in the White House in an executive capacity, I guess my basic feeling is that if you set up a consumer protection agency, the assumption is that the Government, as thus identified, represents the people, and I find it a little difficult to believe that you have to have a special consumer advocate in order to guarantee Government's first obligation to the people.

Now, maybe this is necessary. I do not see it. I certainly would hate like the dickens to try to administer it under those circumstances. Also, I see a possibility that if you set up a consumer advocate, thus institutionalizing the idea, you encourage the agency that is administering this program to say, "Well, that takes care of the public. Now we will run the agency without paying heed to consumers."

I think the first obligation of this product safety organization, whatever it turns out to be, is to the public interest. That is why you are doing this.

So I see a lot of wrinkles in it that I do not favor. But this is a personal reaction. You asked, so I am responding.

Senator Moss. I appreciate your candid answer. I surely do.

In your testimony you place great emphasis on the consensus principle as a method of establishing product safety standards. If the con-

sensus principle is applied to a situation where a few industries are able to meet standards, while others do not have the technical capability to comply, the result of applying consensus would be a lower standard, where economic considerations might dominate safety considerations. How would you avoid the potential problem that seems to plague us in the Flammable Fabrics Act right now?

Governor PYLE. May I ask Mr. Currie to comment on that?

Then what he does not say, I will say.

Mr. CURRIE. The consensus process would tend to guarantee that those who will be affected by the standard would have some opportunity to provide inputs in the standards development process. Likewise, those who do not possess the capability of compliance with the standard as it may be proposed would also have the opportunity to provide input, and perhaps it could be established at this time that the standard would indeed be unreasonable for those who have less technical capability or wherewithal to comply with the standard. If the standard were developed under some process other than the consensus process, you still have the same problem. So we feel that the consensus process would at least provide an opportunity for those with less resources to provide inputs so that a reasonable standard could be adopted.

Senator Moss. Does that not water down the safety considerations by introducing a competitive economic situation to dilute the safety part?

Mr. CURRIE. There would have to be a trade-off with respect to goals and objectives. If the proposed standard were such that it were diluted to the degree that it would produce a level of risk that would be unacceptable, then a trade-off may have to be made in favor of eliminating or limiting the output of some of the less competitive individuals or firms.

On the other hand, I think you have to look at the other side of the story, the commerce of the United States. The standards-development process will look at both sides in order to weigh them and make a determination of the optimum trade-off in the public interest.

Senator Moss. Of course, I recognize the Governor said in his testimony there is no absolute zero that can be reached. There is an element of risk that remains, I suppose, with even walking down the sidewalk, or any other simple act we do. But the thing that bothers me is when we are trying to concentrate here on the maximum degree possible to provide safety, that we put into that process the consensus coming from those who have a competitive drive to produce a product at the lowest possible price and compete in the market. Their tendency would be to reduce some of the safety factors in order to retain or to gain competitive economic positions. An automobile maker, if he didn't have to put a shock absorber on his product, perhaps might be able to make a car a little bit cheaper, or something of the sort. That is what I am really trying to say here.

Governor PYLE. Mr. Chairman, I think the key point is that the development of standards under the consensus process will eliminate, very substantially, the chiselers from the marketplace. It will make the competitive process much more equitable for those who are trying to put out a reliable product at a fair price compared to those who come along with an inferior product but can represent it as being adequate.

In that kind of unfair competition the first thing you know you have a wholly untenable situation in the marketplace. Furthermore, we have to remember that at best all standards, especially as they are promulgated by the government, are inevitably minimum standards. It is a judgmental decision then as to where you level it off in terms of its impact on safety and all of the other factors that tend to make the product useful in the marketplace.

Senator Moss. I like your response. If you have the rules of the game, and everybody has to come up to the rules of the game, then they may compete beyond there.

Governor PYLE. Right. And it is possible that there are going to be products that are going to leave the marketplace. There is no question about it.

Senator Moss. Yes.

Governor PYLE. I do think we will have to be very careful that we do not develop an environment in which only the big boys can compete. This means that the standard is going to be a minimum standard, at best.

Besides, they are always subject to review. If it does not accomplish its mission, you can always review it and reissue it if you think it ought to be done.

Senator Moss. But it must be a standard that brings safety.

Governor PYLE. Right.

Senator Moss. I see.

Governor PYLE. Also, it has to be remembered that we cannot degrade the mission of the product itself. The product has to do what it was made to do.

Senator Moss. Just one final question. In your statement you outlined that when an enforcement unit has evidence of a violation with respect to compliance with applicable promulgated standards, you propose that a citation be issued with a proposed penalty. What types of sanctions should the product safety agency be able to impose at this point, and what steps might the agency be able to impose to remedy the violation?

Governor PYLE. Well, of course, the remedying of the violation is to retrofit the product and require changes in terms of its future development so that it doesn't continue to come up with the weakness that is covered in the citation. There is no way to leave the product on the market without having its frailties rectified.

As far as the penalties are concerned, I think that the responsible agency should issue a proposed penalty whenever the enforcement unit has evidence of a violation with respect to compliance with the applicable promulgated standards. This would provide incentive for the manufacturers to comply with the standards before any enforcement process takes place. To issue a proposed penalty only after failure to abate a violation provides little incentive to comply until cited by the enforcement unit. Thus, there should be a penalty provision for failure to comply with the appropriate standards and perhaps a more significant penalty for failure to abate the violation. In either case, however, those cited should have the opportunity to contest the violation or the proposed penalty or both as previously indicated.

Senator Moss. Thank you, Governor Pyle, Mr. Rosenfield, and Mr. Currie. We do appreciate your coming here today and presenting this testimony for us.

Governor Pyle. May I suggest, sir, if you come to points along the way where you think we might be helpful in supplying additional information, or even coming back, if that is suggested, we would be very happy to try to do what we can.

Senator Moss. Thank you very much for that offer, and we certainly will observe it.

Governor Pyle. Thank you very much.

(The appendices to the statement follow:)

APPENDIX I

This appendix was referenced in the National Safety Council's statement on proposed product safety legislation for the Senate Committee on Commerce and is to be considered part of the record. The appendix presents a description of an accident data system.

In our search for ways to obtain specific accident data for a segment of the total accident problem, such as may be related to consumer products, we have concluded that retrospective accident reports (reports of previous accidents) generally do not yield the kinds of information needed for adequate measurement and assessment of that safety problem nor do they yield sufficient information to determine cause of specific accidents. The Council has concluded that more useful data can be generated from future accident reports where the reported information can be specifically structured to satisfy established requirements. This does not mean that accident data now on hand may not contain some useful information, but in general such data lack the details needed to mount an effective major accident prevention campaign.

The National Safety Council believes the ultimate objective of an accident data system is to prevent accidents. The sub-objectives of such a system are:

1. To establish priorities for *preventive* action.
2. To provide information to determine *true cause* so that *preventive* action will be effective.

The National Safety Council believes that a consumer product accident data system should accomplish these goals:

(a) to establish as quickly as possible those products associated with high severity accidents;

(b) to establish over a period of time those products that produce a significantly high number or high rate of moderate and low severity accidents;

(c) to maintain early surveillance of new products relative to the frequency and severity of accidents occurrence;

(d) to identify priorities based on frequency and severity considerations to maximize benefits;

(e) to indicate countermeasures that will eliminate or minimize cause of the accidents; and

(f) to evaluate the effectiveness of countermeasures implemented.

The National Safety Council now has in place an accident data system that satisfies the above criteria. Basically, the system is designed to obtain two levels of data: (1) basic data; and (2) supplemental data.

We have attempted to describe one accident data system which the Council believes can provide the necessary information to more closely identify the product safety problem, to determine causes of accidents concerned with products, and to develop an effective long-range program for product safety. Undoubtedly there are other accident data systems which will provide the information that will be responsive to the objectives and goals cited above. Such systems should be explored to determine their feasibility to improve product safety.

APPENDIX II

This appendix was referenced in the National Safety Council's statement on proposed product safety legislation for the Senate Committee on Commerce and is to be considered part of the record. The purpose of the appendix is to describe risk-based concepts as related to a framework for the development of standards.

The National Safety Council has long espoused the principle that the application of safety logic comes *before* the failure, malfunction, misuse, or injury occurs. The Council is also a strong advocate of the principle that the determination for the need of a safety standard should not require any evidence of deaths, injuries, or illnesses.

The application of this safety logic can be achieved to a significant degree by modifying the framework of the standards development process. Such a framework should be viewed as a long-range objective to be achieved.

For the purpose of this appendix, a hazard is considered to be a real or potential condition or characteristic which can cause injury, illness or property loss, or cause an event which will lead to such losses. Likewise, risk is viewed as the *probability* that hazards will cause an event which will result in some magnitude of injury, illness or property loss. Thus, risks are dependent upon three criteria: (1) the existence of hazards, (2) the probability that the hazard will interact with people or things to cause loss, and (3) the magnitude of the loss. A composite of individual risks constitutes the level of risk.

A distinction between hazards, risks and level of risk is pertinent to the determination of undue risk. Hazards constitute only one facet of risk, the others being the probability of the hazard precipitating an event resulting in loss and the magnitude of the loss. Risks should then be aggregated to identify the level of risk. Thus, the level of risk concept incorporates evaluation of hazards and the risks resulting from the presence of these hazards.

The concept provides a most comprehensive means for determining level of risk. Such a measurement will enable the decision-maker to deterimne whether or not action should be taken to reduce the level of risk. The alternative countermeasures suggested by the risk analysis, coupled with other significant factors such as cost, social benefit, and performance of a given system, will also enable a means for assessing the probable change in level of risk that can be brought about by promulgating a standard.

The Council urges the development of a framework for consumer product risk analysis as related to the development of standards. Such a framework requires consideration of the following:

1. The product hazards, malfunctions, or failures which may lead to an event that can result in a loss.
2. The probabilities of such events occurring.

Senator Moss. Now we have still one important witness to hear, Mr. P. Edward Merrill, president of Micro Devices Corp., from Dayton, Ohio.

Is Mr. Merrill here?

We are very glad to have you, Mr. Merrill, and appreciate your appearance.

This committee is not considering S. 1798, related to the international voluntary standards, at this time, and therefore I would suggest that you confine yourself to the matters that are directly before us in the bills that we are working on.

STATEMENT OF P. EDWARD MERRILL, PRESIDENT, MICRO DEVICES CORP., DAYTON, OHIO

Mr. MERRILL. Mr. Chairman, members of the committee, I feel that, if I may take the liberty, the statement which I have prepared is related to consumer safety. I think there is a direct connection involved with the international standardization program. This statement was prepared pretty much with that thought in mind. I would like to present it in its entirety.

Senator Moss. We will receive your statement. I was just simply pointing out that there is a separate bill on the international voluntary standards, and that this will be considered by another subcommittee of the full committee. And I just thought perhaps that this

is a little nongermane, at this particular hearing. But we will be glad to receive your statement.

You may proceed.

Mr. MERRILL. Thank you.

Mr. Chairman and members of the committee, my name is Ed Merrill, president of Micro Devices Corp., Dayton, Ohio.

We manufacture a product whose purpose is to make electrical equipments and appliances safe—to protect the public—the consumer.

We are a truly "international" company, since over 50 percent of our sales are exported, to such countries as Japan, Germany, England, Australia, Yugoslavia, South Africa, et cetera, and, by the way, the Moon and the planet Mars.

Because of the nature of our business, we have become deeply involved with standards agencies throughout the world, and therefore feel that we are qualified to comment with respect to the proposed legislation.

Our primary concern pertains not only to safety, but also the alarming deterioration of our foreign trade situation.

It appears that very few people are aware of what is in store for this country if the present trend continues.

Our existing practices of pouring our wealth out of our country can only lead to economic disaster. We have gotten ourselves in a position where—within a few years, if the present trend continues, we will be primarily a buying nation—with much of our manufactured goods coming from foreign countries.

Obviously, we can't survive this trend for many more years.

Look at what has already happened.

Practically all black and white, and a high percentage of color TV sets are imported—and electrical and electronic components, autos, cameras, hi-fi sets, shoes, clothing—the list is long and growing rapidly.

Much of this production is financed with American money, which is not only depleting our own resources, but also strengthening our foreign competitors to the detriment of our U.S. manufacturers. The foreign manufacturers whom we aid then sell to other foreign countries to markets which we have caused ourselves to lose.

Although the proposed legislation regarding international standardization will not begin to solve all of our problems, it can be a major contributing factor. Our participation in worldwide standardization cannot proceed until we have our own house in order.

The Japanese agency, MITI, has accomplished tremendous things for the Japanese manufacturers, in a matter of less than 10 years.

By enforcing standardization on their Japanese manufacturers, costs are reduced, which makes them more competitive. It also hurts foreign manufacturers whose products don't conform to Japanese standards. If the standards in a non-Japanese country, such as the United States, are different, the cost of producing a portion of their items to the special Japanese standards increases, thereby further hurting their chances to sell to the Japanese.

A further result of MITI is a substantial improvement in quality and product safety. In many areas, the Japanese manufacturers have moved far out in front of us in both quality and safety.

And now, in Europe, we see the EFTA and Common Market countries gaining momentum in their standardization program.

Canada, through CSA, has enforced standards for many years.

It is crystal clear that our country cannot possibly afford to stand alone in the commercial world. We must take positive action.

However, we have an entirely different situation in this country, when compared, for example, Japan.

We already have a number of standards agencies in operation, headed by ANSI.

We have an established network which can accomplish our desired goals.

UL, for example, has a labeling and followup service which literally forces their customers to conform to the UL standards.

Their only real problem is that manufacturers can ignore them—although in many areas, the manufacturers must obtain UL listing of their products, or they can't be sold.

Also, their standards are voluntarily prepared and adopted by the manufacturers of a given product.

Similar systems are used by other standards organizations.

Other than forced compliance, the chief flaw to our present system is the fact that the selfish interests of the voluntary participants can, and often do cause delays, and final formulations of inadequate standards.

We know, from our own experience, that the manufacture of known hazardous products usually continues for months, and often years, before the manufacturers can come to an agreement on a revision of the controlling standard. In the meantime, the consumer suffers.

For example, a problem involving safety of gas water heaters was presented to the AGA (American Gas Association) laboratories over 2 years ago, and no corrective action has been taken. In fact, the latest target date was set at 3 years hence, making a total of 5 years before a decision will be made. Actual implementation will take another year, or more. In the meantime, the homeowners are subjected to unnecessarily hazardous water heaters.

We could, of course, illustrate numerous similar examples.

This is where the Federal Government should step in.

If we had a permanent commission, such as the recently expired National Commission on Product Safety, who could have the authority to requrie development of new standards, and force prompt changes in existing standards, our present system, as directed and administered by ANSI, could provide us with the coordination and protection we need.

This commission could delegate responsibility to ANSI who would actually administer the standardization program.

Organizations such as UL, with their followup system, could enforce compliance.

This commission could sit in judgment in case of disputes, and have the authority to direct a change or changes in existing standards, or direct the proper organization to develop a new standard.

This commission could also delineate the responsibilities of the various organizations to eliminate gaps, duplication, and overlapping.

Under the present practices, the manufacturers carry the entire burden of developing standards. We don't believe that this is fair.

Since most standards are developed for the protection and welfare of the consumer, it seems logical that the consumer, through the Federal

Government, should be expected to pay a substantial portion of the costs of developing such standards.

It must be recognized that almost any product which is sold on the market can be criticized by someone.

It must also be recognized that almost any product, no matter how carefully it is designed and manufactured and inspected, can be misused or can malfunction. These misuses or malfunctions can, and have caused disastrous results such as fires, injuries, and deaths.

There is no way that an automobile can be made so safe that the driver cannot destroy himself, nor can we make a stove which will cook and not burn a child's fingers.

We must be careful when we prepare our legislation so that we do not place unfair responsibilities on the manufacturer.

It would seem that the proper approach to resolving this situation would be to set up a system where standards are provided and compliance with such standards are mandatory. Beyond this, we do not feel that the manufacturer should be held responsible except in such cases where intentional deviation from the standards, criminal fraud, and so forth, are involved.

In cases where experience has indicated that the standards were inadequate, it should be the responsibility of the National Commission to promptly implement the necessary changes in the standards. The fact that the standards were inadequate should not be reason for punishing the manufacturer.

It appears that the proposed legislation goes entirely too far in placing responsibility on the manufacturer for the damages that his products might cause when he may have had no way of anticipating such hazards. This is like punishing a man for violating a nonexistent law, or a law that was prepared after he committed the violation.

Nevertheless, the emphasis must remain on protection of the unsuspecting consumer. It is important that when it is found that an existing or proposed product is potentially hazardous to the consumer, we have a system established to take immediate action to correct the problem, regardless of who is at fault, the manufacturer or an inadequate standard.

Although we most certainly must take action to correct our present situation, we cannot do this at the expense of totally destroying our present economic system.

We must first create a commission who can direct the preparation of new standards and modifications of existing standards, and at the same time, set up a system which will force compliance and provide a follow-up service.

As stated above, this can be accomplished within our existing network of agencies in a minimum amount of time.

This cannot be accomplished with the proposed legislation, since the proposed legislation would be too unwieldly, too costly, and take too long to implement.

In the meantime, until some concrete system is established, we will continue to suffer both from a safety standpoint, and in the world markets because of our inability to effectively participate in the international standardization program.

We cannot afford to delay. Two years may be too late. Five years will be too late.

As of this moment, we still undoubtedly have more influence in the world market than any other single country.

Now is the time for us to not only set our own house in order, but also to use our influence abroad to develop worldwide common standards.

It won't be a one-way street, either.

For example, if we wish to survive in the world market place, we must adopt the metric system. This will be very costly and will require Government assistance; without it, too many companies would be forced into bankruptcy.

As a manufacturer with exports exceeding domestic sales, we are experiencing difficulty in selling to some countries whose standards conflict with the ours. Common international standards would certainly reduce these problems.

I recommend that the proposed bills be rewritten to follow the basic format set out above.

Thank you for the opportunity to present our views. We hope that we have made a contribution and will be happy to answer any questions you may have, or supply you with additional information if you wish.

Senator Moss. Thank you, Mr. Merrill. I think you make a very good point. You argue for standardization on a much broader base than just for safety purposes, and our bill, of course, is oriented into the safety field, in providing safe products to our consumers. But I recognize what you say about the competition factor with other countries and with exports, and the need for standardization to be able to compete with them. And I do believe that your request is valid, and that there is urgency that we move on it.

I will see that we get the word on to the appropriate subcommittee of this full committee and see if we cannot get some action, soon.

Thank you.

Mr. MERRILL. Thank you very much. We appreciate it.

Senator Moss. We will now recess until tomorrow at 9:30 a.m.

(Whereupon, at 2:07 p.m., the hearing was recessed to resume at 9:30 a.m., Thursday, July 22, 1971.)

(The following information was subsequently received for the record):

MICRO DEVICES CORP.,
Dayton, Ohio, July 28, 1971.

Subjects: S. 983, S. 1797, and S. 1685.

Hon. FRANK E. MOSS,
The Senate,
Washington, D.C.

DEAR SIR: Since testifying before your committee last week, and after reading an account of it in one of our local newspapers, I have become concerned that my presentation may have been mis-interpreted.

This concern becomes greater, since I seem to have been one of a few, and perhaps the only person called upon by your committee who did not represent a consumer protection or standardization organization of some type.

In order to dispel any misunderstanding, I wish to state emphatically that: *I am in favor of legislation which will provide means for preparing and enforcing standards which will improve product safety and promote cooperation in developing international standards.*

Such legislation is most urgent and long overdue.

The recently expired National Commission on Product Safety, which was so ably administered by Mr. Arnold Elkind, was a big step in the right direction. In

fact, about all that they needed was permanence and provisions for enforcing their decisions.

My concern about the proposed legislation is that it will take too long to implement, and will result in unnecessarily excessive costs and duplication of effort.

Actually, the problem has been over-emphasized.

We have a sufficient number of agencies and testing laboratories fully capable of adequate standards, and enforcing compliance through listing and follow-up services.

What we need, and could provide very quickly, is a clearing house, a commission, who would have the authority to overrule the selfish interests of those who impede the formulation of adequate standards, and the muscle to enforce them.

This capability could, and should be developed and in operation in a few months.

This permanent revolving commission could receive suggestions for standards and/or modifications from all sources, and after evaluation, simply direct the appropriate agency, through ANSI, to produce or modify the applicable standards, and set deadlines.

Thank you for the opportunity of offering these additional comments.

Very truly yours,

P. EDWARD MERRILL, *President.*

CONSUMER PRODUCT SAFETY ACT OF 1971

THURSDAY, JULY 22, 1971

U.S. SENATE,
COMMITTEE ON COMMERCE,
Washington, D.C.

The committee met, pursuant to recess, at 9:30 a.m. in room 5110, New Senate Office Building, Hon. Frank E. Moss presiding.

Present: Senators Moss, Hartke, and Stevens.

Senator Moss. The committee will come to order. We will resume our hearings on S. 983, S. 1797, and S. 1685. We have received some very interesting and informative testimony and we look forward to today's testimony. We have some very important witnesses to hear this morning.

Our first witness will be Mr. Dave Swakin, Consumer's Union, Washington, D.C.

Will you come forward, please?

We are pleased to have you, sir, and we look forward to your testimony.

STATEMENT OF DAVE SWANKIN, CONSUMER'S UNION, WASHINGTON, D.C.

Mr. SWANKIN. My name is David A. Swankin. I am director of the Washington office of Consumers Union of U.S., Inc., a nonprofit membership organization chartered in 1936 under the laws of the State of New York to provide information and counsel to consumers about the management of family expenditures.

Financial support for Consumers Union comes from the nearly 2 million subscribers and newsstand buyers of Consumer Reports, our monthly magazine. We accept no support from any commercial organization. Consumer Reports carries no advertising. Besides testing and reporting test results on products, Consumer Reports publishes general information for consumers on health and medicine, the economics of the marketplace and the legislative, judicial, and regulatory actions of Government affecting consumer welfare.

Our interest in product safety is obvious. As many of the members of the committee know, we watched closely and cooperated fully with the National Commission on Product Safety. When that body issued its final report, we wrote in Consumer Reports (September 1970):

> The "Final Report of the National Commission on Product Safety" is the most comprehensive account ever compiled of the perils one incurs by living in this technological civilization. The account is devastating. In its outline of human injury and suffering, the report stands as one more indictment of a highly mechanized culture that has not managed to deal with—or, indeed, even foresee—many of the problems raised by its own development . . .

> The report itself is of vital interest to anyone who will ever pick up a soda bottle or walk past someone operating a power lawn mower or assume temporary or permanent responsibility for an infant or a child. Page after page, the text and the charts read more like a wartime casualty report than an account of death and injury in American homes . . .
>
> Long time readers of Consumer Reports have had some acquaintance with the kinds of hazards discovered in the report: CU provided data and testimony at commission hearings. Scores of others testified, ranging from the victims of hazardous products to apologists for them.

It seems as though we often lose sight of the misery and suffering that lie behind the statistics. Let me put the statistics to you this way. In the 20 or so minutes that it will take for me to present my statement to you this morning, unsafe products will cause one person to die, four to be permanently injured, and over 800 to be injured seriously enough to miss work or need medical attention. As the Washington Post said editorially yesterday, concerning injuries from toys:

> If 700,000 children were injured every year by street maniacs, the outcry would be loud and instant. Strangely, though, hardly a murmer is heard when unsafe toys do the damage.

The same can be said for all unsafe products, not just toys.

We believe it is time to turn the murmer into outrage, and that it is time for Congress to act.

In one of his appearances before the National Commission on Product Safety, in October 1968, Morris Kaplan, the technical director of Consumers Union, provided a list of products CU rated not acceptable for reasons of safety during the period 1958–68. I have attached that list to this testimony, appendix No. 1. At that hearing Mr. Kaplan said:

> You will be aware that we have not surveyed the whole area of consumer products systematically; therefore, these findings do not necessarily reflect, quantitatively, the areas of greatest concern. It is interesting, nevertheless, to note that we have found examples of unsafe products in almost every category. There are examples of almost every type of hazard that you enumerated.

Since that testimony, the commission issued its final report, but the problem did not go away. In appendix No. 2 I have listed 25 instances since January 1969 through March of 1971 where we reported in Consumer Reports about unsafe products. It is clear to us, on the basis of our experience, that needless death and injury will continue to be a byproduct of far too many consumer products until the Federal Government enacts strong and effective product safety legislation. That is why we think these hearings are so important. You now have an opportunity to give real meaning to one of the consumer's basic rights—his right to safety.

Some say it is unrealistic to expect that we can attain a zero level of death and injury from unsafe products. Perhaps it is. But we can set our goal at the zero level. We can assert our belief that every consumer has a right to products that are safe when they are sold, and that in concept, consumers deserve as much protection against unsafe household products as they do against unsafe drugs or unhealthy food.

Turning to the proposals before you, we believe S. 983, the Magnuson-Moss bill, to be superior to S. 1797, the administration bill. The inclusion in S. 983 of provisions to establish an independent product safety commission and a consumer safety advocate are in themselves

enough to make S. 983 a stronger bill. In addition, S. 983 contains better standard-setting provisions than the administration proposal, better provisions to get imminently hazardous products off the market, and an important certification program not in the administration bill.

Let me turn now, in somewhat more detail, to some of these.

The National Commission on Product Safety was highly critical of the performance of existing Federal agencies with consumer safety responsibilities. During its life, the NCPS commissioned a special study of existing Federal safety programs. This report, commonly known as the Heffron report, turned out to be a scathing criticism of the way in which the National Traffic and Motor Vehicle Safety Act, the Flammable Fabrics Act, and the Hazardous Substances Act were administered. The Heffron report went so far as to characterize existing Federal safety laws as widespread public deception. That is a strong charge. The NSPA itself characterized the administration of existing product safety regulation as "burdened by * * * bureaucratic lassitude, timid administration, bargain basement budgets, distorted priorities, and misdirected technical resources."

We concur. We feel that it makes little sense to assign to the Department of HEW the function of administration of comprehensive product safety legislation.

We base this partly on the Heffron report, and partly on our own experience. Many of you are no doubt aware of our toy safety suit against the Department of HEW and FDA last December. That litigation was necessitated by what we viewed as a shocking reluctance in the past of HEW to administer the Toy Safety Act of 1969. Without going into the details of the litigation here, the significance of our suit was in the fact that it took a law suit by a private consumer organization and a lot of unfavorable publicity to get HEW to do anything about enforcing what we consider a strong consumer protection law. Yet the administration bill would give the same agency added responsibilities in this very field in which they have been so remiss in the past. This makes very little sense to us.

Another example of the FDA's weak enforcement of product safety legislation is the recent final regulation announced by that agency and published in the Federal Register on June 10, 1971, concerning the classification of certain liquid drain cleaners as banned hazardous substaces. This regulation represents, in our opinion, a half-hearted attempt on the part of the FDA to meet a very serious problem. Our research indicates that last year, for example, there were well over 150 reported ingestions of liquid drain cleaners by children. These ingestions produced esophogeal burns which often required corrective surgery. The FDA response to this hazard was the promulgation of a rule which limits the corrosive content in the product to 10 percent, a standard which CU's medical consultants consider unacceptable. We believe that FDA should have banned products containing the corrosive ingredients, sodium and/or potassium hydroxide—lye, from the market altogether.

There seems to be either an unwillingness or an inability in FDA to adequately protect consumers in the area of product safety. We feel that an independent Product Safety Commission, unburdened by other duties, and responsible solely for product safety would be far more

likely to provide the protection necessary. We are all aware of the excellent job the National Commission on Product Safety did in this respect during its 2-year term. Its investigations were extensive, its proposals were incisive and its vigor was refreshing. It is no wonder that one FTC Commissioner called it the most effective Federal commission in existence. CU feels that the resurrection of such an independent agency, this time with full regulatory powers, is a necessity.

Section 4 of S. 983 would establish a consumer safety advocate, whose functions would include representation of consumers before the Commission, recommendation of the modification of existent standards and proposals for new ones, evaluation of standards, and dissemination of product safety information. These functions are not fulfilled by any present governmental agency at this time, and they should be. Not only would the creation of the consumer safety advocate fill the void which now exists in the advocacy of consumer safety, but it should also provide a knowledgeable watchdog to monitor and stimulate the activities of the regulators. By being independent of the regulators themselves, the CSA would be able to bring to bear his own expertise, free from the effect of bureaucratic infighting.

The fact of the matter is that in the United States today, there are not enough private consumer organizations to assure that the consumer interest is or would be adequately represented in all of the subject areas covered by the bills before you. Only by building into the new agency an independent CSA will adequate consumer representation be assured in all proceedings of significance.

Turning now to the area of standard setting, our basic criticism of the administration proposal is that we feel it will allow the very industries which are responsible for the hazardous products this legislation seeks to control, to delay indefinitely the promulgation of safety standards. For example section 6(c)(1) of S. 1797 authorizes HEW to accept offers to develop proposed product safety standards without the placement of any time restrictions upon final standard development. It is true that section 7(2) places a time burden of sorts on such a development procedure by giving the Secretary of HEW authority to determine that an offeror is unable to come up with a sound proposal. But even that section makes no mention of a specific time requirement. It is not difficult to imagine long delays, which would not be conducive to the bill's overall goal of efficient establishment of suitable standards.

Moreover, under the administration proposal, the regulations which the Secretary of HEW would prescribe governing the development of proposed product safety standards are not subject to informal rulemaking provisions. This will not allow flexibility and speedy promulgation of standards. The provisions with respect to findings in sections 5, 6A, 8, 9(c)(1) of the administration bill are also extremely burdensome. Finally, section 9b of the administration's proposal allows the Department of HEW unlimited time to promulgate a product safety standard or declare a product a banned hazardous substance from the time of publication of a proposal. Again, this lack of specific definition of time leads one to anticipate the probability of long delays from the time of proposal to promulgation and from promulgation to date of effectiveness, during which time the hazard sought to be combatted is still very much alive and on the market.

S. 983 does not have these deficiencies. Section 8(c) and (d), for example, indicate that the proposed Product Safety Commission will do the developing of standards with the informed aid of outside parties, not the other way around as it would seem is the case in the administration proposal. Specific time restrictions are placed both on offerors of proposals, within which they must come forward with their proposals, and on the Commission itself. The Commission is required to evolve a standard within 180 days of the original publication of notice commencing the proceeding if no outside offer is made. Also, under S. 983 all standards will take effect not more than 90 days after date of issue in the absence of a demonstration of good cause to the contrary.

Another feature in S. 983, but absent from S. 1797, which makes it more valuable to consumers and retailers alike, is the requirement that manufacturers certify that their products comply with promulgated standards at time of delivery to distributor or dealer. Certification would certainly go a long way toward encouraging manufacturers to comply with all appropriate standards.

Another important criticism we have of the administration bill centers around provisions which would make unlikely the dissemination to the public of information obtained from industry by the Department of HEW to be used in assessing product risks, and product hazard-related deaths or injuries. Section 4(c) (1) goes far beyond the protection of trade secrets and formulas in secreting such information by extending coverage to any business and accident records a company may have on file. The recent exposure of the General Motors Convair files comes readily to mind as an example of how such secrecy can work against the consumer interest. The public is entitled to know how many people have complained to a manufacturer concerning a hazardous product so that it can be better able to bring pressure, either privately or through government, upon that manufacturer to remove that hazard from the market or modify such a product. The secrecy provisions of S. 1797 would make the notion of an informed public a practical impossibility.

We feel that S. 983 needs to be strengthened in three respects. First, there ought to be authority for premarket clearance of products before they go on the market. We would not expect the Commission to require all products to obtain premarket clearance, but there will be times when consumer safety will be better served if the product must be shown to be safe before it is sold.

As was stated in the Heffron report, premarketing clearance for household products was proposed 2 years ago to the Secretary of HEW by an independent task force. We would urge that the task force's advice be taken.

Second, the imminent hazard provision of S. 983—section 9 and section 14(b), while superior to its counterpart in S. 1797—section 12—still could be strengthened by being defined. Part of the problem we encountered in our toy safety case was that FDA and Consumers Union could not agree on what imminent hazard meant. Since that time FDA has published a definition of imminent hazard that we feel is insufficient. We believe that FDA views the concept of imminent hazard as some sort of superhazard which is not our concept at all. For example,

in determining whether or not a hazardous product was an imminently hazardous product, we would consider it irrelevant whether or not it could be shown that 10 percent, as against 50 percent of the people who used the product were likely to be injured by it. In other words, while we would agree that the term "hazard" is related to severity and frequency, we do not think the term "imminence" is related to severity and frequency. We think this committee would be well advised to spell out a definition of imminent hazard that incorporates our concept. We would be glad to submit for your consideration a definition that we would consider appropriate.

Senator Moss. We would appreciate receiving that suggestion.

Mr. SWANKIN. Finally consumer legislation, in general, and safety legislation, in particular, always seem to be inadequately financed. If we learned anything from the toy safety experience it was that the best law, without either the will or the resources to administer it, will fall on its face. It would be tragic if Congress were to enact strong product safety legislation and then fail to appropriate enough funds so that a good job of enforcement could be done. This is not the time or the place to concern ourselves with the competence of the people who will administer this law when it is passed. Neither is this the committee that will have the final responsibility to appropriate funds to administer this law. But this committee can express its belief that adequate funding is a must. We urge you to indicate this understanding by authorizing at least double the amounts now authorized in section 35.

Senator Moss. Thank you very much for that fine statement and for the appendixes that are attached to it, which will also appear as part of your testimony.

This is extremely useful to us and I want to thank you for appearing. I think it is no exaggeration to say the record of your organization in promoting the safety of products in the marketplace is unmatched. Because of your experience in the area of consumer safety, this committee will give special attention to this testimony you have given.

I just have three or four questions to perhaps point up some parts of your very fine testimony.

Unlike S. 983, S. 1797 does not contain a provision to establish a consumer safety advocate, as you pointed out.

Does the Consumer's Union or any other private consumer organization have the resources to represent the consumer before the Product Safety Agency on a regular continuing basis?

Mr. SWANKIN. No, and I know that we are the largest private consumer organization that has some competence and facilities to do independent testing, and we are the first one to recognize how impossible it would be for us to be certain of being in on everything of importance in front of that agency. We don't have a large enough staff. We are in the business of publishing the magazine and that would still be our first priority.

It is unfortunate that this is true. I think it might be better if the Congress could rely on private organizations to do the job. Congress wouldn't have to worry about establishing a consumer advocate. But those are not the facts of life.

Unless an independent consumer advocate is included in this legislation, it is most likely that many issues will come before the Product Safety Agency in which the consumer interest is not represented.

Senator Moss. Do you think the special assistant to the President, the position Mrs. Knauer now holds, could effectively represent the consumer before the Product Safety Agency?

Mr. SWANKIN. As you know, Senator, there was a time not too long ago when I worked in her predecessor, Mrs. Petersen's office.

I think it is important for that office to make its views heard before the Product Safety Agency, and before any other commission that is considering consumer matters but the President's special assistant is not equipped to effectively represent the consumer in standards making, which after all will be one of the prime businesses of this Commission. Nor do I think that the President's special assistant is equipped to make that kind of representation, as a whole. The technical know-how is not there.

Senator STEVENS. Could I interrupt at this point, Mr. Chairman?

Senator Moss. Yes.

Senator STEVENS. Where should the consumer advocate be then? Should he be in this agency and responsible to the people that he is supposed to argue before? He is going to have his paycheck paid by the agency that he supposedly is arguing in front of every day on behalf of the consumers.

Mr. SWANKIN. We have also supported another bill now before the Congress to establish an Office of Independent Consumer Advocate, with across the board responsibilities to represent the consumer before all regulatory agencies, with no limitations.

Senator STEVENS. Yes. I can understand that a lot more than I can your point that you think the independent office in the President's office within the White House or within the President's staff would be less effective than someone within this independent agency who would be responsible to the head of the independent agency.

Mr. SWANKIN. Well, I believe the most important consideration is established by this act, or before HEW, or whomever has the responsibility for administering this act, in safety standard setting. Effectiveness will require technical backup. A person would have to have proper technical competence and stand up strongly in support of it. Without that technical competence, no standard-setting body would be very much swayed with an impassioned plea to set a good standard. I think everybody would agree at the first meeting of the standard board, that the board would want to set a good standard. In order for the consumer point of view to be adequately represented, it will be necessary to have somebody with a body of facts supporting his position, intervening before that board.

The point I am trying to make is that by creating within the commission a consumer advocate—I am assuming that that does not mean one man, three men, or five lawyers, and that you give him enough money and enough technical support so that he can be prepared when he intervenes—he will be able to play a very effective role.

Senator STEVENS. I am sorry to interrupt but I personally feel the argument for the independent advocate is much stronger than the argument for the independent agency under this bill.

Mr. SWANKIN. As you know, to continue this, Senator, we have supported both on the grounds that if the Congress enacts this year an independent consumer agency, and if it gives the agency relatively strong financial support, so that it is well-staffed, the consumer ad-

vocate, will still never be able to appear throughout this Government in every proceeding of interest to the consumer. He will have to have his own list of priorities—the FTC, the new Product Safety Commission, the Agriculture Department—and he will have to say, "We need to intervene here, but we can afford not to there." To the extent any other agency in Government is doing a better job of protecting the consumer, the consumer, in the independent agency, will be able to leave that agency alone. Even if you created an independent product safety agency, and put in it a consumer advocate, and that advocate is strong and effective, the new Independent Consumer Agency, would still have jurisdiction over product safety. The Independent Consumer Agency ought to be able to take a look at the Product Safety Agency and say the cosnumer is or is not not being adequately represented. But the likelihood that the consumer interests would be represented is stronger if you build into the new agency a consumer advocate than if you don't.

Senator STEVENS. Of all the agencies in the Government, the one that is absolutely consumer-oriented is the one that is considering daily the question of product safety. Of all the agencies in need of an advocate, I feel this one is the least.

I agree with you on the independent consumer advocate dealing with the whole range of the Federal Government. But this one is designed to protect the consumer to start with.

Mr. SWANKIN. In my experience in the Department of Labor in matters of occupational safety, in connection with the Bureau of Mines and Department of Labor, we used to think that. But it wasn't necessarily true that we automatically protected the worker without outside pressure.

Senator STEVENS. As you say, outside pressure, I agree. Thank you, Mr. Chairman.

Senator Moss. Is your concept of this consumer advocate something like the Comptroller General, appointed for a term of years, so he would have the independence and during that term not be responsible or not be subject to dismissal except for something that would be akin to impeachment?

Mr. SWANKIN. Yes; I think you have done it in S. 983. You have made him independently appointed, for a term of 7 years, which is longer than the term of any of the members of the Commission.

But, in the final analysis, as we know, it will depend on who is appointed and how much money you give him.

Senator Moss. Would you explain to me what your objection is to the S. 1797 provision which provides for the Secretary to request the Attorney General to file an action in the district courts in the case of an imminent hazard?

Mr. SWANKIN. As I mentioned in my testimony, we have been burned on the imminent hazard provision and I believe the Congress has been burned, too. Much of our toy safety case and testimony, and much of the theory of the case rested on strong indications by the Congress, both Senate and House, as to what they meant by imminent hazard when they passed the toy safety amendment. The administration bill, and S. 983, as I read them, both conceive of the concept of imminent hazard. The administration says whoever is administering this bill, when he determines that there is an imminent hazard, should

go to the Attorney General and ask him to go to court and get an injunction. S. 983 leaves the matter in the hands of the administrator.

I think that defining the term "imminent hazard" would put the administrator and the Congress in the same frame of mind as to what imminent hazard means. That is why I think it is important.

But to answer your question, we had the situation in our toy safety suit where we asked the Commissioner of the FDA to declare an imminent hazard, and he refused to do it, and we went to court to try to get the court to order the Commissioner to declare an imminent hazard. And who was defending the Commissioner of the FDA but the Attorney General.

So we have seen the opposite. Rather than having confidence that an administrator would ask the Attorney General to go in court and get an injunction on the grounds of imminent hazard, we have seen how it works the other way.

I would much rather see the responsibility left in the administrator. He is the person to whom the public and the Congress ought to look and judge whether or not he is administering this act properly, including whether or not he is willing to use the imminent hazard provision.

No one uses it. Congress debated it for a length of time on the floor, and in committee, and the bill was passed and with an imminent hazard provision. You look back now 2 years later and no one has used the imminent hazard provision; it is just there. It is almost like an atomic weapon—it is too strong.

I don't really believe that its purpose is not to be used. I don't believe that imminent hazard provisions are included so that someone theoretically could write a paper. I think if it is in there, it ought to be used. It should be drafted and conceived in such a way that the man administering this bill ought to administer it with the full understanding that he has an imminent hazard provision and it was put in there so he could use it in the proper case.

Once again, I believe that leaving it in the hands of the administrator is much more likely to get it used than making the administrator ask the Attorney General to take action.

Senator Moss. What findings do you believe are necessary to demonstrate the need for a product safety standard? Do you think this ought to be based on records collected of injuries, or can it be done on engineering data?

Mr. SWANKIN. I think it would be a tragic mistake if the Congress directs the administrator to wait until the bodies are counted before standards can be set. That would be tragic. That would turn the American population into 212 million guinea pigs.

Senator Moss. How important would it be for this safety agency to have its own technical facilities and personnel?

How much can it depend on the outside, how much of its own technical laboratory facilities should it have?

Mr. SWANKIN. I think it is extremely important that it have technical facilities. They just don't exist now. And to hope they will come, to hope some other Federal agency will supply them—this is unnecessarily optimistic. I think the only way to be assured that there will be facilities is to direct that they be built. I don't think that the administrator should be precluded from going outside if he can find

the proper laboratory, or if he can find another Government agency which is willing to take his contract, but to limit him to that would be a big mistake.

Senator Moss. Some of our witnesses strongly opposed placing the safety function in HEW and FDA, due to the poor track record of these two agencies on poison prevention packaging and toy safety.

Do you believe the FDA's failure has been due only to poor leadership?

Mr. SWANKIN. No; I think that institutional factors are partly to blame. The fact of the matter is FDA is one of a number of agencies in HEW. The Secretary and Assistant Secretaries of HEW have a variety of responsibilities, and just the amount of time they have to give to supervision is a problem.

Not only that, when it comes to budget, there is never enough money. And experience has shown, as I said in the last paragraph of the testimony, that consumer matters and consumer safety matters in particular somehow always end up the first ones to be cut.

I think the Heffron report comes to a very balanced conclusion as to why a number of agencies, including FDA, have not been able to fulfill their responsibilities. Inadequate leadership, has been one problem. But inadequate budgets are another.

I think it would help, sure, to have vigorous leaders with a clear willingness and desire to protect the consumer interests running these agencies. But, in spite of these people, many institutional problems will remain.

Senator Moss. The scope of the administration bill does not include products which are subject to regulation under other legislation, while the other bill would not include products to the extent they are subject to duly promulgated regulations under other legislation.

Do you endorse either one of those or neither?

Mr. SWANKIN. I very strongly feel that it would be better to draft the bill that this committee reports out in such a way as to extend jurisdiction to any area where activity is not taking place, rather than to any area where there is authority. I wasn't here yesterday, but I read the newspaper, the news releases, and they indicated some discomfort with the National Bureau of Standards in another field.

I think that to say the jurisdiction of the new agency only ought to reach to where the potential jurisdiction under other laws reaches will leave a very large no-man's-land. Again, you have to look at the record. The fact of the matter is that there have been laws passed by the Congress in the consumer product safety field where enough has not been done; toys, flammable fabrics. It would be much better to create competition.

The criticism is that suddenly there are two different agencies who could be acting under two different laws. Well, that is better than the possibility that neither would act.

Senator Moss. In other words, you think the tent ought to be big enough to bring all consumer safety activities into this agency eventually.

Mr. SWANKIN. Yes; and in the meantime I would rather be faced with the problem of two agencies both trying to regulate and resolve that problem, rather than have the problem of inertia, the lack of anybody doing anything.

Senator Moss. I wonder about financing this new safety agency. You pointed out one of the greatest problems we have had in this consumer field is lack of adequate financing.

If this safety program is placed in HEW, do you think it should receive its budget through the Secretary or directly through the Office of Management and Budget, or perhaps through a tax on consumer products?

Mr. SWANKIN. Well, I haven't really thought through the tax business and I would rather wait than answer that off the top of my head.

With regard to whether or not it would be better, if it were in FDA, to have an independent budget separate and apart from having to go through the Office of the Secretary, clearly I think that would be better. An independent budget wouldn't run into the question of priorities among and between all of the responsibilities of HEW that I mentioned in answer to an earlier question.

If an independent budget was established—I doubt that would ever be—then you would have in effect created an independent agency, whether you called it FDA or anything else.

Senator Moss. I wonder, have you noticed any impact on the number of safety products in the market due simply to the function of the report of the Product Safety Commission? Has the publicity done anything to improve safety?

Mr. SWANKIN. I think it would be improper to answer that yes or no. I think to say that it is a total waste of money to give any publicity to safety is wrong, just as it is wrong to say that publicity by itself is going to get unsafe products off the market or have people use potentially unsafe products in a safe way.

There is a role for publicity, but that is not where the lack is right now. The lack is that there is not a regulatory base. Absent that, I don't think the marketplace will be dramatically affected.

Senator Moss. You are really saying it might have had some temporary effect, but it will soon be dissipated?

Mr. SWANKIN. I would say this. Its impact would be much greater—the role of education and information and publicity makes a lot more sense, in my opinion—when there is a strong regulatory base also at work than when it is working by itself.

Consumer education programs generally are not effective when they exist in a vacuum. They are much more effective when there is some clout behind them.

Senator Moss. We do thank you, Mr. Swankin, for your testimony and your response to the questions.

Senator Cook is unable to be here this morning and he has been attending these hearings very carefully and closely. If he has some questions and submits them in writing, I asume you would be glad to respond to them in writing and we can put them in the record?

Mr. SWANKIN. I would be more than happy to, Senator.

Senator Moss. Thank you very much.

(The appendixes to the statement follow:)

Appendix No. 1

List of Products Designated Not Acceptable For Reasons of Safety By Consumers Union, 1956–1968

Appendix to Statement of Mr. Morris Kaplan

I. GENERAL HOUSEHOLD APPLIANCES

Clothes Washers and Dryers: Clothes Dryers—July 1957 (1) inadequate strain relief; Aug. 1961 (2) exposed terminal.

Electric Fans: July 1956 (3) inadequately guarded blades; June 1959 (1) excessive leakage current; July 1962 (1) inadequately guarded blades; July 1968 (3) inadequately guarded blades.

Electric Heating Pads: Jan. 1960 (22) inadequate strain relief and excessive leakage current; Oct. 1966 (3) excessive leakage current.

Automatic Door Openers (garage): August 1963 (1) pinched wire.

Water Heaters including immersible water heaters: (immersible) (1) Feb. 1963—excessive leakage current; (faucet) (2) June 1963—excessive leakage current.

Also: wringer washers May, 1962—mechanical hazard.

II. KITCHEN APPLIANCES

Ranges: (1) Mar. 1964—exposed terminal; (2) Sept. 1965—exposed terminal; (4) Oct. 1965—exposed terminal.

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Ovens (able-top): (1) Apr. 1959—long terminal pins; (1) Apr. 1959—excessive leakage current.

Electric Frypans & skillets: (2) May 1958 long terminal pins; (1) May 1958 excessive leakage current; (2) Dec. 1958 long terminal pins; (1) Dec. 1958 excessive leakage current; (2) June 1964 excessive leakage current (1) Feb. 1968 excessive leakage current.

Cutlery & Openers (electric knife): (1) May 1967—inadvertent start.

Coffee makers: (3) Jan. 1958—excessive leakage current; (1) Jan. 1958—liquid entering base (leakage current); (1) Dec. 1959—long terminal pins; (5) Dec. 1959—excessive leakage current.

Electric Toasters: (3) May 1956—excessive leakage current; (7) Dec. 1958—excessive leakage current; (4) June 1962—inadequate strain relief.

Electric Steam Irons: (3) Feb. 1967—burn hazard from hot water; (1) Feb 1967—excessive leakage current.

Travel Irons: (1) June 1960—excessive leakage current; (3) June 1960—no thermostat.

Electric Mixers: (4) Nov. 1959—excessive leakage current; (1) Jan. 1967—excessive leakage current.

Electric Blenders: (4) Nov. 1957—liquid entered base (leakage current); (1) Nov. 1960—liquid entered base (leakage current); Nov. 1965—inadvertent start.

Electric Broilers: (6) July 1963—excessive leakage current; (5) July 1963—long terminal pins; (1) Apr. 1965—exposed element; (4) Nov. 1967—excessive leakage current.

Garbage Disposers: (2) Aug. 1959—chunks thrown out; (3) Mar. 1966—chunks thrown out.

Griddles: (1) Dec. 1958—long terminal pins; (2) Dec. 1958—excessive leakage current.

Electric Waffle Irons: (2) Sept. 1957—long terminal pins; (1) Sept. 1957—worn insulation (leakage current).

Steam Cooker: (1) May 1962—liquid entered base (leakage current).

Also—Dish Drier: (1) Sept. 1961—excessive leakage current.

III. SPACE HEATING, COOKING & VENTILATING APPLIANCES

Humidifiers: (1) Jan. 1965—inadequate strain relief; (1) Jan. 1965—exposed terminal.

Vaporizers: (1) Jan. 1959—long terminal pins; (1) Jan. 1959—excessive leakage current; (5) Jan. 1963—excessive leakage current; (1) Jan. 1968—excessive leakage current; (6) Jan. 1968—inadequate strain relief.

Dehumidifiers: (1) July 1961—exposed terminal.

Space heaters: (4) Oct. 1960—excessive leakage current; (1) Oct. 1960—inadequate strain relief; (2) Oct. 1960—failed drape test; (1) Oct. 1965—hot surfaces; (3) Oct. 1965—excessive leakage current; (1) Oct. 1965—exposed terminal.

V. HOME ENTERTAINMENT APPLIANCES AND EQUIPMENT

TV Sets: (2) Feb. 1956—excessive leakage current; (1) Jan. 1959—excessive leakage current; (1) Mar. 1960—excessive leakage current; (1) Jan. 1962—excessive leakage current; (1) Mar. 1962—excessive leakage current; (1) Oct. 1962—excessive leakage current; (1) Nov. 1962—excessive leakage current; (1) Apr. 1963—excessive leakage current; (2) Jan. 1968—X radiation beyond generally accepted limits.

Radios: (2) AM/FM Table Radios Nov. 1956—excessive leakage current; (1) AM Clock Radio June 1958—excessive leakage current; (4) AM Table Radios July 1958—excessive leakage current (when used on house current) (3) AM/FM Table Radios May 1961—excessive leakage current; (5) AM Table Radios Aug. 1961—excessive leakage current; (1) AM Table Radio July 1966—excessive leakage current; (1) AM/FM Table Radio Oct. 1966—excessive leakage current; (1) Clock Radio Sept. 1967—excessive leakage current.

Sound and video recording and reproducing equipment: (7) portable phonos Aug. 1957—excessive leakage current; (2) portable phonos June 1962—excessive leakage; (1) current portable stereo phono June 1967—excessive leakage current.

Also: Hobby Kits, (4) Nov. 1957—excessive leakage current; Radio Kits, (2) Feb. 1959—excessive leakage current.

Intercoms: (1) Sept. 1957—excessive leakage current; (5) Mar. 1962—excessive leakage current.

Stero Amplifiers: (2) Sept. 1962—excessive leakage current.

Electronic Science Kits: (3) Nov. 1962—excessive leakage current.

Stereo Headphones: (4) Oct. 1967—excessive leakage current.

VI. HOME FURNISHINGS, FIXTURES AND CONSTRUCTION MATERIALS

Electric fixtures, wiring devices: Bathroom light fixtures; (1) Apr. 1967—excessive leakage current.

Indoor-Outdoor Carpeting: (1) June 1968—excessively flammable.

Lamps and Accessories (High Intensity Lamps): Aug. 1968 (3) inadequate strain relief; (2) burn nearby surfaces.

Blankets: Oct. 1964—fire hazard.

Carpets: Oct. 1960—fire hazard.

VII. HOME ALARM, ESCAPE AND PROTECTION DEVICES

Fire Extinguishers: Sept. 1968 (2)—sealing wires made pull-pin safeties too difficult for some adults to remove; (5)—design deficiency likely to cause malfunctioning or failure to operate; Apr. 1968 (1)—contains carbon tetrachloride.

VIII. HOME WORKSHOP APPARATUS, TOOLS AND ATTACHMENTS

Radial Arm Saws: (2) Nov. 1962—could be started inadvertently.

Saber Saws: (1) Sept. 1967—may start inadvertently.

Electric Drills: (3) July 1966—pinched wire.

Electric Sanders: (2) May 1959—excessive leakage current.

Soldering Guns and Irons: (4) Jan. 1967—excessive leakage current.

(Auto) Battery charges: (2) Nov. 1966—excessive leakage current.

Electric Drill attachments: (4) Feb. 1961—no guard under blade.

IX. HOME AND FAMILY MAINTENANCE PRODUCTS

Cleaning agents and compounds: Oven Cleaners: Aug. 1963 (2)—pressurized and alkaline; Sept. 1967 (3)—flammable propellant gas; Feb. 1965 (1)—pressurized and alkaline.

Spot removers: Jan. 1968 (2)—excessive toxicity; (14 excessively flammable.
Also: Masonry waterproofer, Jan. 1964—flammable.
Room Deodorizers: June 1968 (2)—no fire hazard warning.
Paint Removers: (8)—flammable.

XI. PACKAGING AND CONTAINERS FOR HOUSEHOLD PRODUCTS

Also: Metal wrapped food product: Feb. 1967 (for use in toaster)—excessive leakage current.

XII. SPORTS AND RECREATIONAL EQUIPMENT

Winter sports equipment—Ski Bindings Oct. 1968 (2)—effect of forward weight transfer on the lateral toe release force judged excessively high. (1) could not be made to provide a vertical heel release in CU's tests.
Stationary and Portable Grills—Outdoor grills; June 1961—no grounding provisions.
Choarcoal Igniters: Aug. 1968 (8)—excessive leakage current.
Also: Seat Belt Retractors: (2) Oct. 1966—frayed seat belts.
Seat Belts: May 1956, Feb. 1960 (34) Oct. 1961 (10)—"Other Hazards."

XIII. TOYS

Toy Guns and other toy weapons: June 1966 (1)—deafening gun; Nov. 1968—Zulu gun—stabbing or inhalation hazard.
Games & Kits, including rocketry sets, electric toys and chemistry sets.
Electric toys: Nov. 1964 (2)—hot surfaces; (1)—excessive leakage current; Oct. 1968 (2)—metal casting sets—excessive leakage current and burn and fire hazard: Nov. 1968 (1)—toy oven—sharp metal edges; (1)—toy oven—excessively high temperature; (1)—toy grill—strain relief failed; (5)—corn poppers—shock hazards.
Chemistry sets: Nov. 1965 (4)—inadequate caution labels.
Also: Aug. 1959 Plastic Bag Toy (1)—mechanical hazard; Mar. 1961 Toy Cars—rigid axles; Nov. 1963 Sleds (1)—sharp points; Feb. 1966 Stuffed Toys—sharp eyes; June 1966—eads—poisonous; July 1967—Plastic balloon toy—fire hazard.

XIV. YARD & GARDEN EQUIPMENT

Power mowers of all types: June 1957 (5) high discharge; (3) rearward discharge; July 1960 (19) exposed blade; (6) rearward discharge; (4) high discharge; (2) loose blade; July 1963 (1) high discharge; (5) exposed blade; (9) rearward discharge; June 1965 (4) high discharge; (10) rearward discharge; (5) exposed blade; (5) poor bandle; June 1966 (1) exposed blade; (1) unshielded belt; (1) user in path of discharge.
Other power garden tools—pruning shears June 1967 (4) latches can injure hand.
Trimmers & Edgers: July 1967 (11) product design inherently hazardous (Electric Edges).
Garden Sprayers: July 1966 (2) top may blow off.

XV. NURSERY EQUIPMENT AND SUPPLIES

Blankts (receiving blankets) May '64—fire hazard.
Bottle warmers: Feb. '67 (8)—excessive leakage current.

XVI. PERSONAL USE ITEMS

Hair Dryers: Nov. 1963 (1)—excessive leakage current.
Also: Electric Toothbrushes: May 1962 (1)—excessive leakage current; Aug. 1962 (1)—excessive leakage current.
Bubble Bath: Aug. 1965—body irritation.
Shampoos: Oct. 1968 (1)—extreme eye irritation.
Facial Sauna: May 1967 (1)—excessive leakage current.
Slip preventative: Sept. 1965 (1)—corrosive chemical.

APPENDIX No. 2

IST OF PRODUCTS MENTIONED IN CONSUMER REPORTS WHERE SAFETY HAZARD IDENTIFIED, 1969–APRIL 1971

Date	Place	Product	Brand
1. February 1969	Once over, p. 60	Seat belts	U.S. Safety Weave Co., Riviera and Le Mans models.
2. February 1969	Box, p. 74	Toys	Gifts from museums.
3. February 1969	Article, pp. 90–94	Portable electric circular saws.	Electro, Wards, Stanley, G.E., Black & Decker.
4. May 1969	Once over, p. 239	Cribs	Pride & Trimble, model 654.
5. May 1969	Article, pp. 241–246	Coffee makers	G.E. CU2, Sunbeam AP 45A, Wards Signature, West Bend 13525, Hamilton Beach 21 CM, Royal Hallmark 5835.
6. June 1969	Once over, p. 296	Electric bug killers	Howe Electronic Exterminator Lamp, Electrapest Insect Destroyer, Sears Cat. 1478.
7. June 1969	P. 298	Egg Cooker	Egg-A-Matic.
8. June 1969	Follow-up, p. 299	Toys	Batman Cave Tunnel, Jungle Book Tunnel, Lollipop Red Funny Tunnel Play Tunnels.
9. June 1969	Article, pp. 306–316	Boats	Crestliner Buccaneer 16, Starcraft Jupiter V, Starcraft Polaris 16, Thompson Sandpiper GV 160, Thunderbird Ute, Winner Shalimar 726.
10. July 1969	Article, pp. 372–379	Power mower	Sunbeam, GM 2022B, Pincor 7HSQ.
11. September 1969	Article pp. 523–529	Clothes dryers	Frigidaire, Philco, Wards.
12. September 1969	Article, pp. 537–540	Tent heaters	Hot-tar Heater Stove 3600, Paulin 630100, Primus Weekender 2129.
13. October 1969	Article, pp. 596–600	Electric room heaters	Air King HF4, Arvin 37H25, Fresh'nd-Aire H3201, G.E. H10, Hunter 33346, Manning Bowman 32522, Markel 228T, Presto H13 Thermador DRA161, Tropic-Aire 32122, Wards Signature 47121.
14. October 1969	Article, pp. 601–603	Wringer washing machines.	Philco ,Maytag, Blackstone.
15. November 1969	Once Over, p. 620	Toys	Hot wheels, Mattel Super Charger.
16. November 1969	Article, pp. 664–666	Hotplates	Liberty 452, Liberty 7T2, Dominion 1455, Knapp-Monarch 14–515, Sears Kenmore 6808, Toastmaster 6402.
17. March 1970	Once over, p. 132	Toys	Rubber Hedge Hog (Creative Playthings).
18. March 1970	Article, pp. 136–142	Hair setters	Curlatron-Delightful, Lady Norelco HC 4000/20.
19. April 1970	Article, pp. 256–259	Medical devices	Relaxicizar.
20. September 1970	Article, pp. 532–538	Portable washers	Naxonette T9.
21. October 1970	Article, pp. 586–589	Electric scissors	
22. November 1970	Once over, pp. 628–629	Toys	Wasp Cap Gun, Marksman Ring Darts.
23. November 1970	Article, pp. 659–662	Home intercoms	Fanon FIW2, Fanon Echo EW3A, Lafayette 46237, Lafayette 45734, Midland 13222, Sears 3422, Sears 3404.
24. March 1971	Once over, p. 132	Toys	Official Nerf Ball (Parker Bros).
25. April 1971	Article, pp. 238–241	Blankets	

Senator Moss. The next witness is Dr. Bergman, from Seattle.

Doctor, we are glad to have you.

Dr. Bergman is with the Children's Orthopedic Hospital, Seattle, Wash.

Doctor, you have been before us previously, and we welcome you back.

STATEMENT OF DR. A. B. BERGMAN, CHILDREN'S ORTHOPEDIC HOSPITAL, SEATTLE, WASH.

Dr. BERGMAN. Mr. Chairman, I am Abraham B. Bergman, M.D., a physician specializing in the care of children. I am director of outpatient services at Children's Orthopedic Hospital and Medical Center and associate professor of pediatrics and health services at the University of Washington in Seattle. I am a consumer member on the National Advisory Committee for the Flammable Fabrics Act.

This is the third time that I have appeared before this committee testifying about flammable fabrics legislation. The first time was in

May of 1967 in support of the Flammable Fabrics Act amendments. Many individuals and groups have labored hard through the years for legislation which might reduce the incidence and severity of burn injuries associated with flammable fabrics. It was a great thrill, therefore, for me to see that those amendments passed Congress with strong bipartisan support and to witness the signing ceremony at the White House in December of 1967. A year ago, I appeared before you again to report on the bureaucratic bungling and inertia that was scuttling the Flammable Fabrics Act. Now, 4 years later, the story is unchanged. Not a single life has been saved, not a single burn injury has been ameliorated nor has a single iota of pain or disfigurement been reduced as a result of the Flammable Fabrics Act.

The failure of the Flammable Fabrics Act represents a cynical disregard of the legislative branch of our Government. The same administration that piously preaches about respect for the law, chooses to pick and choose which laws will be enforced and which shall be ignored. One concludes that there is one form of law for the American consumer and another form of law for large corporations with batteries of highly paid lobbyists who prowl the corridors of Washington, D.C. In this case, since human lives are involved rather than just money, failure to implement the Flammable Fabrics Act amendments as Congress mandated constitutes a crime of the highest order.

I won't reiterate all of the arguments that lead to the passage of the flammable fabrics amendments in 1967. I'll simply say that fabric burn injuries are a serious problem especially to young children and the aged; not only fools get burned, and that reputable companies state that it is technically feasible to treat fabrics with flame retardant chemicals.

Senator Moss. We had a witness who said the problem was with the child who lit matches and was burned up in his nightgown and that it was not the fault of the fabric. Instead, the fault was with the parent because they shouldn't have had any matches in the house and they shouldn't have allowed the child to find the matches.

What is the answer to that?

Dr. BERGMAN. Senator Moss, I would like that witness to join me when I talk with a burned child or his parents. I wonder if he would tell them the same thing, I doubt it.

Senator Moss. Thank you.

Dr. BERGMAN. An estimated 2 million persons are burned each year serious enough to require medical attention or to restrict their activities. About 100,000 per year require hospitalization. There are approximately 9,000 deaths a year in the United States involving fires of which about 3,000 involve the ignition of clothing. Ignition of clothing is involved in about 150,000 burn injuries every year. Burns involving clothing ignition are usually much more severe than other types. I'm sure this story is very familiar to the members of this committee.

The costs of the burn injury problem in the United States are enormous. These include the cost of long hospitalization, repeated operations, loss of work productivity, and lifelong psychological damage from scarring in victims who do manage to survive. What price can be put on the pain and suffering or on the lives of those who die? It was in response to these staggering statistics that the Flammable Fabrics Act amendments were passed in 1967.

The Flammable Fabrics Act has failed because the Department of Commerce, which has responsibility for setting flammability standards, has simply placed a higher premium on the economic welfare of the textile industry in the United States than the lives of burn injury victims.

The arguments of that industry have not changed one bit in the last 10 years. They continue to cry that treating children's clothing with a flame retardent finish is technically unfeasible, would ruin the feel of the cloth, and would never be accepted by consumers. Furthermore, while they cluck cluck sympathetically when they hear about cases of flammable fabric injury, they mutter about such things as carelessness and negligence. Their prescription for reducing burn injuries is simply more safety education. This is a timeworn and ineffective precept that makes consumers and their little children out to be fools. The real education that is needed is for one of the textile industry spokesmen to have to face the parents of the little child whose dress caught on fire when she backed up against a space heater. That might be a whole lot more effective than a host of laws passed by Congress. The textile industry managed to come up with Durapress fabric and Scotchguard because they sell better. The auto industry, after it has its arm twisted by this committee, did not find that they lost any money through producing or advertising the safety features of their product. I can't shed too many tears, therefore, for the textile industry of the United States if they are obliged to produce clothing that doesn't turn into a torch when it comes in contact with an open flame.

There have been a few rays of light in the dismal story of the Flammable Fabrics Act legislation. I would like to pay tribute to Dr. Myron Tribus, former Assistant Secretary of Commerce for Science and Technology. He was a fine scientists who was truly interested in implementing the Flammable Fabrics Act. His most notable achievement was to increase the scientific capability of the National Bureau of Standards where some excellent work is taking place on the technical aspects of flammability testing. Dr. Tribus resigned last year and with him went the last vestiges of high level interest in the Commerce Department for actively carrying out the responsibilities of the law.

I have had a hard time figuring out the purposes of the Flammable Fabrics Advisory Committee. We haven't met since November. It's been a grand opportunity to meet a lot of different people and to listen to interesting debates. The members all represent some sort of constituency I suppose. I've learned a great deal about the great American textile industry, above all not to lump them as a unified group. For instance, it was instructive to hear the representative of the cotton council speak against strict flammability standards on children's nightwear, but make a passionate appeal for stricter standards for mattresses. A representative of the makers of synthetic fibers expressed exactly opposite views. There's nothing wrong, of course, in constantly trying to seek an advantage over one's competitor. The problem is that I don't think the American taxpayer should have to pay for me and my colleagues to fly across the country to indulge ourselves in such goings on. I fact, I am skeptical about most of the advisory committees that exist at public expense in the Federal Government. I believe that any administrator worth his salt will seek ad-

vice whenever he needs it from persons whom he respects. Official advisory committees as they are now constituted appear to be mainly window dressing to rubber stamp the action of program administrators. If Congress wishes to check up on how programs are running, you should hire your own investigators.

If the Department of Commerce is the primary villain in the story of the Flammable Fabrics Act, a close second for shoddy performance must be given to the Department of Health, Education, and Welfare. That agency has the responsibility under the law to "conduct a continuing study and investigation of the deaths, injuries, and economic losses resulting from accidental burning of products, fabrics, or related materials." In other words, HEW is supposed to furnish the Department of Commerce with authoritative information about how frequent different types of injuries occur and the relationship of the fabric fire to the injury.

Responsibility within HEW was given to the FDA. It took 5 years for HEW to study a total of 460 cases and the quality of the data on those 460 cases was of such questionable value that much of it could not be utilized to draw meaningful conclusions.

Investigation of injuries requires skilled personnel who take their job seriously. For the most part, FDA relied on its own field personnel who were good at tracing down contaminated food or mislabeled drugs, but not in scientific investigation of burn injuries.

In the past few months there have been signs that FDA is at least going to make an effort to perform competent investigations on product injuries by bringing in some skilled investigators. I fear, however, that the prime interests of the agency are so directed toward other fields that scientific research into product related injuries will never achieve adequate support.

Actually the Department of HEW has never paid much attention at all to preventive medicine. Their handling of accident research is an unhappy illustration.

Accidental injuries account for approximately 105,000 deaths per year in the United States. Throughout school, early work years, and early days of marriage, a person in the United States is more likely to die from an accident than from any other cause, and throughout life as a whole, accidents are outranked as a cause of death only by the cardiovascular diseases and by cancer.

One person in four in the United States annually suffers an injury of sufficient severity to require medical care or to cause at least 1 day restriction of activity. An estimated $16 billion per year is spent in the United States as a result of injuries involving medical and hospital costs, lost days of work or school, and property damage. This adds up to an average cost of about $80 for every man, woman, and child in the country. The accident victim is the largest user of our general hospital beds, tying up 2 million for an estimated 20 million bed days per year. About 80,000 man-years are spent yearly applying the scarce skills of medical and paramedical personnel to victims of accidental injury.

It has been estimated that by effective application of existing knowledge, 40 percent of accidental injuries could be prevented, resulting in a savings of 40,000 lives, 20 million injuries and $6½ billion per year. Application of cost effectiveness analytical procedures have

shown that injury control activities result in higher ratios of benefit than any other health programs so measured. Existing knowledge in modification of environment, the redesign of hazardous products and education and code enforcement to bring about reasonable changes in human behavior can be utilized.

Given the potential of injury control, the paucity of effort along these lines is startling and discouraging. Injury control and research is simply "not fashionable" in scientific circles. There are only a few scientists capable of conducting research on injuries, nor is there much interest in scientific institutions in preparing individuals for such work. Little or no teaching on injuries takes place in schools of medicine other than some learning on how to cope with their results. Few individuals working in public health are involved in injury control. A partial explanation for this dismal picture lies in the fact that there is no powerful lay lobby highlighting the injury problem before the American people.

There are few uncoordinated injury programs scattered throughout HEW, none of them adequately funded. There are absolutely no grant or contract funds available for new accident prevention projects, and the very few scientists who were receiving support for injury research training have either had their grants reduced or abolished.

Actually, there was a good accident prevention program put together in the Public Health Service from 1961 through 1966, but support headed downhill since then. The real death knell to the program came in 1968 when the injury control program, as it was then called, was split down the middle. Responsibility for product injuries was given to the FDA; the Environmental Health Service supposedly took care of home and other types of injuries. This may have looked good on some bureaucrats' organization chart—they like those charts with boxes back here in Washington, D.C., but there were live human beings involved. In other words, if you broke your hip in a fall at home, you were studied by one agency; if your toes were chopped off by a power lawnmower, you belonged to another box. A good team was broken up; morale was shattered. Where are other fragments? There is a spinal cord injury program, and a head injury research program in one institute out at NIH, and there is a trauma research program in yet another institute. Emergency health services are lodged in the Health Services and Mental Health Administration, and the poison control division, with absolutely no budget for research, is off in some cubbyhole in the FDA.

A thorough study of injury control and emergency health services was conducted last year by a special steering committee to which I was a consultant. The final report was issued in June of 1970, with a copy forwarded to this committee. The steering committee recommended the pulling together of department programs into an integrated center for injury control and emergency health services. When Surg. Gen. Jesse Steinfeld testified to the Appropriations Committee last year on August 6, 1970, he was closely questioned by the chairman on this report. He assured the committee that the Department was in the process of implementing the report and establishing an appropriate center for injury control and emergency health services. Not only was the plan shelved; the report itself was never made public.

Mr. Chairman, since the Department of HEW has responded with one big yawn to the problem of the prevention of accidents, Congress must again show the way in the health field. Ever since the late 1930's, when the distinguished chairman of this full committee, Senator Magnuson, introduced legislation to create the National Cancer Institute, Congress has had to provide leadership in the health field. Fortunately, this has been with broad bipartisan support in both Houses and usually against a molasses attitude on the part of whichever administration was in power. I urge you to again take the initiative with this product safety legislation to create an accident prevention center within the Department of HEW. The Department should concentrate all programs concerned with accident prevention and emergency health services into a single administrative unit. The cornerstone of this program should be a nationwide epidemiological surveillance network monitoring all types of accidents. Even though you are considering product safety legislation. I would urge that this injury control center not be restricted to product-related injuries but to the whole field of accidents. This is because the scientific methods of studying accidents are similar, no matter what the agent. Currently, we have unnecessary bureaucratic waste and dilution of scientific thrust by the separation of product-related injuries in the FDA and other injuries in HSMHA.

Although I very much favor the provisions of S. 983 to create a new independent agency, I feel that the center I am proposing for accident prevention and emergency health services should be lodged within the Department of HEW. This is because the main focus of the center should be on scientific research similar to one of the Institutes of Health. The center should not be engaged in regulatory activity.

A commitment must be made to a broad attack on prevention of injuries in the United States. To do this we must increase our scientific capacity. Students in the field of medicine, engineering, psychology and other disciplines must be trained to conduct injury research. There should be close links with our universities in order to obtain creative ideas and skilled manpower.

Let me give you an example of the type of scientific research that is required for the prevention of burn injuries. A research team under my direction currently investigates all fabric burn injuries in the Seattle area. We reconstruct each case with the aid of photographs, analyzing the behavior of the accident victim, his environment, as well as the characteristics of the fabric and ignition source. This type of analytic technique must be directed to all types of injury if we are to find appropriate points of intervention so that injury can be prevented or minimized.

It is my feeling that sooner or later virtually all consumer safety legislation passed in the last decade will be tested in courts of law. We can no longer rely on testimonials or isolated newspaper reports to gage the seriousness of injury problems. Our case must be impeccable. A scientifically sound nationwide epidemiologic surveillance system would provide immediate information about trends in accident, alert us when dangerous new products come on the market, and test the efficacy of new prevention techniques.

Certainly the new product safety commission should be able to draw upon the information developed by the accident prevention center

just as any other private or public agency would utilize its resources. On the other hand, to saddle an agency whose primary role is regulation with a scientific mission will be a sure way to cripple the effort of the latter before it begins.

Mr. Chairman, I shall conclude by relating a personal problem in the field of consumer protection. Part of my duty at Children's Hospital in Seattle is to oversee the operations of a poison control information center that handles approximately 80 calls per day. A news reporter, Mr. Clarence Hein, at one of our local television stations, KOMO–TV, called me last week to ask about the toxicity of a new dishwashing powder, Palmolive Crystal Clear, that was shortly to be distributed in our area. The television station had been contacted about promotion of the product. Mr. Hein, who is a concerned father as well as an excellent news reporter, became concerned when he saw the package, an attractive milk carton with an extremely pleasant lemon scent.

This package, which I have before me, is said to be a convenient new package. However, there is an ominous warning on the bottom stating that it should be kept out of the reach of children and that it is harmful if swallowed or comes in contact with the eyes. We had no information about this product in our poison information center and neither did the National Poison Clearing House in Washington, D.C. It is not yet on the market. When Mr. Hein called the Colgate Co. in New York and asked about toxicity, he was told not to worry about it because the company would not market a product that was toxic to children.

Having no other information, I had the product tested in our chemistry laboratory at the hospital 2 days ago and found that a 1-percent solution had a pH of 11.7. This means that the product is highly alkaline and that if a child places some of the powder in his mouth and swallowed it, he could be critically burned.

Now Congress has passed two major consumer protection bills concerned with poisoning, the Child Protection Act of 1966 and the Poison Prevention Packaging Act of 1970. When I called an official at the FDA in Washington, D.C. about stopping this product from getting on the market he told me that if it was labeled adequately there was probably nothing that could be done. We evidently must sacrifice an unknown number of American children before anyone will take action. I have heard about contempt of Congress citations. Can there be any more blatant case?

In conclusion, the Congress of the United States, thanks to the leadership of this committee and with the support of both political parties, has clearly compiled a bill of rights for American consumers through a series of bold and imaginative laws. These laws have been signed by our Presidents and then been promptly filed away in the bottom drawers of program administrators. It will not do any good to pass more consumer protection legislation until Congress creates a suitable agency that will respect the laws of the land.

Thank you for the privilege of appearing before you.

Senator Moss. Thank you very much, Dr. Bergman. Your testimony is certainly pointed and although a little pessimistic with respect to whether we can accomplish anything by passing laws, you do say that we ought to have some kind of a suitable agency that could go into action.

I must say that you have come up with a shocking one on this dishwasher powder. I suppose that we ought to educate the 3-year-old children to read that warning on the bottom and then they wouldn't drink anything out of this package, or put anything in their mouth.

I am just amazed, really. I see from the warning on here it says that it is, "Harmful if swallowed. If swallowed, drink milk and water. In case of contact with eyes, flush thoroughly. Consult physician. Keep out of children's reach."

Dr. BERGMAN. Mr. Chairman, when the consumer product specialist of our TV station in Seattle, Mrs. Katherine Wise, first saw this carton, she said, "Oh, a new drink for the family."

Senator MOSS. It looks a little bit like lemonade; the color and shape of the box.

Well, your testimony is always very provocative and certainly puts the finger on many points of failure and lack of effort, perhaps, to go ahead and do what we ought to be doing in this field of safety.

You talked about the failure, of course, to get appropriations, and I know that you have had some experience in observing this process. I wonder in your surveillence program as well as in the product safety agency, how do you suppose we can get the money we need?

How can we convince the appropriators of the Congress to come through with the money?

Dr. BERGMAN. Well, I think that the distinguished chairman of the full committee has something to say about this as far as the Department of HEW is concerned.

The problem is that HEW Appropriations Subcommittee has repeatedly asked the Department to please do something in the field of accident prevention. The chairman has written several letters. But Congress cannot administer the programs. It seems astounding that in an area which should not be contentious that the Department should simply ignore the problem of injuries as if it doesn't exist. The payoff, if one puts money into injury and accident prevention, in terms of lives saved, is probably going to be greater than research into practically any other disease.

The problem really is that there is no lay lobby that is pushing accident research. Many accident victims are poor, and they have been made to feel as if they are dumb. They don't form into national societies, to seek appropriations. For better or worse, funds for research on particular diseases bear some relationship to the strength of their lay backers.

Senator MOSS. Well, there are problems of course. You have to have a budget recommendation in the first place from the Office of Budget and Management, and in the second place, if Congress tends to overload that budget by appropriating more than asked—we have had two vetoes of the HEW bills in just the past 2 years.

So there is a problem there.

Then as you point out, perhaps the money isn't the most critical thing. Rather it is the inertia, not go ahead and do with what we do have, even if the appropriation might be smaller than it should be.

In this injury suveillence center, how would you prevent its concentrating on one particular area? You talked about the fragmentation. How would you keep that focused across the board?

Dr. BERGMAN. I don't want to use the term "new institute" because that conjures up all kinds of administrators and desks and pencils, and filing cabinets to me. But the center is operating like one of the institutes of health with a scientific orientation. It means budget for contracts and research grants.

Unfortunately there is so much inertia. Injury research is not considered fashionable in medical circles. The center must act as a catalyst. Were the few people that are interested in injury research brought together, a critical mass would be achieved.

Senator MOSS. Perhaps one final question. Is there any reason for limiting the flammability standard to children's sleepwear? Isn't there a need for a standard for more articles of clothing other than sleepwear?

Dr. BERGMAN. Absolutely, Mr. Chairman. And actually the first time the National Advisory Committee for the Flammable Fabrics Act met, we recommended concentration on children's clothing. Even the representatives of the manufacturers concurred on this emphasis. And yet the delays and delays have been interminable.

Another area of disappointment is delay in issuing standards for mattresses. About 20 percent of the deaths in flammable fabrics are due to mattress fires. There is no argument that it is technically possible to produce flame retardant mattresses. For the life of me, I don't know what we are waiting for.

Senator MOSS. They want to use up the stocks that are on hand, perhaps.

Dr. BERGMAN. Even so, in the provisions of the law there is a 1- or 2-year waiting period, even after the standard is promulgated.

Senator MOSS. Well, I certainly appreciate your testimony and your sense of urgency.

If there is anything we need to convey, it is your sense or urgency of the problem, and we want to deal with it as intelligently as we can. So we appreciate your coming to be with us again, and we look forward to seeing you again, although we hope we don't have to send for you very soon.

Dr. BERGMAN. Thank you, sir.

Senator MOSS. Our next witness will be Mr. Stevens, and Congressman Hanley, from New York, is here to introduce Mr. Stevens, who will be our next witness.

STATEMENT OF HON. JAMES M. HANLEY, U.S. REPRESENTATIVE FROM NEW YORK

Mr. HANLEY. Mr. Chairman, I am most grateful for your accommodation this morning, and I would be remiss if I did not commend you and your committee for having initiated these hearings on this most important legislation.

Certainly the ultimate of it all will produce better consumer products and hopefully assure the safety aspects of it. As we review the history of the issue, I think it is an activity that is long overdue.

Senator MOSS. Thank you, Congressman Hanley. We appreciate your cooperation and help in this field very much.

Mr. HANLEY. Thank you, Mr. Chairman.

With that, it is a great pleasure to introduce one whom I regard as having very special expertise in the field of industrial design, and he is recognized nationally by that fraternity for this expertise.

He is chairman of the Safety Committee of the Industrial Designers Society of America, and along with him is Mr. Charles Mandelstam, who is counsel for the society.

So with that, it is a pleasure to introduce to you and the committee Mr. Philip H. Stevens and his associate, Mr. Mandelstam.

Senator Moss. Welcome, gentlemen. We appreciate having you before the committee and look forward to your testimony.

Thank you very much, Congressman Hanley.

STATEMENT OF PHILIP H. STEVENS, CHAIRMAN, SAFETY COMMITTEE, INDUSTRIAL DESIGNERS SOCIETY OF AMERICA, NEW YORK, N.Y.; ACCOMPANIED BY CHARLES MANDELSTAM, GENERAL COUNSEL

Mr. STEVENS. Mr. Chairman and committee members, I am Philip Stevens, safety committee chairman of the Industrial Designers Society of America (IDSA). Beside me is Charles Mandelstam, the counsel for our society. Before commenting on the legislation before this committee, I would like to take a few moments to describe IDSA, in order to give this committee some context in which it may evaluate our position. This statement represents the consensus of our Safety Committee, and has the approval and endorsement of the President and Vice President of the society.

The society is a nonprofit professional organization established for the purpose of maintaining high standards of professional competence and integrity in the field of industrial design. Since it is national in scope and is the only such organization of designers in the United States, it serves as spokesman for the industrial design profession in this country.

IDSA includes both independent design consultants and staff designers of corporations. The basic requirement for membership is that candidates must have carried major responsibility in mass-market design projects which involved the integration of aesthetic technological, and human factors. Such projects include product and product system design, packaging, corporate graphics, exhibits, space planning, and environmental design. We have designers in most of the major industries of the United States, working closely both with other technical specialists and with administrative decisionmakers.

Participation in the area of safety by our society goes back many years. In 1967 this interest culminated in the formation of the Society's Safety Committee. Since that time substantial efforts have been made to intensify concern for safety factors among both practicing and student designers. We have concentrated on such approaches as:

(1) Encouraging design schools to become more involved in teaching safety and human factors.

(2) Contributing to public awareness of problems of safety, and encouraging members of our society to involve themselves in safety oriented activities, locally and nationally.

(3) Promoting awareness of safety problems by designers, and developing concrete applications helpful in responsible practice: the Society's membership has ratified a statement of its principles on safety. In addition, the Safety Committee is currently developing a detailed safety manual for use by anyone engaged in product development.

(4) Working with other professional societies in the area of safety.

I was invited before you today to represent the society and express its position on Safety Bill S. 983 and S. 1797, and I proceed now with some comments and our general conclusion regarding these bills.

Considering the issue abstractly, the Society's Safety Committee favors S. 983. Aspects of special interest in this bill are commented on below. However, if practical considerations as to ease and economy of implementation (or more strictly political concerns) are seen by Congress to favor S. 1797, we would find the latter bill acceptable and support it. Though less than ideal, it incorporates several of the important features of S. 983.

As for S. 983, we noted especially the following sections:

SEC. 3. The concept of a commission created to minimize political influence is probably the most outstanding feature of this bill. The idea of spreading the responsibility over a group of commissioners concerned with safety seems wiser than confining it to a department already burdened with many diverse responsibilities.

SEC. 4. We feel that the public needs an independent advocate in the specific area of consumer safety. This is one way to counter the lethargic and impersonal aspects of bureaucratic structures, and to make the Government more responsive to the problems of the people.

SEC. 5. An independent Injury Information Clearinghouse at the Federal level is essential to a fair and thorough evaluation of possibly hazardous products, and of great value to an intelligent approach to designing new and safer products (see also comment on sec. 11, below). As various kinds of national information systems increase, this should not be as expensive as it might first appear; in any event, the social and human benefits would more than justify it. Publication of data on accidents in the Federal Register should help to develop public support for the Commission and its objectives.

We have one reservation concerning this section, however, in 5(c), 2 and in 5(g), the activities and purposes of the Commission should be more explicitly limited to the area of SAFETY in design.

SEC. 6. We commend the emphasis on developing priorities for action, from a periodic review of data.

SEC. 11. The design of new products to meet consumer needs and interests is a serious and complex responsibility. Development by the Commission, as proposed, of safety standards and of evaluation procedures for new products could make an important contribution to this enterprise.

SEC. 14. We strongly endorse the idea that the Commission be empowered to ban hazardous consumer products. While such action may be contrary to the interests of certain companies at times, the benefits to the public make us wholeheartedly favor this aspect of the legislation. In fact, the possibility of such action being taken against industry should improve the climate for the design and manufacture of safer

products. A company aware that its products could be banned after manufacture will be more receptive the society believes, to the utilization of good design and a safety-conscious approach right from the start. Industrial designers have sometimes objected to a manufacturer's proposal about a product for reasons of safety, only to be met with resistance on the grounds that a change would be too costly. This legislation would make such situations less common.

SEC. 15. We approve the concept of an advisory council, drawing on persons of varied backgrounds, to assist and consult to the Commission. We see some advantage in extending the number on such a council from 15 to 20, with the additional members contributing further technical expertise (design, engineering, human factors psychology, et cetera) in aspects of product safety.

SEC. 19(a). The idea that this Commission hold hearings concerning the safety of consumer products is very sound. The hearings of the National Commission on Products Safety attracted nationwide interest and certainly brought home the idea that the Government is concerned about the welfare and safety of its citizens. We strongly endorse this feature of the bill.

We recognize, as I stated above, that not all of these features are wholly unique to S. 983, and that the other bill before you, S. 1797, might be preferred if judged easier to implement and administer. Passage of either bill could greatly improve the welfare of the consumer users of our products.

Mr. Chairman, the Industrial Designers Society of America appreciates this opportunity to present its views on this legislation. Mr. Mandelstam and I will be pleased to answer any questions you may have.

Senator Moss. Thank you very much, Mr. Stevens, for presenting your views to this committee. I think it is a tribute to you and your society and your profession that you have taken the initiative to travel here to communicate your views on important consumer safety legislation. Your members are the men responsible for the design of our products which are intended for mass distribution, and it is important that they support our efforts in creating a safer marketplace. I think you have given us a very excellent statement.

Mr. Stevens, unlike S. 983, S. 1797 does not contain a provision empowering the Secretary to construct his own technological facilities for product testing and research. How important do you consider it to be for a product safety agency to maintain its own laboratories?

Mr. STEVENS. Mr. Chairman, I think that is an excellent question. I think frankly this would be my personal feeling on this, that I would like to see the work done, I would like to see it perhaps subcontracted out to other organizations.

I don't think we necessarily have to spend a great deal of money to build a great big laboratory and develop sophisticated test facilities.

For example, we have many defense industries at the present time which need work. I would think to subcontract this work to them, would be a great opportunity.

Senator Moss. Do you think it would be satisfactory if it contracted out all of its laboratory work then and didn't maintain any facilities at all?

Mr. STEVENS. No; I think there are some assignments that a commission, council, or perhaps the advocate might find reasonable to keep in-house. We have the Bureau of Standards which I believe does this sort of thing, and they could assist us.

Senator Moss. I take it you would favor a flexibility of using facilities, both private and other governmental, but perhaps have some capacity for checking within the agency itself?

Mr. STEVENS. Correct.

Senator Moss. In its final report, the National Commission on Product Safety concluded that the consensus principle in developing voluntary industry standards is not effective for elevating safety standards, and it permits the least responsible segments of the industry to retard progress by reducing the standards to reduce hazards.

Does your experience in this area concur with this conclusion of the National Product Safety Council?

Mr. STEVENS. Well, I think you must understand in my own personal day-to-day work I don't become terribly involved in following standards or working with various agencies following standard procedures. However, I am sure what you said is true. The simple fact that when you give industry the opportunity to police itself, the standards can't help but drop to the bottom denominator. This has been proven over and over. So we think the recommendations of the National Commission on Product Safety to the establishment of standards is sound and we support it.

Mr. MANDELSTAM. Let me interject here. We see that ourselves. As counsel for the society, from time to time I have to advise members on how far they can push a client with respect to a product, safety factor in a product, and they ask me what is their responsibility if the product is not safe, and a suit is brought, that is my connection to it.

One sees again and again the pressure against a safety improvement factor. It may just be inherent in the system of distribution that we have in this country. It may be too much to expect industry to police itself. And we are therefore very much in favor of doing it the way this bill does it.

Senator Moss. The competitive factor in industry on the price level tends to seek the lowest cost factor in production, which causes them, perhaps, to skimp on the safety area. Is that what you are saying?

Mr. MANDELSTAM. Yes; I think that is right.

Senator Moss. As design engineers, are you utilizing the risk analysis in the design of consumer products somewhat as they do in the aerospace industry?

Mr. STEVENS. Many of our designers have worked in the aerospace industry. In product development we use any type of technique to solve safety and human factor design problems.

You must understand, however, that many of our clients, and I am speaking for the society as a whole; and the members of the profession, that we don't have the facilities, or the money, to use sophisticated techniques that are used in the aerospace industry. We just can't do it. We have to rely on the other techniques we were taught to use in school.

As I mentioned in our presentation here, one of the things we are trying to do is upgrade the quality of our schools.

So the answer to your question is no.

Senator Moss. Thank you. One final question: You state in your testimony that one of the strongest points in S. 983 is that it creates an independent commission for product safety, which is more apt to minimize political influence than placing the program in HEW.

Do you blame FDA's susceptibility to political influence in HEW to be the primary cause for its failure to effectively administer such legislation as has been delegated to it?

Mr. STEVENS. I have not studied HEW, and I don't know their problems that well. I would like to disqualify my comments in relation to that Department.

However, we can't help but realize that in our political system any time that politics can enter a situation it just seems as though it does. Our professional society feels that safety cannot be compromised by politics. The way S. 1797 is established, it looks as though it could very readily be susceptible to political pressure and that can be very damaging to our citizens. We don't think this compromise should be tolerated.

We feel that the National Commission on Product Safety did a thorough and comprehensive job and they knew what they were doing when they proposed the commission concept.

Senator Moss. We certainly do thank you, Mr. Stevens, and Mr. Mandelstam, for coming here and testifying on behalf of the Industrial Designers Society. Your testimony has been very helpful and we are certainly pleased to have it in our record.

Thank you very much.

We will now hear from Mr. Walter S. Lewis, Jr., who is representing the Gas Appliance Manfacturers Association. Mr. Lewis is general counsel, Rheem Manufacturing Co.

We are glad to have you, sir, and to hear from the Gas Appliance Manufacturers.

STATEMENT OF WALTER S. LEWIS, JR., GENERAL COUNSEL, RHEEM MANUFACTURING CO., REPRESENTING GAS APPLIANCE MANUFACTURERS ASSOCIATION, INC., NEW YORK, N.Y.

Mr. LEWIS. Mr. Chairman and members of the committee, I am Walter S. Lewis, Jr., vice president and general counsel of Rheem Manufacturing Co. In this appearance I am representing over 500 manufacturers who produce more that 90 percent of all the gas appliances and related equipment sold in the United States. The Gas Appliance Manufacturers Association, most frequently referred to as GAMA, has been the voice of the gas appliance industry before Congress for more than 35 years.

Our association works hard in developing the opinions and recommendations it submits to the committees of the Congress. There are serious matters and we take our responsibilities in full recognition of that fact. In the present instance, a committee was formed to study S. 983 and S. 1797 as well as the history leading to their introduction. I was appointed the chairman of the committee. The views developed by the committee were submitted to our board of directors and, after due consideration, have been approved by that board. I mention this

solely to stress that the views I am about to offer are those of an industry, not those of an individual.

Let me say at the outset, that GAMA is vitally interested in the consumer. Consumer are the reason for manufacturing products. Without consumers, there would be no market—no business. Unless consumers are satisfied, business would not succeed. To satisfy a consumer, industry must deliver quality, trouble-free, safe products at competitive prices. A demanding marketplace is a tough taskmaster. Our objective is to measure up to its demands.

The industry I represent has endeavored over the years to design and manufacture good and safe products. Our industry participates with other organizations in the development of safety performance standards. These standards are developed through the American National Standards Institute standards committee method. Upwards of 50 types of gas appliances and equipment are now covered by safety standards so developed. These standards establish more than 1,500 safety specifications. To verify that products meet these standards, our members submit prototypes of these products to the American Gas Association Laboratories, an independent nonprofit testing organization for evaluation.

This testing involves the expenditure by our industry of millions of dollars each year. It is a program initiated by industry and financed by industry. It is a voluntary program. It has made an important contribution to the safety of our products.

GAMA supports the principle of a Federal presence in product safety and believes that appropriate Federal legislation in this area will be in the public interest.

We have before us two different bills, S. 983 and S. 1797, and have considered both carefully. While each bill has commendable features, the principles that I am about to present to you are related to S. 1797 which we would consider to be the better instrument for product safety legislation. I shall submit for the record if you wish a section-by-section analysis of S. 1797 and amendments we believe would improve both bills and result in legislation which in our judgment would be thoroughly constructive.

Senator Moss. We would welcome that if you would submit it.[1]

Mr. Lewis. Thank you, Senator. We will make it a point to do that.

Senator Moss. Thank you.

Mr. Lewis. GAMA recognizes, of course, the vital interest of Government in protecting, through legislation, the health and safety of the public and GAMA believes that in the consumers product safety field this purpose can most effectively be discharged through legislation at the Federal level. However, GAMA is of the view that the national interest would be best served if, upon adoption of Federal product safety requirements the burden on interstate commerce be eliminated which would occur if safety requirements were also implemented in conflicting and diverse ways and perhaps chaotic ways by State and local governmental authorities. The Congress has previously seen fit, with respect to its regulation of safety of another class of products, to afford such vital preemption. GAMA believes that the

[1] See p. 261

extension of the preemption principle to all of the product safety laws is of utmost importance.

In supporting the concept of legislation providing for mandatory product safety standards, we suggest that the need for such standards exists only where voluntary safety standards are nonexistent or where they may be inadequate to protect public health and safety. Where voluntary standards exist, in the vast majority of instances they are providing a level of safety of products compatible with the public interest.

No legislation should curtail the voluntary standards process when it is effectively protecting the public health and safety. Where industry has shown itself capable of self-regulation, we urge that it be permitted to continue in its present pattern. The Federal presence should be held to a minimum and be only that needed to protect the public interest and such presence should not be unduly enlarged.

GAMA recommends that the Department of HEW be given the responsibility for accumulating and disseminating information on product-related injuries, for requisite investigations and it should be provided with funds for this purpose. GAMA further recommends that the Department, utilizing the knowledge of industry in standards-writing and working with representatives of both industry and consumers, should be authorized to develop and promulgate Federal minimum safety standards or other safety orders where its investigations have shown the need for such standards and orders. Under this concept, voluntary standards, if found to be inadequate, would be superseded by any federally promulgated safety standards.

In all cases where it is practicable, a product safety standards should pertain to the safety performance characteristics of the product. Only in those instances where the Department finds that such a standard is not feasible should the product safety standards pertain to the composition or construction of the product.

The imposition of product safety standards will inevitably have an impact on the cost of products which in the ultimate analysis will be borne by the persons who are the users of the proucts. Furthermore, in developing standards other social value criteria judgments will necessarily apply. In the promulgation of safety standards therefore, it is evident that the consideration of facts in the public interest beyond pure questions of safety will be appropriate.

Accordingly, in our view, before any safety standard is promulgated, the Secretary should be required to consider and make appropriate findings for inclusion in his order on all of the factors enumerated below and on such additional factors that might have an effect on the public interest. Such standards and orders should be based on proceedings which are subject to appeal, and to which interested parties are accorded a fair notice and a reasonable opportunity to participate. The factors which should be taken into account are:

1. That voluntary standards do not exist or are not effective.

2. That the risk cannot satisfactorily be controlled by warnings or other techniques.

3. That frequency and causes of deaths, or the frequency, severity, and causes of illness or injuries make the standard necessary.

4. That the existing state of the art in the industry makes the proposed standard practicable.

5. That there are practicable testing techniques to determine whether a product complies with a proposed standard.

6. That the standard applies to the safety performance characteristics of the product and not to its composition or construction or, if not, that a standard which applies to the safety performance characteristics of the product is not practicable.

7. As to the effect of the standard on the utility of the product.

8. As to the effect of the standard on the cost of the product.

9. As to the effect of the standard on the availability of the product.

10. As to the effect of the standard on the disruption and dislocation of competition in the industry.

11. As to the effect of the standard on manufacturing and other commercial practices.

12. As to the availability of a safer alternative product.

13. That the promulgation of the standard is in the public interest, taking into account all the foregoing.

Under the bills, both S. 983 and S. 1797, a single agency would be authorized to investigate product safety matters and to promulgate safety standards and other substantive orders. In our view this agency should not be authorized also as the enforcer of such rules. The power to enforce safety standards or other orders should be given to the Department of Justice and adjudication should be sought in judicial process. Traditionally and wisely, Justice has served as a spokesman for Government in the courts. This division of authority is moreover consistent with the sound concept that the totality of governmental powers in a major sphere should not be concentrated in a single administrative agency.

If the paramount purposes of Federal legislation on consumer product safety are to protect the public from unnecessary risks associated with such products and to subject suppliers of those products to Federal requirements, it would be inequitable if the requirement of any such legislation were to subject the suppliers of a particular class of products to penalties and other sanctions which are more onerous than those applicable to the suppliers of other products. Both of the bills under consideration now carve out from coverage certain products which would normally be considered as consumer products but which are subject to prior Federal legislation. It is submitted that in enacting any legislation of the nature contemplated by the two subject bills consideration should be given to the scope and content of the sanctions contained in the prior safety legislation and the penalties and other sanctions in the pending bills should not exceed those applicable in prior similar laws.

The threat of prosecution under the antitrust laws has undoubtedly hampered voluntary safety standard programs. We think that Congress, in legislating in the area of product safety, should clearly enunciate that good faith participation by a manufacturer in the developing of a product safety standard, either a voluntary standard or a Federal minimum standard would not be considered collusive activity which might otherwise be subject to restraint of trade sanctions.

The bills provide for certain remedies in the event of the sale of the product in violation of the standards promulgated.

The obligation of a manufacturer of consumer products should be reasonably limited to instances where there has been a material failure of a supplied product to conform to an applicable requirement. The manufacturer should not have any obligation to make repairs, refunds, or product replacements in those instances where the product failure is attributable to consumer misuse or abuse, improper installation or application, or other circumstances beyond the control of the manufacturer. There should be a causal relationship that gives rise to the responsibility.

Trade secrets, formulas, processes, product costs, methods of doing business, competitive information, and intellectual properties are of great importance to industry and should be protected. Product safety legislation should not require the release of any such information without a clear demonstration that such disclosure is required in the public interest. In no event should release of information be made relative to specific occurrences or specific parties.

It would be most regrettable if the public were to form the view that consumer product safety hazards could be eliminated by attention given to the establishment of product safety standards since the preponderance of injuries to consumers results from misuse of the product rather than from the characteristics of the product itself. Accordingly, we urge that governmental attention be directed to the need for consumer education which, in our view would far more significantly reduce the controllable occurrences associated with the use of the product.

I have certain other views which we would request that you consider, as follows:

1. Imported products should be required to conform to all Federal minimum safety standards. Not to do so would be to give a foreign competitor an unfair advantage in our domestic market.

2. Federal minimum safety standards should not apply to any consumer product manufactured and held for export. It does not seem appropriate for this country to attempt to tell another country what its standards should be.

3. With respect to criminal sanctions, if deemed necessary, we feel that a stigma of crime should attach only to willful or malicious violations of a material nature. Civil penalties should be adequate for all other violations. Certainly, no criminality should attach for products which have undergone, in good faith, tests for compliance with a Federal minimum safety standard.

4. Safety standards, and the recordkeeping and labeling requirements associated with them, should apply only to product manufactured after the effective date of the standard. In this connection, recognition should be given to the fact that once a product leaves a manufacturer's plant, it may remain in distribution channels for extended periods of time.

5. Because of the substantial policy questions presented in administrative procedures incident to the promulgation of product safety standards and orders, there should be imposed on the department authorized to carry out Federal safety legislation the requirement of

compliance with the applicable provisions of the Administrative Procedure Act in conjunction with its rulemaking and adjudication functions. All final orders of the department should be subject to judicial review. In such review department orders should not be upheld unless supported by substantial evidence.

6. Requirements to notify consumers or to recall equipment should not be imposed until the manufacturer has been given notice, and has been afforded the opportunity to present his side of the issue in an appropriate forum.

7. The assistance of testing laboratories, such as the American Gas Association Laboratories, should be recognized and use of such facilities should be specifically encouraged by the legislation.

Mr. Chairman, I appreciate very much the opportunity you have given me to present this statement. I also appreciate very much the exceedingly complex nature of the legislation before you. May I repeat the offer made earlier to submit more detailed comments, including specific technical recommendations.

Thank you.

Senator Moss. Thank you very much for your full statement and we will welcome the additional analysis which you have agreed to send to us. And we appreciate the fact that the Gas Appliance Manufacturers have studied this matter and have come forward with a position for the industry which you are authorized to make here this morning. It is very helpful to us and as the Association which represents the manufacturers of one of the great products which are in our homes, it is important that we have your views.

There is a vote in progress that I must go and make, so I will ask Mr. Sutcliffe to propound two or three questions that I have noted and would like your response to and then this will conclude the hearing for this morning. So at the conclusion of Mr. Sutcliffe's questions, the hearing will stand in recess until tomorrow morning at 9:30 o'clock. Mr. Sutcliffe. And please excuse me.

Mr. LEWIS. Yes, sir.

Mr. SUTCLIFFE. Thank you, Senator.

Mr. Lewis, in your prepared statement you state that the marketplace is a tough taskmaster.

Do you mean by that that the consumer makes demands upon the manufacturer which the manufacturer has to meet?

Mr. LEWIS. In order for the manufacturer to successfully compete in any market, the consumer must be pleased with the product offered or the consumer will not purchase it.

Mr. SUTCLIFFE. Does the consumer therefore have to have knowledge of a particular characteristic in order to make his competitive choice in the marketplace and to be a taskmaster?

Mr. LEWIS. In general, that would be true; yes.

Mr. SUTCLIFFE. How are consumers in general qualified to assess the safety characteristics of consumer products? Or is this a very technical problem?

Mr. LEWIS. We are talking about a great variety of possibilities, it would seem to me. There are many safety risks which are obvious. So as to those, I would think the average consumer is in a position to identify the problem. In the case of a pocket knife, for example, a con-

sumer can certainly identify that it is sharp and there are risks associated with its use.

It is more complicated products, I can appreciate there would be more complex considerations involved in evaluating the safety risks.

Mr. SUTCLIFFE. So would it then be fair to conclude that as to certain products, the marketplace may be a taskmaster as to safety characteristics, but as to other products because of the technical evaluation difficulties, it would be less of a taskmaster?

Mr. LEWIS. I think that would be a fair statement.

Mr. SUTCLIFFE. You have heard the previous questions as to the way in which the consensus principle in the opinion of the National Commission on Product Safety causes the development of standards which gravitate toward the lowest level of achievement possible within the industry.

Would you care to comment on that in relation to your suggestion of relying to some extent upon the consensus principle for determining mandatory product safety standards?

Mr. LEWIS. Yes; I would have two observations on that.

I think there is an element of truth in the comment. It cannot be completely gainsaid, certainly. I believe, however, that the voluntary standards process will be enhanced should the legislation which is proposed here be adopted, because of the possibility of imposition of Federal mandatory standards, and that accordingly the inclination perhaps to have less demanding standards than might be appropriate would be mitigated.

Second, I think that if the threats of antitrust prosecution associated with the development of meaningful standards were eliminated or mitigated, the conceptual process involved would also be improved and would result in the promulgation in the voluntary process of better standards for the protection of the public.

Mr. SUTCLIFFE. Let me see if I understand the thrust of the first part of your answer.

You think there would be an elevation of the consensus principle approach if there was the outside external pressure of a mandatory Federal standard?

Mr. LEWIS. The possibility of a mandatory standard; yes.

Mr. SUTCLIFFE. One of the witnesses who testified before this committee yesterday was discussing this voluntary standardmaking operation and he pointed out that the American Gas Association laboratories had been trying to solve a problem involving safety of a gas water heater for over 2 years and that no corrective action had been taken yet. He also pointed out that the target date for completion of the problem is 3 years hence.

Could you comment upon that particular endeavor, and perhaps explain the need of public health and safety in relation to the time frame that this voluntary standard approach takes?

Mr. LEWIS. I am not personally familiar with the matter under examination. I am somewhat familiar with the efforts which have been made by industry to meet the safety hazards which might be considered to be associated with water heaters.

In my view, water heaters do not present any unreasonable hazard presently. As a result of the voluntary standards which apply to

water heaters, there are three separate protective devices against the major safety risk associated with the use of a water heater, which is the explosion risk.

The first is that there is a thermostatic control on the water heater, which operates to avoid excessive temperature buildup in the water heater, which occasions the risk of explosion.

The second is that there is a mechanical cutout device which will shut off the energy input supply in the event of an excessive water temperature within the water heater.

And third, the water heaters are sold on a basis which requires the incorporation on the water heater of a label which specifies the installation of a pressure and temperature relief valve by the installer of the heater at the point of installation, which relief valve will operate to relieve any overpressure condition which develops in the water heater.

Because of these devices, we think except in rare cases water heaters are safe appliances for use in the home.

Mr. SUTCLIFFE. Perhaps for the record, then, in order to clarify the testimony that we received yesterday and to give you an opportunity to comment on that, you could provide at this point an explanation of that particular process to which the other witness referred.

Mr. LEWIS. I would be happy to provide by subsequent communication an elaboration on these remarks.

(The information requested follows:)

Having now had the opportunity to review the statement made by Mr. Merrill regarding gas water heaters, I welcome this opportunity to refute his allegation that home owners are subjected to unnecessarily hazardous gas water heaters. This simply is not the case.

Gas water heaters have three protective devices, any one of which operating normally would make the heater safe. All three would have to fail, a most unlikely combination of circumstances, before hazard could possibly exist. I know of no other product in the home in which there has built-in such a plurality of protective devices.

Let me expand upon my testimony as it relates to this plurality.

The first device is an operating thermostatic control which functions to maintain the water temperature at a useable level. In domestic water heaters the maximum setting of this control limits the water temperature to 180F or less. In most cases the water temperature is maintained at about 140F.

Secondly, all water heater thermostats are equipped with a manually resetable type energy cutoff device, in addition to the operating control, which will interrupt the energy supply should the water temperature exceed 210F. If the thermostatic control were to fail, the energy cutoff device would provide protection.

Thirdly, water heaters are installed with a temperature and pressure relief valves.

Mr. Merrill's firm manufacturers a sensing device which could be incorporated in water heaters as a substitute for one of the devices I have described. Such a substitution cannot be justified on the grounds of safety since the redundancy of safety devices now in service, as described above, has resulted in an excellent safety record for water heaters.

Mr. SUTCLIFFE. Mr. Lewis, you have enumerated a number of different findings that you feel are essential to the standardmaking process. Let me ask you about one of them specifically.

You urge the promulgation of performance standards, as I understand it?

Mr. LEWIS. Yes.

Mr. SUTCLIFFE. Then you ask for a finding as to the cost of the product.

Now there are two problems that I have with this finding as you have presented it in the testimony.

No. 1, you have asked that the information as to cost not be disclosed to the public. If it is in a finding, I can't see how the cost information would not be disclosed.

Mr. LEWIS. My reference was not to the cost of the product but the cost which would be in the judgment of the administrative agency associated with the implementation of the safety factor.

In our view the public should be entitled to be informed as to the supplemental cost of a product which is associated with standards which are promulgated.

Mr. SUTCLIFFE. So to the extent that that cost information is available to the manufacturer and the agency solicits that information from the manufacturer, you would say that was perfectly permissible to disclose?

Mr. LEWIS. Yes.

Mr. SUTCLIFFE. There is one other point. If you place the burden of cost evaluation upon the administrator, and you have set a performance standard, how is the administrator going to know what design the manufacturer intends to employ to meet the performance standard? He may have three or four options. One design may require absolutely no increase in cost, and another may require an increase of 50 percent.

Mr. LEWIS. Well, this is for the most part why we prefer specification of performance standards. I think for the most part this is the better technique for the protection of the public interest in determining a safe product, and leaving it to the supplier of the product the means of accomplishing the standard.

I appreciate that there would be occasions associated with the identification of a cost where various possibilities for compliance with performance standards might exist. In such cases, I think if there is no cost associated with the technique, that can be so found and if identifiable costs can be associated with the other techniques, those can also be found.

Mr. SUTCLIFFE. So, in other words, you would require him to search out every possibly design in order to cost the design out? Or would you allow him to find, if you are going to impose this burden upon him, at least a design representing the lowest cost and give that as the basis?

Mr. LEWIS. I think there should be some examination into the question of cost as related to the purpose of the requirement.

Mr. SUTCLIFFE. In your testimony you say you would require a finding that the existing state of the art of the industry makes the proposed standard applicable.

If the technology does not exist, what alternative is the safety agency left with?

Mr. LEWIS. If a standard is imposed which is not technologically feasible, it means as a practical matter that the product is not going to be offered.

And if that is in fact the choice being offered, I think it is a question of public interest, whether the public is better served with a product with some risks, or is deprived of the product. And that point should be so found.

Mr. SUTCLIFFE. Do you think there should be some facility within the agency to undertake research to promote the examination of new technologies, if the industry itself is not undertaking that examination?

Mr. LEWIS. I think the agency should have the availability to it of technological assistance. Whether that technological assistance should be within the agency or not I think is another question.

Mr. SUTCLIFFE. You would perhaps limit that only to the evaluation of information they developed in contract work?

Mr. LEWIS. There are certainly immense varieties of possible investigations which should or could be engaged in in connection with product safety matters.

I would doubt whether it would be feasible to staff within an agency all of the requisite talents which would allow the proper discharge of this function.

It occurs to me far more logical that the bulk of the capability should exist external to the agency and be available to it by contract.

Mr. SUTCLIFFE. Your testimony supports giving enforcement powers for the Product Safety Act to the Department of Justice.

What kind of priority do you envision Justice giving to product safety enforcement in light of their other responsibilities?

Mr. LEWIS. I think this is a matter for evaluation of the Department of Justice, taking into account its responsibilities for protection of the public interest.

Mr. SUTCLIFFE. But is it necessary to assign them the ordering of priorities, because of their particular workload, or would it be possible to relieve them of a further responsibility and allow both responsibilities to the public to be pursued simultaneously?

Mr. LEWIS. I am not sure I follow your question there.

Mr. SUTCLIFFE. I am not sure I did either.

It seems that you have answered that it would be left to the Justice Department to order their priorities. If they have a number of high priority items and it is the view of Congress that safety of the consumer is an additional high priority item, would it be reasonable to have the safety obligations undertaken by another agency rather than the Department of Justice?

Mr. LEWIS. The reason for our views of incorporating the enforcement functions within Justice was primarily the desirability of severance from a single agency of all of the governmental powers. It seems to me that if there is a need for a massive enforcement effort by the Department of Justice or by the administrator, this would be a question of providing funds and providing staff and I think it could be accomplished by either action within the Justice Department or within the department of Government which is charged with the promulgation of the standards.

Our preference for the reasons I mentioned was for the separation of these two functions and to entrust the enforcement functions to the Department of Justice.

Mr. SUTCLIFFE. When you say enforcement function, you mean the litigation to bring fine or penalty, or do you mean enforcement as to surveying the marketplace to determine whether or not there is a hazard in existence?

Mr. LEWIS. No; I meant enforcement within the context proposed in S. 1797, primarily related to the sanctions and also as applicable to the injunctive relief associated with removal of produtcs from the market under certain circumstances.

Mr. SUTCLIFFE. The Senator noted just one other point. He had asked for some information to support the statement that the preponderance of accidents occur from misuse of the products.

If you would like for the record at this time to give that information, or cite an example——

Mr. LEWIS. I don't have this information available to me. By your leave, I will submit a statement, with a view to substantiating that remark.

(The following information was subsequently received for the record:)

In a joint industry-government initiated study* of household safety problems, it was statistically indicated that the injury reduction that may be attainable as a result of product safety legislation is on the order of five (5) per cent. This is not a precise statistic, and may be in error in some degree and in either direction. It does, however, suffice to justify the statement that the preponderance of accidents are not reducible through a standards system since they result from the manner of use or abuse or misapplication of the product rather than from the characteristics of the product itself. It is for this reason that I have so strongly urged that the bill be amended so as to provide for consumer education activities. Consumer education holds by far the greatest prospect of substantial accident reduction.

Mr. SUTCLIFFE. Thank you very much.

(Whereupon, at 11:40 a.m. the hearing was recessed, to reconvene at 9:30 a.m., Friday, July 23, 1971.)

*_Household Safety Study_, Market Facts, Inc., Chicago, Illinois, Volume 1, (July 1971), Volumes 2–5 (June 1971).

(The following material was referred to on p. 251:)

92D CONGRESS
1ST SESSION

S. _____

IN THE SENATE OF THE UNITED STATES

_____, 1971

_____ introduced the following bill; which was read twice and referred to the Committee on Commerce

A BILL

To protect the public health and safety by ~~reducing the risks of death, illness, and injury associated with the use of consumer products~~ authorizing the establishment of safety standards for products produced or distributed for the use, consumption or enjoyment of the public. 1)

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Consumer Product Safety Act of 1971".

~~DECLARATION OF PURPOSE~~
FINDINGS AND PURPOSES 2)

~~SEC. 2. The Congress hereby declares that the public must be protected from the risks of death, illness, and injury associated with the use of consumer products. It is therefore the purpose of this Act to provide for the establishment by the Secretary of Health, Education and Welfare~~

---

1) To better state the content and scope of the bill.

2) To integrate findings and purposes, as in S983, and to expand them in order that they may more fully describe the purposes of the bill and the needs to be satisfied by the bill.

~~(hereinafter in this Act referred to as "the Secretary") of a consumer product safety program which shall include the promulgation and enforcement of product safety standards to reduce such risks to consumers of products for use in and around the household, the schools, or in recreation, or of products otherwise distributed for the personal use, consumption, or enjoyment of the consumer~~.

SEC. 2. (a) The Congress hereby finds---

(1) the public has a right to be protected against risk of death or injury from hazardous consumer products when such hazards can reasonably be eliminated or minimized;

(2) the increasing number and complexity of consumer products make it essential to act promptly to avoid unnecessary death and injury in the future;

(3) complexities of modern consumer products and the diverse nature and abilities of consumers using them frequently result in an inability of users to anticipate hazards and give rise to the need for consumer education programs[3] ~~and to safeguard themselves adequately;~~

(4) voluntary efforts by industry to develop means of preventing the sale of unsafe products, while ~~sometimes contributing to consumer safety, often have not been~~ usually of value, have not in all cases been adequate to protect consumers;

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[3] Education has greater potential in reducing accidents than do standards. Action is desirable in both areas.

~~(6) preservation of free competition precludes enforcement of voluntary product safety standards by private groups; and~~ [4]

~~(7)~~ (5) the production and sale of consumer products generally affect interstate commerce, making control of unreasonable hazards by State and local governments inadequate and often burdensome to manufacturers.

(b) The purposes of this Act are---

(1) to protect the public against unreasonable ~~product hazards to their health and safety~~ risk of death, illness and injury;

(2) to assist consumers in evaluating the ~~comparative~~ safety of consumer products;

(3) to aid manufacturers of consumer products by encouraging industry to voluntarily develop uniform and adequate safety standards for consumer products and by ~~minimizing~~ superseding conflicting State and local regulations; ~~and~~

(4) to promote research and investigation into the causes and prevention of product-related deaths and injuries;

(5) to require the development and conduct of consumer education programs in order to assist consumers in anticipating and avoiding hazards arising from the manner of product use or from consumer misuse or abuse of a product; and

(6) to provide for the establishment by the Secretary of Health, Education, and Welfare (hereinafter in this Act referred to as "the

---

[4] This need not be the case. Congress can and should state, in enacting this Bill, that good faith participation by a manufacturer in voluntary standards activities is not an unlawful restraint of competition.

Secretary") of a consumer product safety program which shall include the promulgation of safety standards or safety orders where necessary to reasonably reduce such risks to consumers of products for use in and around the household, the schools, or in recreation, or of products otherwise distributed for the personal use, consumption, or enjoyment of the consumer.

DEFINITIONS

SEC. 3. As used in this Act---

(1) the term "consumer product" means a product ~~which is customarily~~ primarily produced or distributed for sale in intersate commerce to a consumer for his personal or household use, consumption, or enjoyment ~~in or around a household or residence, a school, in recreation, or otherwise;~~ but does not include industrial or commercial products not primarily intended for consumer use or application[5] ~~but does not include food, drugs, cosmetics, motor vehicles, economic poisons as defined by the Federal Insecticide, Fungicide, and Rodenticide Act, tobacco and tobacco products, or any product with respect to any risk to health or safety which may be subjected to regulation under the Federal Hazardous Substances Act; the Radiation Control for Health and Safety Act of 1968; the Flammable Fabrics Act; the Clean Air Act; part F of title III of the Public Health Service Act; the Act of March 4, 1913 (37 Stat. 832); the Poison~~

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5) This exclusion of commercial or industrial products seems advisable in order that there may be no misunderstanding of the scope or application of the Act.

~~Prevention Packaging Act of 1970; the Occupational Safety and Health Act of 1970; the Act of August 2, 1956 (70 Stat. 953); or the Atomic Energy Act of 1954;~~ [6]

(2) "Consumer" means any person who uses, consumes, or enjoys a consumer product.

~~(2)~~ (3) the term "commerce" means commerce among or between the several States, or within the District of Columbia;

~~(3)~~ ~~(4)~~ the term "State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Trust Territory of the Pacific Islands, or the Canal Zone; ~~and~~

~~(4)~~ (5) the term "product safety standard" means a product safety standard promulgated in accordance with the procedures established under this Act and applying to a class or category of consumer products, or to a particular component of such class or category; [7]

(6) "manufacturer" means any person who manufactures or assembles consumer products in any State for sale in interstate commerce, or who imports or distributes imported consumer products manufactured or assembled elsewhere for sale in any State;

(7) "person" means an individual, partnership, corporation, association, or any other form of business enterprise;

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6) See Section 22, Page 37.

7) To eliminate the implication that a single product of a single company might be made the subject of a consumer product safety standard.

(8) "importation" means the entry of a consumer product for consumption in the United States, and includes reimportation of consumer products previously manufactured or processed in whole or in part in the United States; and

(9) "unreasonable risk" is a risk or hazard associated with the use of the consumer product which has been found by the Secretary, after appropriate investigation and objective tests, to present such a degree of risk of death, injury or illness that the promulgation of a standard is made necessary for the protection of the public health and welfare. 8)

COLLECTION AND DISCLOSURE OF INFORMATION ON CONSUMER PRODUCT RISKS AND CONDUCT OF CONSUMER EDUCATION PROGRAMS

SEC. 4. (a) The Secretary shall collect, evaluate, and disseminate, on a continuing basis, information on the frequency and causes of death, and the types, frequency, severity, and causes of illness or injury, associated with exposure to or use of consumer products, and on means to test, measure, or evaluate the risks of death, illness, or injury associated therewith. In carrying out his functions under this section the Secretary, in addition to or in aid of the foregoing---

(1) shall collect data or perform research or studies to enable him to establish a need for product safety standards and to evaluate their efficacy in reducing risks associated with consumer products;

(2) shall plan, conduct, coordinate, or provide technical assistance to research activities, development of methods, training of personnel, or

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8) A definition of "unreasonable risk" would add to the clarity of the bill and to the certainty of its language.

operations, designed to minimize the risks associated with consumer products, or designed to develop means to test, measure, or evaluate such risks except this paragraph shall not be deemed to authorize the Secretary to engage in the development, manufacture or sale of consumer products;[9]

(3) shall secure information on the risks associated with consumer products from other Federal or State departments and agencies with related interests, professional organizations, industry, industry or labor associations, and other public or private agencies, organizations, or institutions;

(4) shall make available, through publications and by other appropriate means, the results of, and other information concerning, research and studies relating to the nature and extent of the risks associated with consumer products, and may include recommendations for the reduction of such risks, or information on the means of testing consumer products for risks; and

(5) may procure, ~~(by negotiation,~~ competitive bids, or ~~otherwise)~~ purchase, consumer products for research and testing purposes, and, subject to the provisions of this Act, may sell or otherwise dispose of such products.

(6) Shall develop and conduct programs for the education of consumers, in order that, through education, the consumers may be made aware of the risks inherent in the use of consumer products; may intelligently evaluate the relative safety characteristics of competing consumer products; and may avoid misuse or inappropriate product applications which might unnecessarily expose the consumer to an avoidable risk of death, injury or illness.

(b) The Secretary is authorized to obtain from any person by subpoena issued pursuant to regulation information in the form of books, records, or other writings in his possession pertinent to the frequency or causes of death, or the types, frequency, severity, or causes of illness or injury associated

9) To avoid the possibility of sales by the Secretary that would be competitive unfairly with manufacturers or distributors.

with exposure to or use of consumer products. In the exercise of this authority, the Secretary will follow the requirements applying to Civil Investigative Demands as set forth in sections 1311-1314, title 15, United States Code. The district courts of the United States shall have jurisdiction to enforce such subpoenas upon application of the Attorney General. An action for such enforcement may be brought in any district court of the United States for the district wherein such person is found or transacts business.

(c) (1) Nothing contained in this Act shall be deemed to require the release of any information described by subsection (b) of section 552, title 5, United States Code, or to permit the release of information which is otherwise protected by law from disclosure to the public. The Secretary shall not make public information obtained by him under this Act which would disclose trade secrets, formulas, processes, costs, methods of doing business, or other competitive information not otherwise available to the general public; or the names or other means of identification of ill or injured persons without their express written consent.

(2) (A) Except as provided by subparagraph (B) of this paragraph, not less than thirty days prior to his public disclosure of any information obtained under this Act, or to be disclosed to the public in connection therewith, the Secretary shall provide such information to each manufacturer of any consumer product to which such information pertains, if the manner in which such consumer product is to be designated or described in such information will permit the public to ascertain readily the identity of such

manufacturer, and shall provide such manufacturer with a reasonable opportunity to submit comments to the Secretary in regard to such information. Upon receipt of such comments, the Secretary shall engage in such negotiation or procedures as may be deemed appropriate to determine the capability of the manufacturer to remedy or eliminate the source of the risk, where no standard exists, or to bring the product into full compliance with any existing standard. No public release shall be made with regard to such informal proceedings. Where, in the opinion of the Secretary, an unreasonable risk exists with respect to products already in trade channels, which the manufacturer is unable to remedy through recall, repair, notices or private action, the Secretary may, in his discretion, make public release with respect to such products for the protection of the health and safety of the public. Upon the request of such manufacturer, the Secretary shall publish such comments or a fair summary thereof, or a statement of the manufacturer of reasonable length in lieu thereof, concurrently and in association with the disclosure of the information to which such comments or statement appertain. The Secretary shall take reasonable steps to assure, prior to his public disclosure thereof, that information from which the identity of such manufacturer may be readily ascertained is accurate, and that such disclosure is fair in the circumstances and reasonable related to effectuating the purposes of this Act. If the Secretary finds that, in the administration of this Act, he has made public disclosure of inaccurate or misleading information which reflects adversely upon the safety of any consumer product, or the practices of any manufacturer of, distributor of, importer of, or dealer in consumer products, he shall, in a manner similar

to that in which such disclosure was made, publish a retraction of such inaccurate or misleading information.

(B) Subparagraph (A) (except for the last sentence thereof) shall not apply to the public disclosure of (i) information about any consumer product with respect to which product the Attorney General has filed an action (or an action against a manufacturer thereof with respect to such product) under section 12, or which the Secretary has reasonable cause to believe is in violation of section 15, or (ii) information about any administrative or judicial proceeding under this Act.

(6) Shall develop and conduct programs for the education of consumers, in order that, through education, the consumers may be made aware of the risks inherent in the use of consumer products; may intelligently evaluate the relative safety characteristics of competing consumer products; and may avoid misuse or inappropriate product applications which might unnecessarily expose the consumer to an avoidable risk of death, injury or illness.

(d) The Secretary shall communicate to each manufacturer of a consumer product, insofar as may be practicable, information as to any significant risk to health or safety associated with such product.

(e) The purpose of this section shall be to authorize the Secretary to acquire information sufficient to determine the need for product safety standards for categories or classes of products and shall not be construed to authorize inspection and testing of particular products or models with a view to public information release of safety information concerning particular consumer product models or makes.

(f) The disclosures of information, as provided for by this section, which require the identification of the manufacturer may be made only where the Secretary has found in proceedings governed by the Administrative Procedure Act (section 551 et seq., title 5, United States Code) that the identification is necessary for the purposes of carrying out the objectives of this Act and ~~has found~~ that the data or information set forth in any public release is accurate.

AUTHORITY TO PROMULGATE STANDARDS AND ORDERS

FOR CONSUMER PRODUCTS

SEC. 5. (a) Whenever the Secretary finds a need for such action to reduce or eliminate unreasonable risk of death, or of serious or frequent illness or injury, associated with exposure to or use of a consumer product or any type of class of such products, he may by regulation, in accordance with the requirements of this Act, promulgate for such product, or type or class of such products, a product safety standard relating to its performance, composition, or properties (including its compatibility with systems or environments in which it is intended to be used), or relating to two or more of such factors, or amend any such standard previously established.

(b) Where the Secretary finds that the risks of death, injury or illness arise from the use by the consumer and cannot be minimized or controlled by a product safety standard relating to its performance, composition or properties, a product safety order may prescribe warning, notices, instructions or other materials as may be found likely to reduce or control the risk of death or severity or frequency of illness or injury.

INITIATION OF PROCEEDING TO PROMULGATE A PRODUCT SAFETY STANDARD OR ORDER

Notice of Proceeding

SEC. 6. (a) A proceeding to promulgate a product safety standard shall be initiated by the Secretary by publication in the Federal Register of a notice of proceeding. Such notice shall invite public comment with respect to the initiation of such proceeding and shall include---

(1) a description or other appropriate designation of the product or type or class of products with respect to which the proceeding is initiated;

(2) the risk or risks intended to be controlled or minimized;

(3) a summary description of the data upon which the Secretary has found a need to initiate the proceeding, and the manner, consistent with subsection (c) (1) of section 4, in which interested persons may examine such data;

(4) information with respect to any existing standard known to the Secretary which may be relevant to the proceeding; and

(5) an invitation for any person, including any Federal agency, within ~~thirty~~ ninety days after the date of publication of the notice, (A) to submit to the Secretary an existing standard as such proposed product safety standard; or (B) to offer to develop such proposed product safety standard in accordance with regulations of the Secretary prescribing procedures for such development.

Use of Existing Standard

(b) If the Secretary (1) finds that there exists a standard which has been published by any Federal agency or other technically qualified and competent

agency, organization, or institution (2) has made reference to such standard (unless it is a standard submitted pursuant to section 6 (a) (5) (A)) in his notice pursuant to subsection (a) (4), and (3) determines that such standard may be substantially acceptable to him as a product safety standard, then he may, in lieu of accepting an offer pursuant to this section, publish such standard as a proposed product safety standard pursuant to section 9.

Request for the Promulgation of or an Amendment to a Product Safety Standard

(c) Any federal agency or other technically qualified agency, organization or institution may apply to the Secretary requesting the promulgation of a new product safety standard or an amendment to an existing product safety standard, and the Secretary shall within ninety days after such application either initiate a proceeding to promulgate a product safety standard therefor or publish his reasons for not taking such action.

Acceptance of Offers to Develop Proposed Product Safety Standards

~~(c)~~ (d) (1) Except as provided by subsection (b), the Secretary shall accept one, and may accept more than one, offer to develop a proposed product safety standard pursuant to the invitation prescribed by subsection (a) (5) (B), upon his determination that---

(A) the offeror is technically competent and is likely to develop an appropriate standard within a reasonable period of time; and

(B) the offeror has the capacity to comply with regulations of the Secretary prescribed pursuant to section 8.

The Secretary shall publish in the Federal Register the name and address of each person whose offer he accepts, and a summary of the terms of such offer as accepted.

(2) Upon an offeror's application therefor prior to the acceptance of his offer under this subsection, the Secretary may agree to contribute to the offeror's cost in developing a proposed product safety standard, if the Secretary determines that such contribution is likely to result in a more satisfactory standard than would be developed without such contribution, and that the offeror is financially responsible. Regulations of the Secretary shall set forth the items of cost in which he may participate. ~~and shall exclude any contribution to the acquisition of land or building~~.

Product Safety Order

(e) A proceeding may be initiated by the Secretary for the purpose of determining whether a product safety order should be issued pursuant to section 5 (b). Such a proceeding shall follow and comply with all of the procedural requirements pertaining to proceedings for the promulgation of a product safety standard.

(f) Participation by any person in any proceeding to promulgate a product safety standard or ~~an~~ order shall not be a violation of any antitrust law.[10]

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10) The National Commission on Product Safety Report states with accuracy that the voluntary standards proceedings have been hindered in the past by the potential application of the antitrust laws to the consensual process involved in standards setting. In view of the paramount safety purpose to be served, product safety standard promulgation proceedings contemplated under section 6 under private institution sponsorship and proceedings contemplated by section 7 under Agency sponsorship should both be immunized against debilitating trade regulation law exposures.

DEVELOPMENT OF A PROPOSED PRODUCT SAFETY STANDARD BY THE SECRETARY

SEC. 7. If the Secretary has published a notice of proceeding as provided by section 6 (a), and ---

(1) he has accepted neither an existing standard pursuant to section 6 (b) nor an offer to develop a proposed product safety standard pursuant to section 6 (c)~~;~~ or product safety order pursuant to 6 (e); or

(2) he has accepted an offer pursuant to section 6 (c) or 6 (e), but determines (in accordance with such procedures as he may by regulation prescribe, provided that such procedures conform to the requirement of the Administrative Procedure Act (sections 551 et. seq., title 5, United States Code)) that the offeror is unable or unwilling to continue satisfactorily the development of the proposed standard or order which was the subject of the offer or that the standard or order which has been developed is not satisfactory;

then the Secretary may proceed to develop a proposed product safety standard or order pursuant to procedures prescribed under section 8.

REGULATIONS GOVERNING DEVELOPMENT OF STANDARDS

SEC. ~~9.~~ 8. The Secretary shall prescribe regulations governing the development of proposed product safety standards or orders under sections 6 and 7 of this Act, which regulations shall not be considered rules of agency organization, procedure, or practice for purposes of section 553 of title 5 of the United States Code. Such regulations shall include requirements---

(1) that standards recommended for promulgation be supported by test data or such other documents or materials as the Secretary may reasonably require to be developed, and be suitable for promulgation pursuant to section 9;

(2) that standards recommended for promulgation contain such test methods as may be appropriate for measurement of compliance with such standards;

(3) for opportunity by interested persons to participate in the development of such standards;

(4) for the maintenance of such records as the Secretary prescribes in such regulations to disclose the course of the development of standards recommended for promulgation, the comments and other information submitted by any person in connection with such development, including comments and information with respect to the need for such recommended standards, and such other matters as may be relevant to the evaluation of such recommended standards; and

(5) that the Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, have access for the purpose of audit and examination to any books, documents, papers, and records, relevant to the expenditure of any contribution of the Secretary, pursuant to section 6 (c), to the development of such recommended standards.

PROMULGATION OF PRODUCT SAFETY STANDARDS:
DECLARATION OF BANNED HAZARDOUS CONSUMER PRODUCT

Proposal to Promulgate Product Safety Standard or To Declare a Banned Hazardous Consumer Product

SEC. 9. (a) (1) Not more than two hundred and ten days after his publication of a notice of proceeding pursuant to subsections (a) or (e) of section 6 (which time may be extended by the Secretary by a notice published in the Federal Register stating good cause therefor), the Secretary shall publish in the Federal Register ~~either~~ (a) a notice withdrawing such prior notice; ~~or~~ (b) a proposal to promulgate a product safety standard or order applicable to any class or type of consumer product subject to such notice ; or (c) a proposal to declare any such ~~subject~~ class or type of consumer product a banned hazardous consumer product. A proposal to promulgate a product safety standard or safety order and a proposal to declare a product a banned hazardous consumer product may be published in the alternative with respect to any consumer product subject to such notice.

(2) A proposal to promulgate a product safety standard, or product safety order, or to declare a product a banned hazardous consumer product, shall set forth such standard, or order, or the reason for such declaration, the manner in which interested persons may examine data and other information upon which such standard, order, or declaration, or need therefor, is based (consistent with subsection (c) (1) of section 4), and the ~~period within~~ date upon which all interested persons may present their comments on such standard, order, or declaration, or the need therefor, orally or in writing at a public

hearing to be conducted in conformance with the Administrative Procedure Act. In considering those of such comments applicable to a proposed standard the Secretary shall give special weight to comments which were submitted during the development of such standard.

Order to Promulgate Product Safety Standard, or Order, or To Declare a Banned Hazardous Consumer Product

(b) As soon as practicable after the publication of a proposal to promulgate a product safety standard, or order, or to declare a product a banned hazardous consumer product, the Secretary shall, by order published in the Federal Register, act upon such proposed standard, or order, or declaration or withdraw the applicable notice of proceeding. The order shall set forth the product safety standard, or order, or declaration, if any, the reasons for the Secretary's action (including reasons for the promulgation of a product safety standard materially different than that set forth in the proposal or for his failure to promulgate any standard), and the date or dates upon which such standard or declaration, or portions thereof, shall become effective, which shall not in any event precede the date of adoption of such standard, or declaration, or portions thereof. Such date or dates shall be established so as to minimize, consistent with the public health and safety, economic loss to, and disruption or dislocation of, domestic and international trade.

(3) A product safety order developed pursuant to section 6 (e) and promulgated as provided by this section shall not be considered to be a product safety standard.

Findings

(c) (1) (a) Prior to his issuance of an order to promulgate a product safety standard or order pursuant to subsection (b), ~~or to declare a product a banned hazardous consumer product pursuant to subsection (c),~~ the Secretary shall consider, and shall make appropriate findings for inclusion in such order with respect to---

~~(A) data and comments submitted in the course of any proceeding under section 6 relevant to such order;~~

~~(B)~~ (A) the frequency and causes of death, and the types, frequency, severity, and causes of illness and injury, attributed to those aspects of the consumer products subject to such order;

~~(C) the approximate number of consumer products, or types of classes thereof, subject to such order;~~

~~(D)~~ (B) the need of the public for the consumer products subject to such order, and the probable effect of such order upon the utility, cost, or availability of such products to meet such need; and

~~(E)~~ (C) means of achieving the objective of the order with a minimal disruption or dislocation of competition and of reasonable manufacturing and other commercial practices.

(D) the risk of death, illness or injury associated with the use of the product and that such risk is in fact related wholly or partially to the said consumer product.

(E) No standard or order exists with respect to such consumer product or existing standards or orders are inadequate.

(F) The proposed safety standard or order will be effective to accomplish the desired safety objective without impairing the essential utility of the product.

(G) There are practical methods for testing the consumer product to determine whether the product complies with the product safety standard.

In the case of a product safety standard, it

(H) ~~The product safety standard~~ prescribes safety performance characteristics of the consumer product and not its design, composition, construction, finish or packaging, unless it has been found that an essential safety objective can be achieved only by prescribing standards relating to design, composition, construction, finish or packaging.

In the case of a product safety standard,

(I) ~~R~~isks of death, or illness or injury cannot be satisfactorily controlled or minimized by warnings, usage instructions or other safety techniques.

(c) (1) (b) Prior to his issuance of an order to declare a product a banned hazardous consumer product, the Secretary shall consider and shall make appropriate findings for inclusion in such order with respect to:

(1) The consumer product causes or is likely to cause death or serious or frequent illness or injury.

(2) No standard exists for such consumer product or an existing standard is inadequate.

(3) The consumer product has safety hazards which are not readily ascertainable by consumers.

(4) The consumer product has safety hazards which cannot be corrected by compliance with a product safety standard.

(2) The Secretary shall not promulgate a product safety standard, or order, or declare a product a banned hazardous consumer product, unless he determines, and includes such determination in the order promulgating such standard or declaration, that his findings pursuant to paragraph (1) show that such standard, order or declaration (including the effective date thereof) is reasonably necessary to carry out the purposes for which such standard, order or declaration is authorized by section 5 or subsection (e) of this section, and that the promulgation of such standard, order or declaration is in the public interest.

Characteristics and Limitations of Product Safety Standards

(d) (1) Product safety standards shall, where feasible, pertain to the safety performance characteristics of consumer products, except that any such standard may apply to the composition, design, construction, finish, or packaging of the product or any component thereof if the Secretary determines such application to be in the public interest. Where a product safety standard applies to any other characteristic than product safety performance, the Secretary shall specify in the order promulgating the standard the reasons for the inability of the Secretary to apply product safety performance as the criteria for the standard.

(2) ~~Without regard to the limitations of paragraph (1), a product safety standard may require that the product or any component thereof be marked, tagged, or accompanied by clear and adequate warnings or instructions reasonably~~

~~necessary for the protection of health or safety~~. Where the Secretary finds it necessary, a product safety standard may be accompanied by a product safety ~~warning~~ order which directs that the consumer products include or be marked or tagged with warnings or instructions for the protection of public health or safety. When a product safety order so accompanies a product safety standard, the product safety order shall not be considered part of the product safety standard.

Ban of Product

(e) The Secretary may declare a consumer product to be a "banned hazardous consumer product", in accordance with the procedures of this section, only upon his finding, to be included in the Secretary's order pursuant to subsection (b), that no feasible product safety standard will adequately protect the public from unreasonable risk of death, or of serious or frequent illness or injury, associated with exposure to or use of such product. A firearm may not be declared a banned hazardous consumer product. If a consumer product shall be declared a banned hazardous consumer product, the sale or distribution of the product within the United States shall be prohibited, but the order shall not be applicable to the consumer product itself or to its sale for other than consumer applications.

Disputes of Fact

(f) The Secretary may conduct a hearing in accordance with such conditions or limitations as he may make applicable thereto, provided ~~the~~ that hearings shall be held conform to the requirements of the Administrative Procedure Act (5 U. S. C. 551 et. seq.) relating to substantive rule making, for the purpose of resolving any issue of fact material to any finding required to be made by the Secretary under this section.

REVOCATION OR AMENDMENT OF STANDARD

SEC. 10. (a) The Secretary on his own initiative or upon petition by any interested person may revoke, in whole or in part, any product safety standard, upon the ground that there no longer exists a need therefor or that such standard is no longer in the public interest. Such revocation shall be published as a proposal in the Federal Register and shall set forth such standard or portion thereof to be revoked, a summary of the reasons for his determination that there may no longer be a need therefor or that such standard (or any part thereof) may no longer be in the public interest, the manner (consistent with subsection (c) (1) of section 4) in which interested persons may examine data and other information relevant to the Secretary's determination, and the period within which all interested persons may present their views, orally or in writing, with respect to such revocation. As soon as practicable thereafter, the Secretary shall by order act upon such proposal and shall publish such order in the Federal Register. The order shall include the reasons for the Secretary's action, and ~~the date or dates upon which such revocation~~ shall become effective immediately. Upon the revocation of any product safety standard, the rights of any party, including the Secretary, in any proceeding based on such standard shall be extinguished.

~~(b) The requirements of sections 6, 7, 8 and 9 of this Act for the promulgation of a product safety standard shall apply to the promulgation of a material amendment of a product safety standard. The Secretary may promulgate an amendment of a product safety standard, other than a material amendment, without regard to sections 6, 7, or 8, but shall comply with the~~

~~procedures set forth in subsections (a) and (b) of section 9, and shall set forth, in his order promulgating such amendment, such findings as he may deem appropriate in explanation thereof. As used in this subsection, the term "material amendment" means an amendment that would substantially increase any performance standard applicable to a consumer product, or substantially alter the composition, design, construction, finish, or packaging of such product.~~

(b) Amendments to a product safety standard may be promulgated only by procedures comparable to those prescribed in sections 6, 7, 8, and 9 hereof relating to the promulgation of a product safety standard.

JUDICIAL REVIEW

SEC. 11. (a) Any person adversely affected by ~~an~~ final order or determination of the Secretary promulgated pursuant to ~~subsection (b) of section 9, or pursuant to section 10~~ this Act, may, at any time after such order or determination is published by the Secretary, file a petition with the United States court of appeals for the circuit in which such person resides or has his principal place of business for a judicial review of such order. Copies of the petition shall be forthwith transmitted by the clerk of the court to the Secretary or other officer designated by him for that purpose and to the Attorney General. The Secretary shall transmit to the Attorney General, who shall file in the court, the record of the proceedings on which the Secretary based his order, as provided in section 2112 of title 28 of the United States Code. Such record shall include such order of the Secretary and, if issued, held, or obtained in connection therewith, the notice of proceeding published pursuant to subsection (a) of section 6; any notice or proposal published pursuant to subsection (a) of section 9,

or section 10; the transcript or summary of any proceeding and the findings arising therefrom; and any other information, including comments of interested persons, required to be considered by the Secretary in the promulgation of such order.

(b) Upon the filing of the petition under subsection (a) of this section the court shall have jurisdiction to review the order of the Secretary in accordance with chapter 7 of title 5 of the United States Code and to grant appropriate relief, including interim relief, as provided in such chapter. The order of the Secretary shall be affirmed if supported by substantial evidence on the record taken as a whole.

(c) The judgment of the court affirming or setting aside, in whole or in part, any order of the Secretary shall be final; subject to review by the Supreme Court of the United States upon certiorari or certification, as provided in section 1254 of title 28 of the United States Code.

IMMINENT HAZARDS

SEC. 12. (a) The Secretary may request the Attorney General to file, in a district court of the United States having venue thereof, an action against an imminently hazardous consumer product, or against any person who manufactures for sale, sells, or offers for sale, in commerce, or imports into the United States, such product. Such an action may be filed, notwithstanding ~~the existence of a product safety standard applicable to such product, or~~ the pendency of proceedings initiated pursuant to section 6. As used in this section, and hereinafter in this Act, the term "imminently hazardous consumer product" means a consumer product the use of or exposure to which presents imminent and unreasonable risk of death, serious illness, or severe personal injury.

(b) The district court in which such action is filed shall have jurisdiction to declare such product an imminently hazardous consumer product, and to grant (as ancillary to such declaration or in lieu thereof) such temporary or permanent equitable relief as may be necessary to protect the public from such risk. Such relief may include a mandatory order requiring the notification of the original purchasers of such product of such risk, public notice, the recall, ~~the repair, the replacement~~, or the seizure of such product.

(c) Concurrently with the filing of such action or as soon thereafter as may be practicable, the Secretary shall initiate a proceeding, pursuant to section 6, to promulgate or amend a product safety standard applicable to the consumer product with respect to which such action is filed, or, if the initiation of such proceeding is not feasible, shall initiate a proceeding, pursuant to section 9, to declare such product a banned hazardous consumer product.

NOTIFICATION OF FAILURE TO COMPLY; REPAIR OR REPLACEMENT OF NONCOMPLYING CONSUMER PRODUCT

SEC. 13. If any consumer product has been found after hearings subject to section 555 of title 5 of the United States Code to[11] fail~~s~~ to comply with any ~~applicable order~~ product safety standard issued pursuant to this Act, the manufacturer, importer, or distributor of, or dealer in, such product, if sold after the effective date of the applicable product safety standard, may be

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11) The determination as to whether the product has failed to comply with any applicable order as well as the whole circumstances surrounding the non-compliance, including any knowledge of the supplier of the failure to comply, the substantiality of the risk to consumers, the period of time in which the consumer product has been in the consumer's possession, and the practicality of the notification steps contemplated should all be resolved by hearings under Section 554 of the Administrative Procedure Act.

required by the Secretary (by order after ~~opportunity for~~ hearing subject to section 554 of title 5 of the United States Code) to give public notice and---

(1) to mail to each consumer of such product known to such manufacturer, importer, distributor, or dealer, and, in the case of a manufacturer or importer, to each distributor or dealer to whom he delivered such product, a notification of such failure containing such information as the Secretary may prescribe, upon the Secretary's determination that such notification is required in order adequately to protect health or safety,

(2) to either bring such product into conformity with the requirements of such order without charge to the consumer, or

~~(3)~~ to replace such product with a like or equivalent product which complies with such order without charge to the consumer, or

~~(4)~~ to refund the purchase price of such product upon tender of the product, less a reasonable allowance for use if such product has been in the possession of the consumer for one year or more at the time of such tender, at the option of the supplier.

The manufacturer, importer, distributor, or dealer against whom an order is issued under this subsection shall reimburse each consumer of the product which is the subject of such order for any reasonable and foreseeable expenses (including transportation expenses) incurred by such consumer in availing himself of the remedies provided by such order, exclusive of attorneys' fees.

INSPECTION AND RECORDKEEPING

SEC. 14. (a) For purposes of carrying out regulations, standards, or orders promulgated under this Act, officers or employees duly designated by the Secretary, after a finding by the Secretary of the need therefor, upon presenting appropriate credentials and a written notice to the owner, operator, or agent in charge, or authorized---

(1) to enter, at reasonable times, any factory, warehouse, or establishment in which consumer products are manufactured, assembled, or held for introduction into commerce or are held for sale after such introduction; or to enter any vehicle being used to transport consumer products in interstate commerce; and

(2) to inspect, at reasonable times and in a reasonable manner, those areas of such factory, warehouse, establishment, or vehicle where or in which such products are produced, stored, or transported, and all pertinent equipment, materials, containers, and labeling therein.

The person making such inspection shall not make any disclosure of any confidential, privileged and trade secret data and information divulged to him in the course of such inspection. A separate notice shall be given for each such inspection, but a notice shall not be required for each entry made during the period of inspection set forth in such notice. Each such inspection shall be commenced as soon as practicable after the delivery of such notice, and shall be completed with reasonable promptness. If the officer or employee who makes such inspection obtains any sample in the course thereof, he shall,

prior to leaving the premises, give to the owner, operator, or agent in charge, a receipt thereof describing such sample.

(b) Every person who manufactures, assembles, distributes, or sells in commerce, or imports, a consumer product required to conform to a product safety standard shall establish and maintain such records, and make such reports, which are found to be necessary for attaining the purposes of the Act and relevant to a promulgated product safety standard, and provide such information as the Secretary may by regulation reasonably require with respect to such product. Upon request of an officer or employee duly designated by the Secretary, every such person shall permit the inspection of such records and other books, records, and papers relevant to determining whether such person is in compliance with this Act and regulations, standards, and orders prescribed thereunder. The Secretary shall not require the retention of such records for periods in excess of three years.

(c) The district courts of the United States shall have jurisdiction to issue any warrant in aid of an inspection or investigation under this section, if such warrant is required by the Constitution or laws of the United States, upon a finding that such inspection or investigation is necessary for the purpose of enforcing this Act.

PROHIBITED ACTS

SEC. 15. It shall be unlawful for any person engaged in the business of making consumer products available to consumers, either directly or indirectly, to knowingly---

(1) (A) manufacture for sale or lease, in commerce, any consumer product with respect to which a product safety standard has been promulgated pursuant to section 9 of this Act and which does not comply with ~~a~~ such product safety standard; (B) sell or lease, or offer for sale or lease, in commerce, any consumer product with respect to which a product safety standard has been promulgated pursuant to section 9 of this Act and which does not comply with a product safety standard (i) if such product was manufactured or assembled in the United States after the effective date of such standard, or (ii) if such product was imported into the United States in violation of clause (C); (C) import into the United State any consumer product which does not comply with a product safety standard; or (D) manufacture for sale or lease, sell or lease, or offer for sale or lease, in commerce, or import into the United States, any consumer product which has been declared a banned or imminently hazardous consumer product;

(2) fail or refuse to comply with any order of the Secretary pursuant to section 13;

(3) fail or refuse to comply with any requirement of section 14;

(4) alter, modify, destroy, or remove any portion of, or do any other act with respect to, a consumer product or labeling thereon or attached thereto, if such act is done while the product is being held or transported for sale, and results in the consumer product or its labeling failing to conform to a product safety standard, or renders the product a banned or imminently hazardous consumer product.

ENFORCEMENT

Civil and Criminal Penalties[12)]

SEC. 16. (a) Whoever knowingly commits any act prohibited by section 15, or, in case of commission of any such act by a corporation, the corporation and any individual director, officer, or agent of such corporation who knowingly caused in whole or in part the corporation to commit such act, shall be subject to a civil penalty of not more than $10,000 for each such act, and, if such act was willfully committed, shall be guilty of a misdemeanor and, upon conviction, fined not more than $10,000 for each such act or imprisoned not more than one year, or both. As used in this subsection the term "knowingly" means (1) the having of actual knowledge, or (2) the presumed having of knowledge deemed to be possessed by a reasonable man who acts in the circumstances, including (A) knowledge obtainable upon the exercise of due care to ascertain the truth of representations, and (B) knowledge of the probable consequences of action taken in disregard of reasonable safeguards.

Injunctions

(b) Upon application by the Attorney General, the district courts of the United States, upon a showing that irreparable injury would otherwise occur, shall have jurisdiction to enjoin the commission of act prohibited by section 15, ~~and to compel the taking of any action required by this Act.~~

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12) While making no technical recommendations regarding this section, the sanctions contemplated by this bill should parallel and be consistent with those incorporated in other Acts pertaining to product safety. For example, see National Traffic and Motor Vehicle Safety Act, section 1388, title 15, United States Code, which provides for civil penalties only.

~~Seizure~~

~~(c) Any consumer product which is not manufactured in compliance with an applicable product safety standard, which is not in compliance with such a standard as the result of an action made unlawful by clause (4) of section 15, or which is declared a banned or imminently hazardous consumer product, shall be liable to be proceeded against while in commerce or at any time thereafter, on complaint for forfeiture by the Attorney General, and condemned in any district court of the United States within whose district the consumer product is found. The procedure in such cases shall conform, as nearly as may be, to the procedure prescribed by subsections (b), (c), (d), and (e) of section 6 of the Federal Hazardous Substances Act.~~ 13)

Private Suits

~~(d)~~ (c) Any interested person may bring an action in any district court for the district in which the defendant is found or transacts business to enforce a product safety standard, or to enforce any order under subsection (e) of section 9, or under section 12, and to obtain appropriate injunctive relief. Not less than thirty days prior to the commencement of such action, such interested person shall give notice by registered mail to the Secretary, to the Attorney General, and to the person against whom such action is directed. Such notice shall state the nature of the alleged violation of any such standard

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13) The remedy of seizure in paragraph (c) should be limited to banned or imminently hazardous consumer products. The seizure of an imminently hazardous consumer product is provided for in section 12 and this authority need not be duplicated by section 15.

or order, the relief to be requested, and the court in which the action will be brought. No separate suit shall be brought under this subsection if the same alleged violation is or becomes the subject of a pending action by the United States under this Act or has been the subject of such an action. In any action under this section, such interested person may elect, by a demand for such relief in his complaint, to recover reasonable attorney's fees, in which case the court shall award reasonable attorney's fees to the prevailing party.

IMPORTS

SEC. 17. (a) Any consumer product offered for importation into the United States to which a product safety standard applies (except insofar as the Secretary may otherwise provide with respect to a consumer product accompanied by a certification of compliance with such standard in a form prescribed by the Secretary) or which is declared a banned or imminently hazardous consumer product, shall not be delivered from Customs custody except as provided in section 499 of the Tariff Act of 1930. In the event an imported consumer product is delivered from Customs custody under bond, as provided in section 499 of the Tariff Act of 1930, and is declared a banned or imminently hazardous consumer product or fails to conform with a product safety standard in effect on the date of entry of such merchandise, the Secretary shall so inform the Secretary of the Treasury, and unless it appears to the Secretary that the product can be brought into compliance with all applicable requirements under this Act shall request the Secretary of the Treasury to demand redelivery. Upon a failure to redeliver, the Secretary of the Treasury shall assert a claim for liquidated damages for breach of a condition of the bond arising out of such

failure to conform or redeliver in accordance with regulations prescribed by the Secretary of the Treasury or his delegate. When asserting a claim for liquidated damages against an importer for failure to redeliver such nonconforming goods, the liquidated damages shall not be less than 10 per centum of the value of the nonconforming merchandise if, within five years prior thereto, the importer has previously been assessed liquidated damages for failure to redeliver nonconforming goods in response to a demand from the Secretary of the Treasury as set forth above.

(b) If it appears to the Secretary that the consumer product can be brought into compliance with all applicable requirements under this Act, final determination as to admission of such consumer product may be deferred and, upon filing of timely written application by the owner or consignee and the execution by him of a bond as provided in the preceding provisions of this section, the Secretary may, in accordance with regulations, authorize the applicant to perform such action specified in such authorization (including destruction or export of rejected consumer products or portions thereof, as may be specified in such authorization). All such action pursuant to such authorization shall, in accordance with regulations, be under the supervision of an officer or employee of the Department of Health, Education, and Welfare or of the Department of the Treasury.

(c) The Secretary of the Treasury shall ~~obtain without~~ procure at the expense of the government charge and deliver to the Secretary, upon his request, a reasonable number of samples of consumer products being offered for import. The owner or consignee of any such product may have a hearing before the

Secretary with respect to admission of such imports into the United States. If, except as provided by subsection (b), it appears from examination or testing of such samples or otherwise that a product fails to comply with the requirements of this Act, such product shall be refused admission, and the Secretary of the Treasury shall cause destruction of such product unless it is exported, under regulations prescribed by the Secretary of the Treasury, within ninety days after notice to the importer or consignee.

(d) All expenses (including travel, per diem or subsistence, and salaries of officers or employees of the United States) in connection with the destruction provided for in this section, the amount of such expenses to be determined in accordance with regulations of the Secretary of the Treasury, and all expenses in connection with the storage, cartage, or labor with respect to any consumer product refused admission under this section, shall be paid by the owner or consignee and, in default of such payment, shall constitute a lien against any future importations made by such owner or consignee.

EXPORTS

SEC. 18. This Act shall not apply to any consumer product manufactured, sold, or held for sale for export from the United States (or to any consumer product imported for export), if such consumer product, and any container in which it is enclosed, bears a stamp or label stating that such consumer product is intended for export and such consumer product is in fact exported from the United States; except that this Act shall apply to any consumer product manufactured for sale, offered for sale, or sold for shipment to any installation of the United States located outside of the United States. No manufacturer or

other supplier shall be liable in any way for alterations made by others, over whom they have no control, to the consumer product or any part thereof without his knowledge, or for the sale by others over whom they have no control in the United States of any consumer product intended by the manufacturer or other supplier exclusively for export sale.

EFFECT ON STATE STANDARDS

SEC. 19. ~~(a)~~ No State or political subdivision thereof shall establish or continue in effect, with respect to any consumer product, any standard or similar regulation prescribing requirements applicable to any aspect of health or safety of such consumer product, if such aspect is required to conform to a product safety standard under this Act: Provided, That nothing in this section shall be construed to prevent any State or political subdivision thereof from establishing or continuing a health or safety requirement applicable to a consumer product for its own use, if such requirement imposes a higher standard of health or safety than that required to comply with the applicable product safety standard under this Act. [14]

~~(b) The Secretary may, upon application of a State or political subdivision thereof, exempt such State or political subdivision from the limitation of subsection (a) if a standard proposed by such application (1) imposes a higher level of health or safety than the Federal product safety standard with respect to~~

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[14] Section 19, with the acceptance of the recommendation to delete subsection (b) would preempt State and local authority in the same manner and to the same extent as in the National Traffic and Motor Vehicle Safety Act, section 1392 (d), title 15, United States Code. I cannot overemphasize the importance of preemption, and urge most strongly that the precedent established in the cited Safety Act be followed in enacting this legislation with its similar purpose of providing for the safety of consumers.

~~products to be manufactured, sold, held for sale, or used in such State or political subdivision thereof, (2) is required by compelling local conditions, (3) does not unduly burden commerce, and (4) is adopted by such State or political subdivision pursuant to procedures and requirements which in the judgment of the Secretary are substantially comparable to those prescribed for product safety standards under this Act.~~

UTILIZATION OF OTHER FEDERAL AGENCIES

SEC. 20. In carrying out his duties under this Act, the Secretary shall, to the maximum practicable extent, utilize the personnel, facilities, and other technical support available in other Federal agencies.

PRODUCT ALTERATION, ABUSE, OR MISAPPLICATION

SEC. 21. Nothing in this Act shall be construed as requiring manufacturers or suppliers to make refunds or repair or replace products if the failure of a product to conform to a product safety standard promulgated pursuant to section 9 is the result of an alteration made by the consumer or other person over whom the manufacturer or supplier has no control; or is the result of product abuse or misuse or misapplication by the consumer.

COMMENT

SEC. 22. (This section might be used to make the Act include or exclude consumer products now the subject of other Acts. Since the paramount purpose of the Bill is to protect the public from consumer product safety risks, all such products might properly be subject to this Bill. The fractionation of consumer products, safety legislation as indicated in section 3 of S. 1797, presumably reflects prior safety legislation such as the Federal Food, Drug

and Cosmetic Act and the National Traffic and Motor Vehicle Safety Act and the established agency authorities administering the provisions of such acts. In the interests of uniform and consistent administration, the authority over consumer product safety standard promulgation could be entrusted to a single agency. Fragmentation might result in substantial variances in treatment and overlaps and omissions in coverage of the consumer products for which a Federal safety presence is contemplated.)

CONSUMER PRODUCT SAFETY ACT OF 1971

FRIDAY, JULY 23, 1971

U.S. SENATE,
COMMITTEE ON COMMERCE,
Washington, D.C.

The committee met, pursuant to recess, at 9:30 a.m. in room 5110, New Senate Office Building, Hon. William B. Spong, Jr., presiding.

Present: Senators Spong and Cook.

OPENING STATEMENT BY SENATOR SPONG

Senator SPONG. The hearings will come to order.

The first pure food and drug law passed this Congress in 1906. Since that time no one has seriously doubted the responsibility of the Federal Government to guarantee the safety of consumer goods moving in commerce. Yet here we are eight decades into the 20th century and we are still confronted with the bitter litany of preventable product injuries.

Still saddled with products that burn, tear, shock, and poison.

Still faced with the evidence of weak laws, weak-willed agencies, and woefully inadequate resources devoted to product safety.

I welcome the opportunity to chair these hearings. I believe—and said so at the time—that the National Commission on Product Safety cut through the mass of data and bureaucratic gingerbread to the core of truth: We need a strong, independent consumer safety agency, with sufficient powers, adequate resources, and a mandate from Congress to get the job done right this time.

We are going to hear first this morning from Dr. A. Coleman, of the American Academy of Pediatrics. Dr. Coleman contributed grim statistics and sharp insights to the Product Safety Commission's investigations. I suppose that only a parent and a pediatrician can really comprehend the human tragedy that attends the needless, unforeseen injury of a child.

Dr. Coleman, if you would come forward, please.

Before you begin your testimony, I would preface with the question, What must we do to tame what appears to be an epidemic of product-caused injuries?

We are happy to have you here this morning.

66-631 O—71—pt. 1——20

STATEMENT OF DR. ALAN B. COLEMAN, AMERICAN ACADEMY OF PEDIATRICS; ACCOMPANIED BY GEORGE K. DEGNON, DIRECTOR, DEPARTMENT OF GOVERNMENT LIAISON

Dr. COLEMAN. Thank you, sir.

I am accompanied this morning by Mr. George Degnon, of the Department of Government Liaison of the American Academy of Pediatrics. We are very happy to have this opportunity to testify before the subcommittee.

As you know the American Academy of Pediatrics is an organization of medical specialists in child care devoted to the improvement of child health in the United States. It represents most of the specialists in this field.

We very strongly support the idea and the concept of the legislation proposed and you will note that we were in direct cooperation and worked very closely with the National Commission on Product Safety during its all too brief life. I, too, was very happy to see how rapidly and easily such a commission could cut across redtape lines and go about its work without being bogged down as some of the larger agencies seem to be at some times.

We rather strongly support the idea of an independent agency rather than one added to all the rather unwieldy departments such as the Department of HEW. These departments get very large and complex and I note in S. 1797 that there is not even a recommendation for additional funding for this work, simply adding to the already overburdened budget of this very large department.

I think an example of our feeling about preventive packaging can be given in two major things which occurred recently. Because of the flurry of worrying about phosphate pollution of our streams a fair number of washing products have come out which have been low in phosphate. Unfortunately, in order to take phosphate out of a washing product and make it a good washing product so that it cleans you have to add a fair amount of alkali to it. Unfortunately, that makes the product rather dangerous for a child to eat.

Not connected with what I am about to say, only rather recently one of the executives of the American Academy of Pediatrics had a grandchild do exactly that in St. Louis and he got rather bad mouth burns. A similar product was seized by the FDA because it was so alkaline as to be extremely dangerous under the Federal Hazardous Substances Act.

It turns out that the Federal Hazardous Substances Act will allow that product to be reissued if the label is changed. We don't think little children can read labels. At the same time, the Poison Prevention Act which has been relatively slowly implemented by the same department is not yet in effect but this substance would be covered by the Poison Prevention Act, and indeed, we feel should not be issued unless put up in a child-resistant package.

Unfortunately, it takes a while for this type of machinery to get going and one would hope that an agency devoted only to product safety could cut across this type of line and get this done a little more rapidly.

Another example that I found out about only recently is in the flammable fabrics field. For a very long time, particularly in England, it has been known that one of the big dangers to children is flammable night clothing. It is a little more dangerous in England where they tend to have open fireplaces and what they call electric fires in the walls for heating, but even so flammable night clothing is a hazard.

We had hoped that one of the first actions of implementation in that act would be in the field of underclothing and night clothing for children. It now appears that despite all the distress of those who were anxious to get this legislation passed the proposition is that it be simply labeled as flammable rather than that a standard for noninflammable be passed. This is a recent proposal. I do not believe an independent consumer protection agency would have taken that tack.

We note that in section 3 of S. 1797 and in section 33(b) of S. 983 hazards subject to previously promulgated regulations under other acts have been exempted. I believe that is a poor way to do this and we would hope that, whichever one of these acts is finally adopted, there would be an addition of a paragraph consolidating all of these rather that excluding all these.

For instance, it would be silly to exclude flammable fabrics and exclude substances under the Federal Hazardous Substances Act and even economic poisons under the Pesticide Act to the extent that they appear in household products. They certainly should not be excluded.

Foods, drugs, and cosmetics, of course, the FDA has handled for a long time and very well, but we would hope that even if these substances are excluded from a consumer protection agency that their packages would not be so excluded and that the consumer protection agency would have major and primary responsibility for safe packaging.

We come back again to funding. S. 983 proposes specific funding, of course, for a separate agency. We note with some displeasure that the other bill, S. 1797, puts a great responsibility for a new segment of activity on the Department of HEW without giving them any money for it.

I might say in our opinion in the department which is greatly underfunded in many of its aspects of health—particularly in the aspect of child safety and consumer safety. I would say that S. 1797 has a paragraph in it that sounds very bad for the United States. That is the one about export.

The other bill, S. 983, rather correctly states that exported goods must be subject to the same regulations as those used domestically un less they conform with the country of export's standards or are exempted by it. I would not like to think that the rest of the world would feel that we were exporting shoddy goods that we wouldn't use for ourselves in our own domestic use in the United States.

Another aspect of the bill that is of concern is the portion on imminent hazards. S. 1797 would require the Department of HEW to go to court and seek an injunctive process through the courts in order to ban something which was considered imminently and immediately hazardous.

The other bill would allow more rapid action and would give the manufacturer judicial relief if they disagreed with the banning. We

would feel that if something is defined as an imminent hazard something more rapid than the courts' injunctive process should be available to whatever agency administers this bill.

The subpena powers listed in the acts seem to differ quite a bit. In S. 1797, the Secretary of the HEW would be empowered to subpena a record but not the people. I am not sure whether that was the exact intent of the persons who wrote the bill. We feel that the provisions in S. 983 for subpenaing persons and holding hearings is a rather complicated way to gather important data, as was shown by the hearings of the National Commission on Product Safety.

These are the major feelings about the bill, besides some of the more extensive remarks we have made in our accompanying statement.

Senator SPONG. We will admit the statement into the record in its entirety and are very appreciative for the comments that you have made on the statement itself.

Senator SPONG. Senator Cook.

Senator COOK. Dr. Coleman, you stressed that S. 1797 has no appropriation in it and that S. 983 calls for $5 million in 1971; $7.5 million in 1972; and $10 million in 1973.

I might say that when Secretary Richardson was here on the first day of these hearings he made it very plain that the Department had already earmarked approximately $40 million for the first year of operation within the framework of HEW for this facility. He said that the amounts of money set forth in S. 983 were woefully inadequate and that under the circumstances would really accomplish nothing.

I think it might be wrong to say that because a bill specifically sets forth appropriated funds and another bill does not that this makes the other bill totally and completely weak. The testimony in the record so far indicates that the amount of money set forth in S. 983 isn't even going to begin to do the job.

I can only say to you that I think they made it very clear at that time that they were prepared to earmark some $40 million for the first year's operation of this program regardless of whether it is S. 983 or S. 1797, or a combination of both.

The Commission and the chairman made it very plain that they were not talking in terms of a major testing facility. Yet HEW was talking in terms of a major facility and said that the logic of the thing was to combine the present testing facilities and facets of HEW, for instance, for flammable fabrics, and so on and so forth, and aggregate those into a major testing facility.

The Chairman of the Commission, within the framework of S. 983, made it very plain that he was not talking about a major testing facility at all. Don't you feel that if this is really going to function the way it ought to function, that we have a major all-purpose, all-encompassing testing facility?

Dr. COLEMAN. Not being an engineer, I don't claim to be an expert on that field, but I would say this from what I know about the work of the Commission and how it functioned and the proposals that we have made. It would be quite feasible, I would think, to utilize other agencies of the Government and also contract facilities for the same purpose. I

would think that engineering people would have to make the decision about what separate facilities were needed or whether there were plenty of other facilities that could be utilized for the same purpose.

Senator Cook. You may well be correct, but you placed emphasis on the fact that there was a distinction between the two bills as they apply to imminent danger. Don't you think the Government's position has to be clear-cut before it would withdraw a product from distribution when it involves imminent danger and don't you think we have to have the facilities before we can take this position?

Dr. Coleman. I would think the facilities would be more ones of surveillance rather than final testing. Engineering testing is a relatively technical field in which I am not expert. I would think it could be obtained in many ways. Surveillance, on the other hand, is something that has to be done by an interested agency on a constant basis. I think a great deal of emphasis has been put on the surveillance portion of it, and rightly so.

Senator Cook. The reason I bring this up is that not too long ago the U.S. Department of Agriculture moved in and closed up a packing facility in the United States because it felt that somehow or other some products that had come out of this facility had come from carcasses of hogs that had been subjected to mercury poisoning. They did almost irreparable damage to this company.

Stores within its trading area had signs on their windows that they didn't carry this particular company's products. When it was all finished, the Department of Agriculture didn't have a leg to stand on, because they did not have the facilities to test. As a matter of fact, it turned out, after having done several hundreds of thousands of dollars worth of damage to this corporation, that they found out that the mercury poisoning that, by the way, had shown itself in serious problems to three children, was the result of a home-slaughtered animal. It put the Government in a very, very serious and precarious position to the extent that there is now a claim against the Government for a tremendous amount of money.

I agree with what you are saying, but I think if we are going to go into this thing that you cannot look at it from the standpoint of contract work, because I think this is going to take a long time. I think it is going to take a tremendous amount of time, for instance, in those products that may be suspect as being imminently dangerous. As a matter of fact, far more time than it may take you to get an injunction in court.

Dr. Coleman. That is possibly true, Senator. I will have to leave it to the engineers to decide what is the best way to do such a thing. I would hope that whatever legislation is finally passed would have adequate safeguards, of course, for the manufacturers.

Senator Cook. What I am really trying to say, in essence, is that I think there is some good in both of these bills that can be brought together to make the kind of legislation that you are talking about. To summarily praise one and condemn the other when you will wind up with a combination of both is not the right thing to do. What we really ought to be discussing is how we can bring these two together and come up with a workable operation.

You talk about how unwieldly the HEW is and I won't disagree with you. But I think probably one of the most efficient divisions they have is the National Institutes of Health. I might suggest that this is almost totally run by doctors.

Dr. COLEMAN. That is perfectly true, but it is not a service organization but a research organization.

Senator COOK. It is more than a research organization. I have been trying to get a committee of some 20-odd doctors to see to it that facilities are made available to a medical school in the United States and we can't get a decision at the NIH level. We have to get a decision from the deans of medical schools all over the United States. The problem with this is that that system was established by doctors.

I am wondering when we get into this, if we have a compatible division within the framework of an existing department and it can function with a degree of independence, whether it is conceivable that this can be gotten off the ground much faster?

Dr. COLEMAN. I don't necessarily disagree, Senator. Of course, we would like to see a clearly identified portion of HEW, if that is the way it turns out, clearly visible, with no other motivation than to do this particular job; which, of course, was the appeal of a separate commission. We would also like to see funds clearly earmarked for the purpose we are particularly interested in, in this case, consumer safety. One also worries about the funding getting sort of mixed into a big lump in the budget of a big department.

Senator COOK. I think that my only problem is that I envision, when you talk about separate commissions and organizations, another bureaucracy, and another building and another establishment. I don't see a reduction down of any of the people who are presently working on flammable fabrics or anything else. Consequently, all you are going to do is add to rather than consolidate.

You made a very good point. Do you feel that there should be a section in this bill that in essence reestablishes the power over flammable fabrics and other facilities to take care of packaging and so on, that it ought to be spelled out very clearly in any type of legislation that comes out of here on product safety, that it assumes the authority of the present legislation and sees to it that it comes under this jurisdiction. In this way we can eliminate something, and add it to a new facility rather than to completely overlap and have a state of confusion whereby one agency says one thing and another agency says, "But that is my authority and it is not yours and I am going to take control of it"?

Dr. COLEMAN. Yes; That was exactly my point. I would like to see an additional paragraph consolidating just about all of the previous legislation related to any consumer product under whatever agency eventually administers this type of service.

Senator COOK. Thank you very much, Doctor.

Dr. Coleman, Secretary Richardson on Monday announced the reorganization of the FDA to include an Office of Private Safety Regulation. Will this reorganization allay your fears of placing the product safety program in HEW as opposed to an independent agency proposed in S. 983?

Dr. COLEMAN. Not entirely. Unfortunately the Department of HEW and Public Health Services have undergone a number of reorganiza-

tions in the last few years, some of which we have felt have been relatively unhealthy. In particular the entire field of injury control, rather than being consolidated, has been relatively fragmented under the organization.

There is one portion of it dealing with behavioral aspects of injury control that is still sitting out in Cincinnati. The section which was identified as the Accident Prevention Branch is no longer in existence, which we feel was not a good thing to do. Through some other organizations, including the American Public Health Association, we have been urging that this be reestablished.

Senator SPONG. Thank you.

Recently the distribution of free razor blades in newspapers caused an uproad due to the potential hazards to children. Similar public reaction resulted from doorknob sampling of a detergent in University City, a suburb of St. Louis.

Dr. COLEMAN. Yes, that was the one that burned Dr. Harrison's grandchild.

Senator SPONG. I gathered as much. From your testimony I take it that you believe that jurisdiction of a product safety agency should be extended to include the power to promulgate standards to cover the distribution of products?

Dr. COLEMAN. Yes, and their promotion also by these various means.

A few years ago, for instance, a drug company gave out door-to-door samples of a cold remedy in a flavored tablet containing aspirin. The package was rather small and a child eating one package of it wouldn't have been hurt. However, the director of the poison control center in Boston, Dr. Alpert, found that a little child he knew went around the neighborhood and collected 42 packages. Had he eaten them all he would have been seriously injured. We consider this an improper promotional method and would hope that all of this would stop. We would hope that it wouldn't have to be spelled out that whatever agency administers this type of legislation could have something to do with safe promotional practices also.

Senator SPONG. Doctor, we appreciate very much your appearance and testimony here this morning.

Thank you.

Senator COOK. Doctor, let me ask you one question because you brought it up. You don't believe that the United States should abstain from dictating the safety standards of other countries by requiring that U.S. exports meet certain standards of safety which may not be the standards of safety that are set in other countries?

Dr. COLEMAN. No, sir; that is not exactly what I said. I would say that if another country has a standard of its own and the export conforms to it, I see nothing wrong with that. But I would hate to have the United States accused, as it has been in the export of certain drugs in the past, of exporting material which we would not use and would consider dangerous in this country.

Senator COOK. I have to get this point in. We are talking about the razor blade situation. I think it was almost incumbent on the United States to immediately put a stop to that, but I will say with all due respect, because we read so much about it in the nature of condemnation, that I have not noticed that any newspapers apologized for the fact that they took that advertising and took the revenue to put those

razor blades in their Sunday supplements so that everybody in the United States could receive them.

Dr. COLEMAN. I agree heartily.

Senator COOK. Thank you, Doctor.

Senator SPONG. I trust the press will cover that, Senator Cook.

(The statement follows:)

STATEMENT OF ALLAN B. COLEMAN, M.D., CHAIRMAN, COMMITTEE ON ACCIDENT PREVENTION, THE AMERICAN ACADEMY OF PEDIATRICS

The American Academy of Pediatrics presents these views regarding the Consumer Product Safety Act of 1971 on behalf of the children of this nation. Children, though politically impotent, do represent a significant portion of our population and indeed embody our nation's greatest resource. The Academy is also speaking on behalf of the pediatric community of this nation whose membership daily is involved in educating parents toward accident prevention and child protection. Each day the members of the pediatric community also provide medical attention to the young children who are victims of burns, the preschool and school-age children involved in accidental poisonings, the youngsters injured by unsafe children's furniture, the many victims of broken glass from doors and windows, and the thousands of youngsters harmed by unsafe toys. Data on these incidents are contained in the Report of the National Commission.

The Report of the National Commission on Product Safety contained a chapter entitled "Lessons of Federal Law" which very capably discussed the Federal experience regarding consumer product safety. The contents within that chapter and other chapters of the report will not be repeated, yet it is incumbent upon us to discuss recent experience regarding Federal responsibility affecting children as a basis for recommendations contained within this statement.

The passage of the Child Protection and Toy Safety Act during the 91st Congress was viewed as a long overdue step toward protecting children from unsafe toys and other products. Unfortunately, however, months elapsed without implementation.

History will indicate that it was largely the impetus provided by concerned consumer organizations through legal action against the Federal government which prompted the implementation of this Act. This is certainly an unfortunate commentary.

However, the absence of a meaningful Federal commitment to protect our children is even further highlighted by recent history regarding the Poison Prevention Packaging Act designed to protect our young children from accidental poisoning. This legislation was passed by the Congress and enacted into law in the closing days of 1970. Weeks went by, indeed months passed. The Presidential Proclamation published in February indicated that the week of March 21 would be National Poison Prevention Week. That proclamation directed "the appropriate agencies of the Federal government . . . to promote better protection against accidental poisonings, particularly as they relate to young children." Federal initiative was anticipated, indeed the stage had been set for what might have been a bench mark in a national effort to protect our young children. Unfortunatley, National Poison Prevention Week came and passed with no new Federal initiative, with no guidelines to implement the Poison Prevention Packaging Act, indeed with no indication that there was any concern for the estimated two million children poisoned each year.

It has been a relief to take note in the past few days that standards are being proposed and the law apparently will be implemented. Unfortunately, since the enactment of the Poison Prevention Packaging Act approximately 150 children have died, over 13,500 were hospitalized for accidental poisonings, and over one million were involved in accidental ingestions. *EACH DAY* we wait for effective enactment of the Poison Prevention Packaging Act accidental poisonings will claim the life of one child, necessitate the hospitalization of seventy-five youngsters, and involve an estimated six thousand children in accidental ingestions. Data indicate these glum statistics might be reduced by ninety percent with packaging already available.

One further comment along this line pertains to the Flammable Fabrics Act, which for nearly four years now, has stood in testimony to initiative and disregard for product safety within the Department of Commerce. That agency

has not taken action to protect the consumer, but even worse is the diabolical position being taken which will allow the marketing of flammable fabrics.

These comments are not designed to cast aspersions upon the personnel of the Food and Drug Administration or the Department of Commerce. The individuals within these agencies charged with the responsibility of consumer protection and product safety are handicapped without a Federal commitment of funds and manpower necessary to achieve objectives. These comments are, however, presented so that some consideration might be raised regarding our national priorities.

Warning statements and labeling for the protection of the public health and safety are fine, and indeed it is commonplace to note on cans, bottles, and other packages within the household cautionary labels of "Harmful or fatal if swallowed," "Danger," "Poison," "Caution," "Warning," "Not intended for internal use." Unfortunately, most potentially hazardous household substances do not afford protection to the young child who does not read, and 75% of the children involved in accidental poisonings have been victims of products which have been stored within sight in the household. The establishment of the Commission on Consumer Product Safety, the appointment of a Consumer Safety Advocate, the establishment of an Injury Information Clearinghouse will refresh our efforts, provide for new vigor and centralize Federal endeavor in assuring that all children are protected from hazards.

It is not reasonable to anticipate that industries will be motivated by so great a surge of concern for the protection of the consumer that they will move forward voluntarily on any large scale to make products more safe. Credit is certainly due to those precious few toy manufacturers, proprietary drug houses, infant furniture manufacturers, etc. who have taken action to further assure safety and safe use of their products. However, too many are concerned with the net figures in the profit column with a cold disregard for the toll of those sustaining injury. The Federal commitment must provide the impetus for the protection of the consumer.

The American Academy of Pediatrics records its wholehearted support for the provisions of S. 983 which calls for the establishment of the Consumer Product Safety Commission. Renewed Federal emphasis upon product safety will be meaningful, indeed it is overdue. A Commission dedicated to the protection of the public with its own established priorities for action will not suffer from the handicap currently experienced by a Bureau which is understaffed, underfunded, and competing within an agency with a weak record as a safety advocate.

A visible, viable Commission is needed. Furthermore, the charge to that Commission should assure full range of activities and responsibilitiles in protection of the public health and safety. Fragmentation of responsibility in assuring the safety of consumer products must be avoided, least a hydra-headed effort frustrate the realization of objectives.

The definition of "consumer products" in Section 33 of S. 983 is comprehensive and the Academy is pleased to note that products subject to the Federal Hazardous Substance Act and the Poison Prevention Packaging Act are no excluded from the purview of the Commission.

To further assure the centralization of effort of all consumer protection activity, the Academy would recommend that the Flammable Fabrics Act fall within the scope of responsibility for the Commission. Additionally, it is recommended that responsibility for regulations pertaining to the packaging of products subject to the Food, Drug, and Cosmetic Act and the Federal Insecticide, Fungicide and Rodenticide Act be within the purview of the newly created Commission. The provisions of S. 983 should be clarified in this regard.

Furthermore the authorization of appropriation in S. 983 of $22.5 million through fiscal year 1973 is a necessary measure of commitment. The authorization of appropriation stands in contradistinction to the proposal of the Administration which provides no authorization and adds a further responsibility to a department which has been an "under achiever" in the areas of child protection and product safety. Although the enactment of S. 983 would provide for a significantly better consumer protection program, it is recommended the Congress include a specific authorization for appropriation within S. 1797 so that funds might be earmarked for consumer protection activity, should this less desirable alternative be adopted.

Accident prevention and consumer safety long ago should have been declared a priority of our nation. One might point an accusing finger at the victims of an

accident, at the manufacturer, the government or indeed the medical profession as well as a host of other convenient scapegoats in attempting to place the blame for accidents and injuries relating to products. However, the Consumer Protection Safety Act provides constructive alternative—namely, the development of a positive course of action. The American Academy of Pediatrics and its twelve thousand member physicians caring for children endorses and joins in the partnership which will provide all segments of society the opportunity to play a more responsible and responsive role in protecting the public health and safety.

Senator SPONG. The next witness is Mr. Eugene Keeney.

Mr. Keeney, we are very pleased to have you here this morning.

If you would identify Mr. Chaucer and Mr. Sherman, we would be most appreciative.

STATEMENT OF EUGENE ADAMS KEENEY, PRESIDENT, AMERICAN RETAIL FEDERATION; ACCOMPANIED BY EUGENE SHERMAN, DIRECTOR, MECHANDISE RESEARCH AND DEVELOPMENT, NEWBERRY'S; AND DANIEL CHAUCER, VICE PRESIDENT AND DIRECTOR, BUREAU OF STANDARDS, R. H. MACY & CO.

Mr. KEENEY. Thank you, Mr. Chairman.

Accompanying me today on my right is Mr. Daniel Chaucer, vice president and director, Bureau of Standards, R. H. Macy & Co. On my left is Mr. Eugent Sherman, director of Merchandise Research and Development of Newberry's. Both of these gentlemen have had long experience in the field of product design and safety.

We appreciate the opportunity to appear here today to state the retail industry's position on the major bills introduced during this Congress dealing with consumer product safety.

The American Retail Federation accepts the need for development of safer products. We have always believed that consumers have a right to buy and enjoy safe products. Government, business and the consumer, can, by working together, control unreasonable hazards.

We support Government presence in the area and the setting of product safety standards where there is a demonstrable need. We support and urge the wide collection and dissemination of product safety information.

We feel that S. 1797, among the product safety bills pending before this subcommittee, offers a better approach to the resolution of the problem. Some areas of that bill could be strengthened, particularly in the area of information collection and disclosure.

The federation supports the establishment of a product safety program within the Department of HEW. That department is the most appropriate agency to handle such an enormous and complex program. There are already several laws in the area of product safety that are under HEW. The Federal Insecticide, Fungicide, and Rodenticide Act, the Federal Hazardous Substances Act, the Radiation Control for Health and Safety Act of 1968, the Public Health Service Act, the Food, Drug, and Cosmetic Act, and the Poison Prevention Packaging Act of 1970 are all administered by the Department of HEW. It is desirable to use this existing technical knowledge and capability to its fullest extent.

Mr. Chairman, we realize that you have indicated that many of these programs under HEW are inadequately administered and un-

productive. We submit that the creation of a new agency will not solve that problem. That agency itself may very well be unproductive. What is needed is a greater concern over the people employed to run an administrative agency or program. What is needed is an adequate funding to permit these agencies to act as intended. What is needed is greater oversight and pressure from Congress, business, and the consumer. We believe that if these needs are implemented, efficiency and productivity would have to follow. These needs would also apply to any new product safety program.

We also support the idea of mandatory safety standards where there is a demonstrable need. Most consumer products are safe and nonhazardous. Some require little more than reasonable and commonsense precautions or instructions. A few, on the other hand, may pose unreasonable hazards.

We feel that the procedures proposed by S. 1797 for the promulgation of standards are good. We especially support the sections dealing with the use of existing standards and the acceptance of offers to develop proposed standards. Section 6(b) allows the Secretary to publish, in lieu of accepting offers, an existing standard as a proposed product safety standard. This has much merit, for it allows the use of existing expertise and avoids duplication. Section 6(c) requires the Secretary to accept at least one proposed product safety standard and allows him to contribute to the cost. This is also utilization of existing expertise and helps some of the capable technical associations develop competent proposals.

Section 9 requires the Secretary to either publish a proposed regulation or withdraw the prior notice within 210 days. We interpret this as being an outer limit which would not preclude more rapid action in those instances there the hazards present can be eliminated by a change in cautions, warnings, or use instructions, or where a competent voluntary standard has already been promulgated.

There should be a recognition within S. 1797 that cautionary labeling could be sufficient to protect the public in certain circumstances. The Secretary should have the option to so mandate in lieu of setting standards that would cause a change in the product characteristics.

The federation supports the widest possible collection and dissemination of product information safety. Perhaps the most important part of protecting the consumer's safety lies in the information that will be collected and evaluated. Without complete and thorough information, the injury problem itself cannot be properly understood. Such information can be used to the benefit of both the manufacturer and the consumer. Inadequate and incomplete information can only result in poor protection for the consumer.

We therefore recommend the establishment of an injury information clearinghouse within the Department of HEW, to be established by the Secretary as a part of the product safety program. Such a clearinghouse was recommended by the National Commission on Product Safety. Present systems for collecting injury data are inadequate and primitive. A national system is needed. The commission correctly pointed out that:

> An information system for product safety must provide for estimating injuries, monitoring the frequency of injuries in association with contributory factors, and investigating injuries to elucidate the best methods of preventing or reducing them.

Such a clearinghouse should promptly supply the industry a user-with-safety information which could be applied to the manufacture, instruction, repair, maintenance, use, and disposal of products. Industry would welcome this, for it helps them produce safer products.

Section 4(c)(1) of S. 1797 prohibits the release of certain information to the public that relates to trade secrets, costs, methods of doing business, et cetera. We feel that this prohibition is good and protects necessarily secret competitive information. There are situations, however, that would make the dissemination of such information necessary to protect the consumer from a hazardous product. In these situations we feel that the Secretary should be allowed to disclose that information.

The federation therefore recommends the addition of the following proviso to the end of section 4(c)(1):

Provided, That, nothing in this subsection shall preclude the Secretary from disclosing the product name or an identification of the offending defect, component or ingredient where he determines that such disclosure is necessary to carry out the purposes of this Act.

We feel that is a good balance between the protection of the consumer and the protection of the manufacturer.

Where the Secretary finds that no feasible product safety standard will adequately protect the public from unreasonable risk of death or serious illness or injury associated with a product, he may declare that product a banned hazardous product. The federation supports this authority. We recognize the fact that in some cases this may be the only means by which the public will be adequately protected.

The federation also supports the authority of the Secretary to request the Attorney General to file an action against an imminently hazardous product where that product presents an immediate and unreasonable risk to the public health or safety. The initiation of a proceeding to promulgate a standard or to declare the product a banned hazardous product must begin as soon as practicable thereafter. We recognize that occasionally a dangerous product may inadvertently be placed on the marketplace and that the best recourse would be to proceed against that product independently of the whole class of products. While this would protect the public health and safety, it would not disturb the entire production of one manufacturer or that of an entire industry.

Section 13 of S. 1797 provides remedial measures for the consumer in situations where a consumer product fails to comply with an order issued under this act. In such situations it gives the Secretary authority to require the manufacturer, importer, distributor, or dealer to give public notification and to mail to each consumer known to such manufacturer, importer, distributor, or dealer a notification of the failure of compliance.

In addition, the manufacturer, importer, distributor, or dealer could be required by the Secretary to either bring the product into conformity with the requirements of the applicable order, or to replace such product with a like or equivalent product, or to refund the purchase price less a reasonable allowance for use where the product has been in the possession of the purchaser for more than 1 year. Likewise, the retailer should have the same rights of recovery from his supplier as is afforded under the Toy Safety Act.

For example, we would recommend the following to be added on page 13, line 17, after "fees":

The manufacturer, importer, distributor, or dealer against whom an order is issued under this subsection shall reimburse each retailer of the product which is subject to such order for the cost of the product plus any reasonable expenses incurred by the consumer and reimbursed to the consumer in availing himself of the remedies and any reasonable and foreseeable expenses incurred by the retailer in return of said product.

Retailers would have little trouble complying with such requirements when there is a significant risk of injury involved. Our only fear is when there is a massive recall of a product that presents technical violation of a part of a standard, but presents no risk of injury.

Section 14(b) of S. 1797 provides that every person who manufactures, assembles, distributes, sells, or imports a product required to conform to a product safety standard must maintain such records as the Secretary may require. We feel that there are potentially vast administrative problems here. It is conceivable that the Secretary could require that extensive records be kept on all first purchasers of all products covered by a product safety standard. Recordkeeping provisions will be difficult and costly to comply with. Considering the number of products that could come under product safety standards, what is now difficult would then become impossible. We urge this subcommittee to seriously consider the recordkeeping provisions of sections 13 and 14(b) and seek to strike a balance between what is realistically obtainable and what will best protect the consumer from unsafe products, without creating an undue cost burden, which would be passed on to the consumer.

Section 16 provides for civil penalties for knowing violations of the act and for criminal penalties for willful violations of the act. It also provides for injunctions and seizures by the Attorney General of products manufactured in violation of an applicable product safety standard or which has been declared a banned or imminently hazardous consumer product. There are also provisions for private lawsuits by any interested person.

We support this section. We realize that laws will not be effective unless there is some degree of sanction imposed therein. The mere existence of authority to enforce a product safety standard will make their use rare.

We also urge the subcommittee to add to S. 1797 a section that would permit the manufacturer of a product subject to a product safety standard to furnish to the retailer, at the time of delivery of the product, a continuing guarantee that such product conforms to all standards. Included in this guarantee should be a provision whereby the retailer who establishes the existence of a guarantee received in good faith and, absent any evidence of fraud or collusion, be exempted from civil or criminal liability. This would isolate the responsibility but still give a power of enforcement against those who would wrongfully seek to use this as a shield.

Such a guarantee is not new. Many other acts have provisions for practical and effective continuing guarantees.

Section 17 prohibits delivery from customs of any product to which a product safety standard applies or which is declared a banned or imminently hazardous product without certification that such product

is in complicance with the standard. The section then details procedures by which the imported product could be brought into compliance with the applicable standard.

We suggest that section 17 be modified to place the importer in the same position as a domestic manufacturer of a consumer product which is subject to a safety standard. The advance certification now in section 17 would delay imported products at the docks pending testing and certification. The modification we have suggested would provide for a more consistent approach to the problem.

We would also suggest that the subcommittee include a provision for an advisory committee composed of technical and merchandising experts from business, government, and consumer organizations. This committee should be consulted before any product safety standard is proposed. The committee could be asked for assistance in developing standards, as well as advice on other proposals. A good advisory committee can provide insights and act as a brake on weaknesses of proposed standards. Public meetings should be held and a record of deliberations should be kept.

Wtih respect to the preemption section, section 19 of S. 1797 provides for preemption of any law established by any State or any political subdivision which applies to any aspect of health or safety of the consumer porduct which is covered by any standard or regulation under the act.

The section further provides for exemptions from preemption where, upon application to the Secretary, the State law imposes a stricter standard, is required by compelling local conditions, does not unduly burden commerce and is adopted pursuant to procedures comparable to those required of HEW.

Whenever States go into the field of safety standard setting, there arises a considerable number of conflicts caused by varying requirements. Manufacturers cannot produce uniform products for a national market and comply with these variances. The consumer is the one who pays for this in the long run through inconsistently safe products and necessarily more costly products. However, there may exist situations which make a geographic or climatic condition so unusual that it requires standards stricter than Federal ones. The federation supports this concept with a suggestion that provisions for opposing comments on the issue of exemption be required. This should not, however, be allowed to delay the expediting of a needed exemption.

In conclusion, Mr. Chairman, we urge this subcommittee to seriously consider what we feel are positive recommendations. We support the approach of S. 1797 to the problem of protecting the consumer from hazardous and unsafe products. We have suggested several measures which will strengthen that bill.

Our recommendations fall into five areas: First, we feel that the presence of the Federal Government in the product safety area is necessary and that product safety standards are required.

Second, we believe that the widest possible collection and dissemination of product information is absolutely necessary to the effectiveness of any safety program. To this end we have suggested strengthening changes in S. 1797 which would set up an injury information clearinghouse and allow the Secretary of HEW to collect and disseminate information.

Third, we support the banning of hazardous products and the temporary banning of products that present an imminent hazard.

Fourth, we have suggested that provisions be instituted for continuing guarantees running from the manufacturer to the retailer with the purpose of isolating the responsibility.

Last, we suggest the creation of an advisory committee to assist the Secretary in the complex area of product safety standards.

We would be most happy to assist the subcommittee with specific legislative language to support our proposals.

Senator SPONG. Thank you, Mr. Keeney, for presenting the views of the American Retail Federation to this committee.

In considering these two bills at the conclusion of these hearings, the committee will give careful thought to the amendments that you recommend. I am particularly interested in your proposed amendment concerning disclosure of information and your suggestion referring to reimbursement of retailers. This will be given careful study and review by this committee.

In your statement you endorse the S. 1797 proposal of locating the product safety program in the Department of HEW. You point out that this would be more efficient than an independent agency because there are already several laws in the area of product safety that are under HEW.

Throughout these hearings several witnesses have severely criticized FDA for their inept handling of important areas of consumer legislation, including Poison Prevention Packaging and the Toy Safety Act. Do you believe we can trust HEW to effectively handle the product safety program on the basis of their past track record?

Mr. KEENEY. Yes, I believe we can trust them, provided that adequate funding is granted to HEW, but even more so, a greater oversight on the part of Congress and from business as well as from the consumer groups. We find excellent analogy as far as the FTC is concerned. A number of the consumer groups highlighted and spotlighted the problems regarding the FTC and also regarding the FDA. We find a greater awareness from both of these regulatory agencies, regarding the interests of the consumer and the general public.

I don't feel that a separate new agency, basically, will really be the answer. The same problem could very well arise as far as an independent agency is concerned. If gentlemen such as yourselves, Mr. Chairman, and Senator Cook, and the other responsible citizens in our country and business people and consumers, keep watch over the operations of these agencies that we create, we can be assured that they will do their job. If they know that someone is watching then we know a better job will be done.

Senator SPONG. You have mentioned this matter of greater oversight and pressure. In S. 983 there is a provision for a consumer safety advocate. I see no mention of that in your statement. Wouldn't such a position insure the greater oversight and pressure which you say are needed to make an approved safety program effective?

Mr. KEENEY. I am not too sure whether this might be the case, Mr. Chairman. We would have a man employed by the Government, subject to the Government's pressures, subject to many other pressures, especially the various hierarchies and all the echelons and channels

that this advocate would have to go through. He would try to do a job but basically if the pressures came from business and from Congress, as well as consumer groups, I believe it would be more than adequate.

Senator SPONG. In your statement you endorse the procedures for the promulgation of standards as outlined in S. 1797. Both S. 983 and S. 1797 provide for the development of standards by competent third parties. Unlike S. 983, however, S. 1797 would not enable the Secretary to conduct in-house standards development research while a third party was developing the standard.

Do you feel that this prohibition would create undue delay?

Mr. KEENEY. Mr. Chaucer.

Mr. CHAUCER. No, Senator, I don't think it necessarily would. I think in any standards making process, regardless of whether it be Government or voluntary standards systems, there would hopefully be considerable input from the Government people working along with the standards associations and business to provide that type of concurrent review and to maximize the effort.

Senator SPONG. Mr. Keeney, in your statement you endorse rapid action in standard promulgation. The administration standards setting procedures specifies that a standard must be proposed within 210 days of the initiation of the proceeding. However, after this initial time limit there is no specified time period in which the Secretary must issue the final standard or when the standard becomes effective. Do you believe that such time limits should be specified?

Mr. KEENEY. Yes, I would agree with that.

Senator SPONG. Are you aware that under S. 1797 there are no provisions for recall, repair, and notification if the product is found to be defective and there has been no product safety regulation promulgated?

Do you believe there should be such a provision?

Mr. KEENEY. Yes, I would support that.

Senator SPONG. In your testimony you urge the amendment of S. 1797 to permit the manufacture of a product subject to a standard to furnish to the retailer at the time of delivery of the product a continuing guarantee that such product conforms to all standards. Isn't this provision similar to the certification requirement of S. 983?

Mr. KEENEY. I don't believe it is. There could be some confusion regarding the certification of the continuing guarantee but I believe a fine line can be drawn between the certification and the continuing guarantee. A certification can be in conformity with the Government required standards. A continuing guarantee would be an extension of this certification and an assurance by the manufacturer to the retailer to the effect that this standard has been followed and that any liability with respect thereto would be assumed by the manufacturer.

Senator SPONG. Thank you.

If you would like later to elaborate upon that last answer, after looking at both of these, we would be glad to receive anything additional that you might like to furnish to the record.

Mr. KEENEY. Thank you.

Senator SPONG. Senator Cook.

Senator COOK. Thank you, Mr. Chairman.

Mr. Keeney, is there really going to be an effective product safety act unless a particular agency or an independent agency not only has the authority under S. 983, but also the authority under the Federal Insecticide, Fungicide, and Rodenticide Act, the Food, Drug, and Cosmetic Act, the Poison Prevention Packaging Act and the rest? Do you really feel there is going to be an efficient operation unless all of this is centralized under one facility.

Mr. CHAUCER. We did recommend that the bulk of these activities which are included in S. 1797 be incorporated under HEW. The reason for that is that we think it would maximize their effectiveness. They have currently a considerable body of competence in handling the actions to which they are currently subject. By bringing the rest of them under it and following the recommendations which Mr. Keeney made to provide the funding and the overview of their activities, we do feel that this would be utilizing the expertise which is currently available to its best advantage and improving it.

Senator COOK. The chairman raised the question that there is serious criticism of HEW for not endorsing particular action. If you create a new commission and a new agency under Government regulations, the Government is empowered and agencies are empowered to transfer individuals' interdepartmentally because of their particular fields rather than to create new positions. If we adopt S. 983, and you take many of the people that are presently working on the Toy Safety Act, and who will also have to function under these terms, under the Flammable Fabrics Act, aren't you going to wind up with an agency that is going to suffer the same type of criticism from the general public? Or do you envisage that we are going to have all of these people in their present facilities, and create something new, and just add a few more hundred people to the payroll and we will wind up with the same type of situation. Within a very short period of time we would be subject to the same type of criticism from the general public.

Mr. CHAUCER. I believe what you suggest is a possibility we are concerned with. You could just create another agency which would be duplicative of the efforts of HEW right now.

Senator COOK. If in fact you create a new agency, isn't it conceivable that many of the people who are presently working on product safety standards within these agencies and under these acts will be transferred to this new agency, and consequently, if they are doing no better in regard to the attitude of the general public where they are now, we can't assume that because we create a new agency and create a new hierarchy that we are not going to get the same kind of results.

Mr. CHAUCER. This again is our concern and we feel very strongly that the answer is to take the agency which has the ability to function and if they have not been utilizing it properly, to see to it that they do.

Senator COOK. So the criticism really isn't HEW. It's a criticism leveled at the people in the procedural and standard-making process, which are going to be many of the same people who will be involved in the passage of a new agency created under S. 983.

Mr. CHAUCER. That is correct.

Senator COOK. The chairman brought up the question of the consumer advocate. I have no objection to this in general, but one objection I do have is that there seems to be no quid pro quo. In other words,

the commissioners of this agency are subject to the following restrictions: "No person in the employ of or holding any official relation to any person, firm, association or corporation engaged in selling or manufacturing consumer products or holding stock or bonds of substantial value in such a firm, association, or corporation, or who is in any other manner pecuniarily interested in such a firm, association, or corporation or a substantial supplier thereof, shall enter upon the duties of or hold the office of Commissioner."

The consumer advocate provision says, "Appointed by the President with the advice and consent of the Senate for a term of 7 years." There is no qualification or restriction mentioned.

On the first day of the hearings we had the Chairman of the Commission and we had Dr. Hill who was one of the members of the Commission. They are tremendous consumer advocates. Both of them testified that under section (c) neither of them could qualify under any circumstances to get on this Board. The doctor indicated that he could but that he would have to totally divest himself of several holdings and he would have to get out of the research and development agency of which he is the owner. Even if he got out of it I think he would still remember the clients that he did work for when he was there.

So I am wondering how you set a restriction on who the Commissioners will be, and then you say that a consumer advocate can be anybody.

Mr. KEENEY. There appears to be a double standard there. It would have to be either equalized or some way would have to be sought in order to establish what requirements and qualifications a consumer advocate would have to take as well as any commissioner that might be appointed.

Senator COOK. We should definitely draft an equitable provision in this regard.

Mr. KEENEY. Some change is definitely in order by way of that requirement.

Senator COOK. The thing that impressed me the most was that two of the greatest advocates for S. 983, the chairman and one of the leading members of that Commission, said without equivocation they could not qualify. If we are really saying that by reason of the fact that we automatically presuppose that anybody who owns a share of stock is dishonest if he is going to work in regard to the general public, that we take individuals that worked on this Commission, that wrote this report, who have received glowing reports from everybody in the country, that these types of gentlemen are unqualified to be on this Board, I am wondering what is going to be the intellectual significance, in regard to consumer and product safety, of the Commissioners who would ultimately wind up on that Board.

Mr. CHAUCER. It would appear that it would have to be almost destructive. You are limiting the people you can employ in this job, as you have carefully indicated. I wonder whether we are not applying some kind of mistake to the title of consumer advocate by setting it up as a authority in HEW, the Secretary of HEW and his staff and most people responsible would be in effect acting as a consumer advocate in providing the same function and the same input.

Senator COOK. Thank you.

Thank you, Mr. Chairman.

Senator SPONG. Perhaps some of you gentlemen might care to comment on this. What kind of recordkeeping requirements do you envision emanating from either S. 1797 or S. 983? How much difficulty would your company have in complying with the requirements?

Mr. CHAUCER. It is very difficult to state what recordkeeping provisions would be required. These would be ultimately subject to the regulations. One thing, it seems to me, is that the purpose of S. 1797 or S. 983 is to create better standards for merchandise which is sold in the marketplace. It would seem to follow that the very existence of these standards would cause a significant reduction in the amount of recalls that we can anticipate.

I believe this is the experience that we have had under, for instance, the Radiation Control Act. I am not aware at this moment of any recalls of television products subsequent to the passage and the provisions of the act. Yet despite this, recordkeeping is going to go on for a long time afterward. I suggest that the recordkeeping provisions which are being used there and elsewhere of having the retail outlet maintain a record of the names and addresses of the consumers or customers for the product may in fact be probably the least effective way of doing it.

Under the conditions which we do business today many items which may ultimately be the subject of this law are what we call carryout type of items. The consumer drives in to his local market. He picks an item from a rack on a display. He goes to a checkout counter where a clerk issues solely a cash register type of receipt. The ability to obtain a meaningful record under those circumstances would be very small indeed.

The American Retail Federation represents upward of a million very small stores. They are what are called mom and pop type of industries, and getting meaningful input to them and having these people maintain and collect and retain the type of records that may be necessary would be an extremely difficult cost burden on them and very possibly an impossibility.

In addition to the outlets that I mentioned in our marketplace today products which may be subject to the act are being sold through mail-order solicitation, from diverse companies such as gasoline companies, banks, gas stations, so I think that the number of people actually involved in this would be astronomical.

There is another aspect of the individual recordkeeping which I think must be considered very seriously. That is, that a tremendous number of products which are purchased in the marketplace are not purchased for the ultimate use of the purchaser. Depending on the nature of the item or the time of year, the bulk of them may be bought for gifts. Furthermore, they may, even if not bought for gifts, be used for a short period of time and then passed down from parents to children. Where we keep a record of the initial purchaser and the item is in fact purchased as a gift, you would lose your chain of association. There would be no way then of reaching the man who actually has a product which may be subject to the recall.

I personally would suggest that an alternate to the recordkeeping provisions be enacted. That is, that each product which is subject to

a regulation or to a standard should be required to have affixed to it in a permanent and legible fashion the name of the manufacturer, the model number, serial number, or other clear identification of the product. I would further like to see that each product which is subject to a standard have enclosed within it a registration card, a product safety registration card, made out very, very clearly to indicate its purpose. I would want that card to be stamped and preaddressed for return to the vendor or to the manufacturer of the product.

The card would have the model number, serial number, and space for the consumer to fill in his name and address.

Senator COOK. This raises a very interesting point, if you do not mind my interrupting a minute. You are talking about sending them back to the manufacturer. There seems to be a serious problem between S. 983 and S. 1797 in regard to importers and exporters. Under S. 1797 the importer is held responsible. The importer can be immediately dealt with. The importer can be made responsible for a recall. The importer can have the information you are talking about.

Let's take the soup situation in New Jersey. Can we compel a foreign manufacturer to recall all of his products in the United States?

Mr. CHAUCER. No, sir; but in the case of an imported item you have an importer of record regardless of whether it be a——

Senator COOK. Then don't you think this importer ought to be the one who should be responsible and that we should hold him responsible rather than the foreign manufacturer?

Mr. CHAUCER. We most certainly do. We think the importer should be placed in the shoes of the manufacturer and held responsible for the quality of the product.

Senator COOK. You have him immediately available for court. You have him immediately available for injunctive relief. You have him immediately available for recall. If you are dealing with foreign manufacturers, how do you do this? What is our authority? Do we go to Germany or Japan? How do we proceed against them? I know of no way.

Mr. CHAUCER. We would know of no way other than holding the importer of record responsible.

Senator COOK. If this be the case we put the retailer in the position of recalling; we put the retailer in the position of warehousing; we put the retailer in the position of collecting all of the information. The logical person who should be responsible is the importer.

Mr. CHAUCER. Yes, sir; we feel exactly the same way on that.

Senator COOK. Don't you think in the case of the situation in New Jersey right now that if you had a product such as soup that had come into the United States and they are now moving for the corporation to remove over a million cans of soup from the shelves, that if this were a foreign manufacturer the entire cost and responsibility of this removal would fall on the Federal Government? There is not a soul that we could call on really and truly, to assume this burden or assume this cost, if in fact it was a foreign corporation.

The company might say, well, we have already sold everything we have in the United States so let's forget about it. If the responsibility was with importers we would have somebody immediately available for legal action in the United States that could be proceeded against immediately. Isn't this true?

Mr. CHAUCER. Yes, sir; I believe it is.
Senator COOK. Thank you.
Senator SPONG. Thank you, gentlemen.
Senator SPONG. Mr. Robert Willis.

STATEMENT OF ROBERT H. WILLIS, PRESIDENT, CHIEF EXECUTIVE OFFICER, CONNECTICUT NATURAL GAS CORP., HARTFORD, CONN., ON BEHALF OF AMERICAN GAS ASSOCIATION, ARLINGTON, VA.; ACCOMPANIED BY FRANK E. HODGDON, VICE PRESIDENT AND DIRECTOR OF A.G.A. LABORATORIES; AND GEORGE H. LAWRENCE, VICE PRESIDENT AND DIRECTOR OF GOVERNMENT RELATIONS

Mr. WILLIS. Mr. Chairman, I am Robert H. Willis, president and chief executive officer of Connecticut Natural Gas Corp., Hartford, Conn., and chairman of the Consumer Affairs and Safety Committee of the American Gas Association.

I am accompanied here at the witness table by Mr. Frank Hodgdon on my right, vice president and director of the American Gas Association laboratories, and on my left, Mr. George H. "Bud" Lawrence, vice president and director of Government relations for the American Gas Association.

Senator SPONG. Mr. Willis, we are pleased to have you here.

We will receive your prepared statement in its entirety and you may proceed as you wish.

Mr. WILLIS. The association appreciates the opportunity to appeal here today to present its views on the consumer product safety measures now pending before this committee which would institute consumer safety programs designed to offer protection from risks associated with the use of consumer products.

AGA is a nonprofit trade association representing some 300 natural gas distribution and transmission companies. AGA member companies are located in all 50 States and service approximately 92 percent of the 42 million natural gas customers which includes some 150 million of our population in the United States.

AGA has been involved in the formal establishment of standards for gas appliances and accessories since 1925. For 45 years, AGA has operated laboratories for the purpose of testing gas equipment to determine its compliance with established standards and to publicize the results where the model of the appliance submitted has passed the test.

I think it would be helpful to provide you with an explanation of the procedures through which standards are developed and the manner in which AGA applies them in its testing and certification program.

BRIEF DESCRIPTION OF PROGRAM

In general the program is as follows: For each category of gas appliance available to the public, there is a standard evolved over the years, which describes the characteristics which must be found in an appliance of that category before it can be described as reasonable in safety, durability, and performance. A manufacturer who desires to manufacture appliances which conform to the standards for that category enters into a written contract with AGA setting forth the

basis on which he can affix to such appliances the AGA registered certification mark. This mark, known as the Blue Star, is a five-pointed star in a circle, containing the name "American Gas Association, Inc." and the words, "Certified-Design Complies With National Safety Standards." (A copy of the American Gas Association's Blue Star Certification Program pamphlet is attached to this statement as appendix A.) The manufacturer then submits a prototype of the appliance to the laboratories for testing against the standard.

If the design of the appliance meets the standard, a certificate to this effect is issued to the manufacturer. He is then authorized to put the seal on production units which he manufactures in conformity with the tested prototype. This appliance is also listed in a directory of Certified Appliances and Accessories published by AGA. The certificate is in force for 1 year. However, upon satisfactory inspection under the contract the appliance may be recertified each year, up to a total of 5 years. At the end of 5 years, the appliance must be retested against the then current standard if the manufacturer wishes to continue using the Blue Star seal.

Our engineers make one scheduled and at least one unscheduled visit each year to each manufacturer to check production line models for conformity with the certified design and specifications. In the event that any of these inspections or a complaint indicates that models are being sold which do not conform, AGA can withdraw its certificate and under its contract can require the manufacturer to go into the field and make corrections or remove the seal from all such appliances which he has sold.

STANDARDS ACTIVITIES

Any product certification program must be based on standards. AGA's activities with respect to the establishment and updating of standards are extensive.

AGA does not write the standards which are employed in its product certification program; rather it supports such work by providing financial and administrative assistance—a function characterized in standards work as sponsorship—and its members participate in standards writing. AGA's involvement in standards work is supervised by a committee of the AGA board of directors called the Standards Committee. It is responsible for AGA's policies on standardsmaking.

The fundamental policy of AGA is that all AGA-sponsored standards projects should be, whenever possible, carried on under the auspices of the American National Standards Institute (ANSI) and under the rules and procedures of that institute. The reason for this is that AGA wishes to promote, not dominate, the establishment of standards.

The AGA Standards Committee designates uninstructed AGA representatives to standards-making groups, whether sponsored by AGA or others, although it will not designate more than a minority on any committee. In the case of standards developed by AGA-sponsored ANSI Standards Committees, the AGA Standards Committee transmits completed work to ANSI. Since the AGA Standards Committee does not develop standards, it cannot revise, delete from, or add to proposed standards delivered to it by a sponsored ANSI Standards

Committee; nor can it withhold submission to ANSI of any proposed standard received from a sponsored ANSI Standards Committee.

The ANSI Committee which develops the revised standards for domestic and commercial gas appliances is known as "ANSI Standards Committee Z21 on Performance and Installation of Gas-Burning Appliances and Related Accessories." Under ANSI procedures, each such committee must have a sponsor. AGA, because of its concern for the safety of the appliances through which its members serve the consumers, acts as sponsor for the Z21 Committee. This means that AGA provides that secretarial and technical assistance necessary to permit the Z21 Committee and all its many subcommittees and various working groups to perform. AGA spends about $200,000 each year on this function. All of this money comes from dues paid by AGA members primarily gas utility companies. No funds are contributed by manufacturers of gas appliances.

AGA not only sponsors the activities of the Z21 Committee, but representatives from member companies also are designated to participate as members of Z21. Under AGA policy it will not designate more than one-quarter of the total membership of the 40-member committee. Manufacturers of appliances comprise roughly another quarter of the membership; the remainder represent the public interest through appointees from such agencies and organizations as the U.S. Public Health Service, U.S. Bureau of Mines, U.S. Department of Agriculture, Federal Housing Administration, American Home Economic Association, National Fire Protection Association, and fire insurance associations.

Since the Z21 Committee is involved with some 50 standards, responsibility is divided among 23 subcommittees organized along product lines such as water heaters, ranges, and heaters. Subcommittee chairmen and members are appointed by the Z21 chairman. Each subcommittee works as a task force to prepare draft standards or draft revisions of the standard or standards within its purview. A subcommittee's members generally are divided about equally between manufacturers and gas utilities, and where appropriate, there is representation from other interested organizations.

Attached as appendix B is the scope and a list of the members of the ANSI Standards Committee Z–21. This committee coordinates the work of 23 subcommittees, each concerned with a type of appliance or gas system in domestic use, and another six subcommittees which deal with commercial and industrial appliances and systems. Not only do these subcommittees concern themselves with the appliances and systems, but also with standards for installation, safety shutoff devices, regulators, and other key components.

As with the Z–21 Committee, membership of this subcommittees includes representatives not only from the gas industry and gas appliance manufacturers, but also from other associated organizations, including governmental agencies.

Proposals for additions to, deletions from, or changes of an existing standards may come from any source. Anyone can suggest or recommend a new standard. Usually such proposals originate with public officials, manufacturers, or utilities. Each proposal is channeled to the appropriate subcommittee for consideration and placed on a meeting

agenda. Any interested person may attend any meeting, and it is at such meetings that decisions are reached as to whether a revision or a new standard may be needed.

When a subcommittee drafts a proposal for a new standard, or a revision of or deletion from an existing one, the draft text is circulated widely to appropriate government agencies, manufacturers, utilities, and others for review and comment. Draft proposals for all gas appliance and equipment standards are distributed to ANSI, to all members of the AGA Standards Committee and ANSI Standards Committee Z–21, and to all chairmen of Z–21 subcommittees, in addition to people in gas companies, inspection officials (State, county, and municipal), and individuals who have expressed interest in reviewing all proposed revisions. In addition, proposed texts covering a given category of appliance or accessory are also sent to all known manufacturers of the product concerned, and many manufacturers by their request receive texts covering other cateogries in which they may have a direct or indirect interest. For example, a proposal concerning range thermostats would go both to range and to thermostat manufacturers. Their review and comment drafts are also available to anyone else requesting them and often a number of such requests are received. This is especially true in the case or proposed revisions to the Z–21.30 Standard for Installation of Gas Appliances and Gas Piping.

A minimum of 30 days, and usually 5 or 6 weeks, is allowed for receipt of comments. The returns are then studied by the subcommittee. Depending upon the comments, the proposal may be accepted or rejected, or appropriate changes made in the draft. If substantive changes are made, the subcommittee will usually resubmit the revised draft to those persons who received it in the first instance. Any new comments are considered and a proposed text is prepared for consideration by the main standards writing commitee, ANSI Standards Committee Z–21.

When at least 80 percent of the subcommittee agree on a proposed text, the text is submitted to the Z–21 Committee. Z–21 discusses each proposal, and hears anyone who wishes to put his views on the proposal before the committee. The proposal may then be accepted in whole or in part. If Z–21 believes that sufficient agreement has not been reached, it may refer the text back to the subcommittee for further consideration. It may alter or clarify a draft text, and in some cases has directed a subcommittee to prepare and submit prescribed revisions to industry for review and comment. Z–21, like its subcommittees, requires at least an 80 percent affirmative vote to approve a proposal. Anyone casting a negative ballot on a proposal before Z–21 must give his reason for so voting. This sometimes causes others to change their views and votes. When the committee feels that it has reached sufficient agreement, the proposal is submitted to the sponsor for transmittal to ANSI for approval as an ANSI standard.

The proposed standard is submitted to the ANSI Board of Standards Review. Under ANSI procedures, the BSR is responsible for the judicial function of determining whether or not a consensus exists of those substantially concerned with the scope and provisions of a proposed American National Standard.

In order to broaden the base of review, the BSR requires a period of time (between 60 and 120 days) for public review and comment for each proposed American National Standard.

A Technical Advisory Board (for the Z–21 standards the Miscellaneous Technical Advisory Board) will also review the submittal and the proposed American national standard. It will determine whether the American National Standards Committee is competent and authoritative, adequately representative of all interests concerned, and that there is a satisfactory balance of interest. The Board of Standards Review is interested in whether a standard is useful or of potential value and whether there is significant conflict with other American national standards. There must also be no conflict with the public interest and no unfair provisions. At the end of the public review period, all comments will be transmitted to the sponsor for consideration and action, following which, the Board of Standards Review will decide whether consensus has, in fact, been reached. Favorable action requires an affirmative vote of not less than two-thirds of the full Board. Actions by the Board of Standards Review may be appealed first to the Board of Standards Review, and if necessary, to ANSI's board of directors.

It is important to note that at the present time, four of the members of the Z–21 Committee are from Government agencies. Although AGA does not determine the structure and organization of the Z–21 Committee, in matters which are determined by the committee itself, AGA would welcome more Government representation on this committee and indeed would like to see a Government employee elected to the chairmanship of the committete. AGA has formalized this view by suggesting that AGA-designated members of Z–21 support the election of a qualified public interest chairman.

The gas industry is spending its money and exerting its best efforts in this standards program because it recognizes that such a program must exist and that the committees must be able to perform independently, competently, and lawfully. AGA's interest lies in providing the facilities for orderly and just developments of reasonable standards for all kinds of gas appliances and is willing to rely on the judgment of the members of the committee which it sponsors as to what those standards should be.

Certification of compliance with the standards, in contrast to standardsmaking, is a function of AGA. AGA operates two testing laboratories—a main laboratory in Cleveland, Ohio, and a branch in Los Angeles, Calif., which serves the west coast. The two laboratories employ approximately 200 persons and our total noncapital expenditures for 1970 amounted to approximately $2.5 million.

In 1969 approximately 3,100 test reports were prepared and certificates relating to approximately 2,700 different models of gas equipment were issued by the laboratories. Various estimates have been made over the years as to the percentage of the total output of the gas appliance industry displaying the AGA certification mark. Because the percentage varies from appliance to appliance, reliable figures are not available; but it is believed in the industry that more than 85 percent, perhaps 90 percent, of the gas appliances sold in the United States display the blue star. It is probable that almost all gas air conditioners

are of certified design, but it is known that of gas ranges sold, some 20 percent do not comply with national standards because they do not have automatic safety pilots for oven ignition. And in the field of commercial cooking equipment, the ratio is unknown because of the many appliances manufactured for local use. And, of course, an appliance complying with the applicable standard can be manufactured without having been submitted to AGA laboratories for testing and certification.

The testing process commences when a manufacturer submits an appliance to our laboratories. He provides detailed information as to its physical characteristics and design. An initial examination of the appliance upon receipt determines if there are obvious major departures from the standard; if there appear to be none, a senior testing employee assesses the amount and nature of the work to be done and records this in a work order.

The appliance is then sent to the appropriate testing department (water heater, range, etc.). The major emphasis of the standards, and therefore of the test work, is on safety provisions. Safety in respect to complete combustion and in respect to fire hazard are the primary considerations, and are involved in all appliance certifications. Test structures for fire hazard tests simulate actual installations under adverse conditions, and are thoroughly instrumented. The fire hazard structure in which eye level ranges are checked contains some 2,000 thermocouples.

Extensive testing is done in respect to reliability of ignition and reignition, and on the operations of the various safety devices such as temperature and pressure limit controls, automatic safety pilots, ignition devices, and so forth.

As technology and practice progress, new tests and testing equipment come into being in response to new standards. Outdoor equipment (rooftop furnaces for commercial heating, domestic air conditioners, and the like; gas lights, outdoor incinerators, gas girlls, etc.), must be checked for reliability in wind, and rain, and their controls must be checked for satisfactory operation at low temperatures. This has required installation of a wind machine capable of simulating a 40-mile-an-hour gale, and machinery which simulates heavy rain. Another example of response to change arose in post-World War II years when complex circuitry involved electrical inspection authorities and required the design and use of advanced electrical testing equipment in our laboratories.

Test activities are carried on in departments organized, as are the standards, by general product categories, although there are not separate departments for minor classes of appliances. These departments include, central heating, room heaters, ranges, conversion burners, and accessories.

Tests are performed under the supervision of department heads by junior engineers or technicians. The testing process usually takes several weeks and the volume and nature of the work is such that a number of different employees will conduct the various tests on a given appliance. The manufacturer will ordinarily have a representative present at the laboratories during the testing period.

It is not unusual for an appliance to fail to comply with one or more tests within the applicable standard. All failures are reported

immediately to the manufacturer. If a failure is relatively minor in nature, the manufacturer's representative may correct it while the appliance is still on the test floor. In case of a failure requiring more extensive correction, the appliance is removed to a separate test room provided for the purpose, where the representative can work on the problem until he feels that he has solved it. Of course, a failure due to design can occasion withdrawal from test and redesign to the extent necessary. Few appliances escape at least some correction and improvement during test. Changes made in correcting a given failure may well necessitate rerunning tests previously passed.

After all corrections have been made to the appliance, and it has been found to comply with the standard, its construction and design are compared carefully with the manufacturer's drawings and description, and corrections made so that there is an accurate record of all pertinent features. Photographs are also used to augment the description of the appliance, which inspectors use to check appliance production in the field. A certificate of compliance is issued, with the appliance description as a part of the certification.

The impact on the safety of gas appliances sold in the United States is readily demonstrable from a comparison of the design of the prototypes when they arrive at our laboratories for testing and the design of the model as certified after testing is completed. It is a rare model indeed which passes all tests without modification.

INSPECTION ACTIVITIES

AGA conducts an extensive inspection program as followup to certification of design by test. This program includes scheduled and nonscheduled factory inspections, and field or factory inspections or reexamination of appliances in the laboratory. Some of these inspections are part of our procedure; others arise as a result of reports from utilities, consumers, or others, of defects.

Satisfactory inspection and absence of significant adverse safety experience in the field is a prerequisite to renewal of certification of each design each year. Accordingly, there is one scheduled factory inspection per year during which the inspector will select samples of each certified design from warehouse stock, or from the production line in case of models being produced at the time, checking them against laboratories' records of required construction and making operational tests as required.

In addition to the scheduled inspection, unannounced inspections are made at each plant producing certified equipment at least once a year. The frequency of such inspections is based upon past experience with the manufacturer, AGA's analysis as to the effectiveness of his quality control program and upon information received from the field. Lab personnel have in specific cases made unannounced inspections eight or more times a year, and have on occasion insisted on 1 or more days observation of total production in order to determine that a manufacturer was able to effect satisfactory quality control. In addition to these inspections check tests on performance are conducted by the inspector on certain types of appliances and records of the tests conducted by manufacturers as a part of their quality control are reviewed. Some accessory devices are sampled and subjected to annual retest.

A very valuable adjunct to the inspection program is the reporting done by utilities as to appliances encountered on their lines. This may be done spontaneously, as the result of customer complaints, or observations and tests by utility appliance laboratories or alternatively may come to us in an organized fashion through AGA's National Appliance Field Observation program.

This program is a voluntary effort through which participating utilities report, on standardized forms, appliance inadequacies which are brought to their attention through their customer service departments or by their utilization laboratories. The purpose of this program is to improve safety by identifying hazards and to reduce inconvenience and costs involved in service calls and repairs.

The AGA laboratories act as the collecting agency for these reports. As reports are received by the laboratories, they are reviewed and analyzed for content, coded for later analysis, and forwarded to the manufacturer involved who is asked for his comments and report of action to be taken. When the manufacturer's reply is received by the laboratories it is reviewed and returned to the reporting utility, and the contents added to the file on the original report.

Whenever a report indicates that safety is involved, special action is taken. If noncompliance with terms of certification is concerned, the matter is turned over to the inspection department for action. If inadequate installation or maintenance is at fault, the utility will ordinarily have reported correction in its report; however, records of repeated cases of this kind would be brought to the attention of the appropriate standards group. If, as a result of inspection, or of any of the information received through the various channels described, it is determined that production models do not conform to the prototype tested by the laboratories, AGA's agreement with the manufacturer allows AGA to revoke its certification (terminating the manufacturer's authority to use the seal) and compel the manufacturer to go out in the field, find the nonconforming devices and remove the AGA certification seal displayed on them. A notice of revocation may be published in the directory.

While we feel that AGA has a particularly successful testing and certification program, we will be the first to admit that we have encountered some major problems. One basic problem of any private certification program is that of maximizing effectiveness. Private organizations involved in testing and certification are prohibited by antitrust laws from enforcing mandatory standards to bar the sale or use of nonconforming merchandise. As a result, private testing organizations must rely on the forces of the market or, in some cases, enforcement by appropriate governmental agencies to compel manufacturers to seek certification. The former approach relies on the dissemination to the public of information produced by the testing. Thus, it is based on the assumption that intelligence in the marketplace will shape demand and thereby encourage sellers to manufacture to standards. However, if such an industry certification program were to be combined with a Government seal of endorsement and advertising of the meaning of such seal, the program would be significantly strengthened. I shall outline such a proposal later on in my statement.

Studies have shown that consumers are to a great extent unaware

of this existence of testing programs or certification seals and their significance. In reality, the question of whether or not a product is certified does not now appear to be a major factor in the consumer's decision to purchase the product. In spite of this, however, 85 to 90 percent of all gas appliances are certified by AGA, which evidences a sincere desire on the part of the gas appliance manufacturers to provide voluntarily safe products for consumers.

A second problem which accompanies all standard-making operations is the balancing of safety and economy. While in many cases it is possible to establish standards which described appliances having the absolute ultimate degree of safety under every conceivable circumstance, including unforeseen human error, few consumers could afford to purchase them. If such standards were adopted on a nonmandatory basis, few, if any, manufacturers would seek to have their appliances certified; if they were mandatory, the public would be deprived of goods it wants and needs. Consumers are entitled to choose from a variety of products assuming, of course, that certain basic standards of safety are met. The responsibilities of Government and industry can best be met by efforts to insure that consumers have the necessary information on products to make intelligent decisions, not by preventing consumers from obtaining products they knowingly wish to purchase.

We believe remedies can be fashioned for these problems through the joint efforts of Government and industry. It is essential that neither Government nor industry individually attempt to assume complete control over standards making and enforcement of such activities.

Heavy reliance should be placed on industry in the basic role of formulating standards, testing, and certification programs. Industry and private standards making and testing organizations as well, have the experience, expertise, and facilities necessary to establish products standards. The Government can, however, perform a valuable function in overseeing the standards-making activities of industry. Such supervisory activities could serve two purposes. First, Government examination and approval of standards and standards-making procedures as well as certification of testing facilities; and second, Government compilation of accurate information on product safety which industry can translate into adequate standards consistent with the technology and economies of supplying people's needs.

We believe that the provisions of S. 1797, the Consumer Product Safety Act, basically set forth the type of procedure which would provide for the industry-Government cooperation I have outlined. Provision is made for industry-developed standards to be submitted to the Government for approval. Where there is no standard, the one in effect is inadequate, or the Secretary of HEW does not accept an offer to develop one, a standard would then be promulgated by Government through normal rulemaking proceedings.

We would, however, add that the criteria for rejection of an existing standard, or an offer to develop a standard, should be detailed in writing so as to enable the submitting parties opportunity to reappraise a rejected standard or the methodology detailed in an offer to develop such a standard. Such a requirement would insure that the dialog necessary for proper standards development is maintained at all stages in such a process.

We must, however, suggest that the provisions of both S. 1797 and S. 983 are not adequate in terms of industry participation in the investigations prior to public disclosure of information on consumer product risks. In addition, we feel that public disclosure of these investigations without full prior discussion with the manufacturer involved, and without the manufacturer being afforded an opportunity for informal discussions in cases of disputes of fact, could work a serious hardship on the manufacturer's competitive position. Notwithstanding the simultaneous publication of a manufacturer's views with the Secretary's public notice, or the possible retraction of a statement at a later date, such a notice could create an unjustifiable stigma surrounding a particular product or class of products.

Therefore, we would recommend that in advance of any public notification of investigation or the results of these same investigations that the Secretary notify manufacturers of all investigations, summary findings, and afford the manufacturer an opportunity for informal discussion on disputes of fact. If it can thus be shown that the consumer product involved does not present a risk or hazard to the consumer, no public notice of investigation should be issued.

We recognize that there may be instances where no standard exists for a particular product or a standard which is in force may be inadequate to keep unsafe and dangerous products out of the marketplace. In such instances, we feel that the provisions contained in both bills dealing with imminent hazards resulting from use of such products adequately protects the consumer through the action of the Attorney General and the courts. In any event, we feel that to give the Secretary or an administrative agency the authority to ban any class of products would be unwarranted, and an imprudent delegation of congressional authority.

In the past Congress has recognized that the enactment of mandatory standards which would outlaw nonconforming products was a serious matter which should be considered by the legislative branch. Thus where there are mandatory standards today, such as for automobiles, tires, natural gas pipelines, coal mines, flammable fabrics, and food and drugs, to name a few, Congress has enacted the basic authority to ban hazardous goods only after giving individual attention to each class of products. Proposals now before this committee would give blanket authority to restrict administratively any product without specific legislative consideration.

If a product is declared hazardous and poses an imminent danger to consumers, the ability of the court to prescribe injunctive relief and to restrain the sale or use of specific products for the protection and relief of consumers is adequate, and obviates the necessity for the general authority for seizure of a consumer product while in commerce or any time thereafter.

In those cases where a consumer product does not pose an imminent threat of injury or death, but is found in violation of an existing or newly promulgated standard, normal remedies would be provided for the consumer under the measures now before the committee. A separate and arbitrary seizure authority is unnecessary and would only serve to harass or intimidate manufacturers. If, after the standards-making procedure, it is believed that no effective standard can be developed

for a particular class of products and that they should be banned as unsafe, nevertheless, this banning authority should not be delegated by the Congress to any administrative agency. The Secretary could recommend to Congress that legislation be enacted authorizing the appropriate administrative agency to develop mandatory safety standards with regard to that entire class of products. I repeat, this is the way Congress has handled this in the past when it deemed necessary to provide for the protection of the public. It is the way to handle it in the future. Thus, the institution of a consumer product safety program within HEW could also serve to advise the Congress on needed legislation and would at the same time preserve and strengthen the congressional role in the enactment of mandatory standards.

The concept of penalties associated with the enforcement of safety standards is a necessary one, but should be placed in the proper perspective of the overall intent of such legislation. Provision is made for the Secretary to require that notification be given to all consumers of a failure to comply with the existing standard, bring the product into conformity with the standard, replace such product, or refund the purchase price of the product less reasonable depreciation. Such alternatives when translated into the costs involved for the manufacturer, in conjunction with the additional cost of a penalty levied against him, could constitute a considerable expense to be shouldered by a businessman despite any good faith efforts on his part to comply with a standard.

The imposition of criminal penalties subject to a broad and general requirement of a willful and knowing violation of the act would not, in our opinion, add to the effectiveness in deterring violations. In considering that no businessman would want to subject himself to the stigma and costs associated with a recall or replacement order, coupled with the possibility of civil penalty, it would appear that the addition of criminal penalties is unnecessary and excessive.

The imposition of civil penalties should be subject to compromise. The amount of the penalty should be levied in relation to the size of the offender and the gravity of the offense.

By the very nature of such legislation, manufacturers, distributors, and dealers would be effectively deterred from willful violation without the need for criminal penalties. In the past, the Congress has acted in specific product and industry areas, developing safety criteria and standards, and has not seen need for such provision.

A general concept which we endorse is contained in S. 983, which provides for a balanced 15-member product safety advisory council, comprised of representatives from Government, industry, and the private sector. This concept should be strengthened and incorporated in S. 1797. Such a council should be more than just a group the Secretary can consult if he so desires. The Secretary should be required to submit all proposed safety standards and regulations to the council and should be required to publish the reasons for any disagreement he might have with the council on such proposals. Such a provision was put in the Natural Gas Pipeline Safety Act of 1968 and as a result, the technical pipeline safety committee which was created has been able to operate as an effective liaison between the office of pipeline safety and experts in the field from industry, government, and the public.

As provided in S. 1797, the Secretary should be given the responsibility of compiling information and statistics on consumer products and injuries as section 4 of the proposed Products Safety Act provides and such data should be more than just information for public distribution. Such statistics should be made a basic part of any findings by the Secretary which prompted him to take any action, including any specific legislative recommendations to ban products referred to in my previous comments. Thus, we believe that before the Secretary can call on private industry to develop a standard or seek an injunction to prevent distribution of a dangerous product, or make legislation recommendations, he must show that the data he has gathered warrants such action being taken. We concur with the intent of S. 1797 to require that all such findings be based on complete statistical information. By requiring that statistical information be made part of any findings, the courts and any other reviewing bodies such as the Safety Advisory Council would have something specific by which they could evaluate the reasonableness of the Secretary's actions.

AGA strongly urges the committee, that in order to insure the most equitable, reasonable, and efficient standards, that the proposed legislation for effecting a consumer safety program should be modified to provide for the accreditation of private testing and certifying laboratories and to develop through rulemaking procedures guidelines which testing organizations could follow to secure this accreditation. That the accrediting agency should be authorized not only to determine the competence of organizations proposing standards, but should also inspect testing facilities, review the manner in which approved testing procedures are actually implemented, and determine whether on-site inspection activities or other procedures followed by the testing laboratory are sufficient to insure proper standards development.

To implement the Secretary's standards program, a Government seal should be developed which could be superimposed on an existing private certification seal to indicate that the Government has approved the standards writing and testing and certifications program to which it relates. The Secretary of HEW should be authorized to conduct an extensive advertising campaign to inform the public of the existence of the governmental program and its significance. Only through such efforts will consumers become aware of what this elaborate program means to them individually and how they can benefit from it.

An area of disagreement is with the provision contained in S. 983 which would create the post of Consumer Safety Advocate. Since the Secretary would be authorized to monitor the activities of industry on behalf of the consumer, we question the necessity of having someone to monitor the Secretary.

I have attempted to limit my remarks to those sections of the proposed bills which we believe directly affect AGA's program to assure safe and reliable products. I would not want my failure to comment on other sections of the legislation to be construed as approval of disapproval of them. I feel there are other organizations which have a more direct interest in the other provisions of the bill and are better qualified to comment on them than I am.

I have tried to outline a basic program which we feel would reasonably provide adequate consumer protection while still providing the

goods consumers want. We have tried to relate this program to the subject bills before this committee.

If I may, I would like to briefly summarize what we feel are some of the important aspects which should be incorporated in any consumer product safey measure which this committee finally approves:

1. That the Government should approve standards-making procedures, final standards, and procedures which certify product compliance with approved standards, all of which utilize the experience, expertise, and facilities which private groups have developed, recognizing, however, that if private groups are unable and unwilling to develop acceptable standards that the Government may initiate and finalize an appropriate product standard.

2. That as an integral part of such a program the principal enforcement of compliance with these approved standards be accomplished through the requirement to display a Government seal of approval on those products which comply with an existing standard.

3. That Congress should not delegate to any administrative agency the authority to ban any product from the marketplace, in light of the Secretary's ability to invoke economic sanctions, and make specific legislative recommendations to ban, together with broad injunctive powers.

4. That the powers of injunction be utilized as the exclusive means to protect the public from imminent hazards of emergency conditions associated with the use of consumer products.

5. That in addition, the Product Safety Advisory Council be a part of the Secretary's deliberations in the establishment of standards.

6. And finally, that the Secretary's office serve as the principal repository for all statistics and data compiled with respect to the investigations into hazards associated with product use, and that these data serve as the basis for legislative recommendations and other findings.

To the end that consumers must be protected from unreasonable risk of injury or death associated with the use of consumer products, there is no question that product safety is the joint responsibility of business, Government, and consumer. Further to provide the goods and services vital to the welfare of all segments of our society, the body of regulations within which this Nation's commerce will thrive must be based upon reasonable and effective standards achieved through the representation of all interests in every phase of their development.

Senator SPONG. Thank you very much, Mr. Willis.

You may be assured that this committee will carefully analyze the information you have presented here this morning.

As I interpret your statement, you are opposed to the Congress granting blanket authority to ban any product without specific legislative consideration. You believe that Congress should make the determination ultimately of what product should be banned.

Do you believe that in the case of a serious imminent hazard that Congress could act quickly enough?

I recall the instance of torch sweaters which were declared by everyone a national hazard in 1951. It was 2 years before Congress passed any legislation at all which would get to this matter.

I know you have mentioned injunctive relief. You don't have to worry about disparaging Senator Cook and myself. I am just asking

as a practical matter if you really believe that Congress in all instances can act rapidly enough to meet the problem.

Mr. WILLIS. I would say in the first instance that injunctive relief is probably the primary resource for quick action. Certainly on the failure of injunctive relief to get the job done, I think the Congress would act a good deal faster than it would do under other circumstances. Therefore, I think the combination of the two represents a very workable framework in which to do this.

Senator SPONG. In your statement you speak of the provision requiring notification to be given to all consumers concerning products which are not in conformance with safety standards. You say you think it would be unfair to burden a businessman who, despite good faith efforts to comply with the standards, marketed a noncomplying product with the expense of both the penalty and the remedial activity. Under S. 1797 the penalties can be invoked only in cases where the act was willful or knowing.

Under S. 983 the civil penalty may be mitigated by the Commission and the criminal penalties are only for cases of willful and knowing violation.

If the noncomplying product was not marketed knowingly or willfully, are you implying by your statement that the consumer and not the manufacturer should bear the burden for the defect remedial activity?

Mr. WILLIS. No, I am not, Mr. Chairman. We are really suggesting here that the whole question of willfulness is a very difficult one at the outset. What may appear to one party as a willful act may not in the eyes of the manufacturer have been willful. We think, whether willful or otherwise, if this turns out to be a violation of the standard that it should be the manufacturer's responsibility to correct the deficiency and not have that burden transferred to the consumer.

Therefore, I would say that the suggestion of informal conferences between a manufacturer and the staff of the Secretary would serve a very useful purpose in determining that question of willfulness and possibly bring about remedial action a good deal faster than it can otherwise be done through enforcement procedures.

I think basically the economic forces are such that a manufacturer will literally turn handsprings to avoid bad publicity about a product. If he finds that he has done something wrong, whether willful or otherwise, I think he will rush pellmell to correct it.

Senator SPONG. Do you believe that in the area of safety the burden should be on the manufacturer rather than the consumer?

Mr. WILLIS. Yes, sir; with proper standards.

Senator SPONG. Senator Cook?

Senator COOK. I have only one question, Mr. Willis. That gets back to the provisions for the Commission which is going to be appointed, and the restrictions that are placed on the Commission. Nobody can be on this Commission that has any interest in any manufacturing, retailing, or supplying company. He can't have any security or any holdings. He can't in any way be associated with those activities. They are the ones who will be appointed under S. 983 to supervise the manufacture and the retailing of consumer goods. It is their responsibility to monitor industry in regard to product safety.

We then seem to come along and appoint a consumer advocate whose job is apparently to monitor the Commission.

Is that true?

Mr. WILLIS. I believe that is the proposal and it would represent duplication of effort. We agree with the previous witness that public bodies and the industry themselves probably represent a better overview type of organization than just one more layer of Government which would be represented by the consumer advocate in addition to another Government organization which has the responsibility.

We think in essence this represents a duplication and that the consumer advocacy function is done much better by public consumer groups unrelated to Government.

Senator COOK. Thank you very much.

Senator SPONG. Thank you very much, Mr. Willis. We have appreciated your testimony.

(The appendixes to the statement follow:)

AMERICAN GAS ASSOCIATION, ARLINGTON, VA., AND AMERICAN GAS ASSOCIATION LABORATORIES, INDEPENDENCE, OHIO

APPENDIX A

THE BLUE STAR CERTIFICATION PROGRAM

Since 1925, a star has steered consumers to safer, more dependable gas appliances. It's the Blue Star of the American Gas Association's certification program.

In the pioneering Blue Star certification program, prototypes of gas appliance and accessory models are tested for compliance with national safety standards.

If the prototype is certified as complying with these standards, its manufacturer is authorized to display the Blue Star Certification Seal on production models. The seal is a five-point blue star on a white background with the inscription: "Certified—Design Complies With National Safety Standards—American Gas Association, Inc."

Inspection of production models of certified appliances is made periodically to make sure of continuing compliance.

The Blue Star program, initiated by the gas industry to promote appliance safety, was launched on a modest scale in two rooms in Cleveland, Ohio. The American Gas Association Laboratories quickly earned recognition for its preeminent voluntary effort in the best interests of consumers.

From the beginning, the certification program was warmly received by gas customers, utilities and appliance manufacturers. Within three years after the A.G.A. Laboratories opened, testing services had been extended to the Canadian Gas Association, and a two-story facility was built in Cleveland to accommodate the increasing demand for gas appliance testing.

By 1931, a branch of the Laboratories had been opened in Los Angeles to serve West Coast manufacturers, and in 1969 the Laboratories moved to spacious well-equipped new quarters in Independence, Ohio, near Cleveland.

The new home of the A.G.A. Laboratories is as modern as the appliances it tests and certifies. The handsome building on wooded acreage of a new industrial park is served by an automated gas total energy system which provides all the testing center's heating, cooling, lighting and power needs.

ALL ARE WELCOME

The A.G.A. certification program is strictly voluntary. A gas appliance is not required to have a Blue Star Certification Seal to be on the market. However, many communities require that all appliances installed must comply with existing national standards.

Most manufacturers of gas equipment seek the Seal for the same reason the gas industry launched the appliance testing program back in 1925—to inform the customer.

In an average year more than 2,000 basic appliance and accessory models are submitted to the Laboratories for testing.

SETTING STANDARDS

Standards for gas appliance safety are set by a national committee operating under the rules and procedures of the United States of America Standard Institute. USASI is an organization which supervises the development of national standards in many fields. (In the Fall of 1969 consideration was being given to changing the name to American National Standards Institute, Inc.)

Gas appliance safety standards are developed painstakingly with the cooperation of consumer-oriented groups, governmental agencies, engineering societies, product manufacturers, gas utilities and others. Participants include, for example, U.S. Public Health Service, National Fire Protection Association, Federal Housing Administration and American Home Economics Association.

Once a safety standard has been developed by a committee made up of members of the various groups it must be approved by USASI before it becomes effective. In granting this approval, USASI must be satisfied that a consensus of all the national groups concerned has accepted the new standard.

KEEPING UP TO DATE

Blue Star safety standards are changed frequently. To keep the program up to date, the Seal is granted for each appliance design only for one year at a time. Each year for five years it can be renewed for that design by factory inspection. At the end of five years, the appliance must be retested at the Laboratories under updated standards if its design is to continue to be certified.

Revised standards are issued for the major product lines on an average of every two years. That means an appliance almost always has to have design improvements before it can meet the new safety standards when it goes back to the Laboratories for its five-year retesting.

Standards are continuously being upgraded because the gas industry is constantly developing new manufacturing techniques and new features such as self-cleaning ovens. Changing consumer demands affect the standards, too.

WINNING THE BLUE STAR

When a manufacturer has developed a new gas appliance, accessory or component, or has changed a model that already has qualified for the Blue Star, he submits a prototype, or sample, to the A.G.A. Laboratories for testing. If the prototype passes every one of the many safety tests specified by the standard, and is representative of a production model, it is awarded the Blue Star Certification Seal. The Seal then can be attached to all models that are structurally the same as the certified sample.

To win its Blue Star, a gas appliance or accessory goes through a long series of rigid tests. They range from simple inspection to "torture" by machines that subject appliances to high winds, heavy weights, and exhausting wear.

Test engineers accumulate detailed test data, including a descriptive record, of each design submitted. Major safety tests include a careful analysis of flue gases, fire hazard, durability of components and general construction.

There are standards—and tests—for all kinds of domestic gas appliances, including ranges, clothes dryers, water heaters, incinerators, furnaces, air conditioners, outdoor grills, gaslights, infrared and other types of heaters.

Appliances are tested with the various types of gas found throughout the United States and Canada—natural, manufactured, mixed, liquefied petroleum, and liquid natural gases.

Accessory devices, such as gas valves, regulators and other controls are tested under their own standards prior to being reexamined as part of an appliance. On a gas range, for example, valves are tested on a machine that cycles them on and off as many times as a homemaker would turn them in ten years.

A giant wind machine tests the stability of pilot lights, and an indoor rainstorm falls for hours on outdoor equipment such as air conditioners and furnace flues to test their weather resistance.

Even informative labels and rating plates are checked for accuracy of information as well as for legibility and adhesion.

As technology and practice progress, new tests and testing equipment are developed in response to new standards. Innovations which require such new standards include rooftop furnaces for commercial heating, outdoor incinerators, and complex circuitry involving electrical components and controls.

NO EXCEPTIONS

If an appliance fails even one test specified by the national standard, the Blue Star is withheld. Sometimes adjustments can be made on the prototype at the Laboratories so that it can qualify. Often, however, the equipment must go back to the manufacturer for redesign and further development.

KEEPING THE BLUE STAR

The Laboratories has an extensive inspection program. Unannounced checks of certified appliance models are made by A.G.A. engineers. Usually they are made on factory production lines or in warehouses, sometimes in salesrooms and occasionally in homes.

If a test engineer discovers that the production version is not built exactly like the prototype that met all the Blue Star requirements, certification may be withdrawn and the manufacturer compelled to remove the Seal unless the defect is corrected.

A.G.A. inspection engineers travel 200,000 miles a year to make more than 4,200 factory inspections, some at the request of manufacturers and some unscheduled.

LOOK FOR THE BLUE STAR

Every piece of equipment whose design has met stringent standards and has been certified by the Laboratories bears the Blue Star on the appliance rating plate, together with the model number and manufacturer's identification.

In addition, each piece of equipment certified by the Laboratories is listed in a directory published twice a year and updated monthly.

NO QUESTION OF COST

The Blue Star is not an indication of the cost of an appliance: it certifies only that the design of an appliance on which it is affixed meets or surpasses national safety standards. Thus, families can buy low-cost appliances that have met the same safety standards as higher-priced models.

NATIONAL SYMBOL OF SAFETY

The Blue Star Certification Seal is the symbol of the only widely recognized national testing program for gas appliances. The program is as contemporary as it is venerable.

It has often been commended for its role in the continuing improvement of gas equipment.

The Blue Star is the guiding star for more than 40 million American families who use gas appliances.

Appendix B

American National Standards Committee on Performance and Installation of Gas-Burning Appliances and Related Accessories, Z21 (as of July 1, 1971)

Scope: Establishment of minimum or basic standards for installation, performance, safe operation and substantial and durable construction for gas-burning appliances and low pressure (not in excess of ½ pound per square inch or 14 inches water column) gas piping extending from the outlet of the meter set assembly or the outlet of the service regulator when a meter is not provided, to the inlet connection of appliances, together with such laboratory methods of test as are necessary for determining compliance therewith.

This committee exercises general supervision of the preparation and revision of such standards for gas appliances and their accessories by direction of activities of 23 subcommittees, this covering initiation of assignments, supervision of operations and final disposition of all standards developed.

Chairman, E. O. Mattocks; Vice Chairman, Joseph Grumer; Administrative Secretary, R. E. Cramer (Non-Member).[1]

[1] Mailing address: 8501 East Pleasant Valley Rd., Cleveland, Ohio.

Year appointed, name and position	Company and address	Expiration date
1969—E. O. Mattocks, M.E., P. E., consultant (chairman).	523 Rutile Dr. Post Office Box 403, Ponte Vedra Beach, Fla	
Representing American Gas Association, Inc.:		
1969—D. M. Amundson, vice president, operations and engineering.	Indiana Gas Co., Inc., 1630 North Meridian St., Indianapolis, Ind.	June 30, 1973
1968—R. A. Bleakney, vice president, gas operations.	Boston Gas Co., 2900 Prudential Tower, Boston, Mass	June 30, 1971
1969—Richard E. DuVall, vice president, operations.	The Peoples Natural Gas Co., 2 Gateway Center, Pittsburgh, Pa.	Do.
1962—Chas. B. Gamble, Jr., executive vice president.	Alabama Gas Corp., 1918 1st Ave. North, Birmingham, Ala	Do
1971—Claire S. Coleman, vice president, operations.	Mountain Fuel Supply Co., Post Office Box 11368, Salt Lake City, Utah	June 30, 1973
1970—David F. Hansen, vice president, sales.	Minneapolis Gas Co., 739 Marquette Ave., Minneapolis, Minn.	June 30, 1971
1967—Carrington Mason, vice president and general manager, distribution division.	Houston Natural Gas Corp., Post Office Box 1188, Houston, Tex.	June 30, 1972
1969—Lester R. Pickup, general manager of customer services.	Southern California Gas Co., Post Office Box 3249, Terminal Annex, Los Angeles, Calif.	June 30, 1974
1971—Henry H. Miller, manager, gas appliances and service department.	Baltimore Gas & Electric Co., Gas and Electric Building, Baltimore, Md.	June 30, 1974
Representing Air-Conditioning and Refrigeration Institute:		
1962—Frederick J. Reed, director of engineering.	Air-Conditioning and Refrigeration Institute, 1815 North Fort Myer Dr., Arlington, Va.	
Representing American Home Economics Association:		
1969—(Miss) Margaret Schierberl, associate editor, household equipment.	McCall's, 230 Park Ave., New York, N.Y	
Representing American Insurance Association:		
1967—W. D. Malmstedt, engineer	American Insurance Association, Engineering and Safety Dept., 85 John St., New York, N.Y.	
Representing American Petroleum Institute:		
1969—A. A. Mulliken, Jr	American Petroleum Institute, 1271 Avenue of the Americas, New York, N.Y.	
Representing American Public Gas Association:		
1968—Ralph D. Sparkman, assistant superintendent, gas operations department.	Memphis Light, Gas & Water Division Post Office Box 388, Memphis, Tenn.	
Representing Association of Home Appliance Manufacturers:		
1968—Herbert Phillips, technical director.	Association of Home Appliance Manufacturers, 20 North Wacker Dr., Chicago, Ill.	
1968—John Weizeorick (alternate) assistant technical director.	Association of Home Appliance Manufacturers, 20 North Wacker Dr., Chicago, Ill.	
Representing The Canadian Gas Association:		
1965—John A. Spence, manager, approvals and codes.	The Consumers' Gas Co., 400 Coventry Rd., Ottawa 7, Ontario, Canada.	
Representing Factor Mutual System:		
1949—Louis H. Flanders, Jr., chief heating engineer.	Factory Mutual Research Corp., 1151 Boston-Providence Turnpike, Norwood, Mass.	
Representing Federal Housing Administration (liaison representative, with vote):		
1970—Nat L. Eure, Department of Housing and Urban Development.	Federal Housing Administration, Washington, D.C	
Representing Gas Appliance Manufacturers Association:		
1964—A. M. Castello, vice president, engineering.	Space Conditioning Division Dunham Bush, Inc., Post Office box 979, Harrisonburg, Va.	
1968—Robert H. Chaffee, executive vice president.	Watts Regulator Co., Post Office box 628, Lawrence, Mass	June 30, 1972
1963—Keith T. Davis, director, modular and manufactured homes sales.	Bryant Air Conditioning Co., 7310 West Morris St., Indianapolis, Ind.	Do.
1971—R. W. Newell, vice president, product development and research engineering.	Rheem Manufacturing Co., 7600 S. Kedzie, Chicago, Ill	June 30, 1974
1961—Edward A. Norman, consultant	ITT Environmental Products Division Columbus operation, 1513 Essex Rd., Columbus Ohio.	June 30, 1973
1970—H. E. Brehm, director, corporate product safety.	Whirlpool Corp., Research and Engineering Center, Monte Rd., Benton Harbor, Mich.	June 30, 1972
1971—William V. McDonnell, vice president.	Honeywell Inc., 2701 4th Ave., South, Minneapolis. Minn	June 30–1974
1957—S. F. Skafte, director of engineering.	Williams Furnace Co., Post Office Box 577, Buena Park, Calif.	
1971—Harold Moss, vice president	Magic Chef, Inc., 740 King Edward Ave., Cleveland, Tenn	June 30–1974
Representing Department of Health, Education, and Welfare (liaison representative, with vote):		
1970—Floyd B. Oglesbay, chief, injury control branch.	Department of Health, Education, and Welfare, Public Health Service, Bureau of Community Environmental Mamagement, Federal Office Bldg., 550 Main St., Cincinnati, Ohio.	
1971—Lewis G. Polk (alternate), chief, traffic safety injury control branch.	do	

Year appointed, name and position	Company and address	Expiration date
Representing Incinerator Institute of America:		
1962—Edward A. Sargent, president	Sargent-N.C.V. Division, Zurn Industries, Inc., 610 Devon St., Kearny, N. J.	
Representing International Association of Plumbing and Mechanical Officials:		
1967—Jack Allen	International Association of Plumbing and Mechanical Officials, 5032 Alhambra Ave., Los Angeles, Calif.	
Representing Mechanical Contractors Association of America, Inc.:		
1952—Anthony E. Lavelle	Gorman-Lavelle Plumbing Company, 3459 East 52d Place, Cleveland, Ohio 44127.	
1952—K. A. Leitgabel (alternate)	A. F. Leitgabel & Sons, 4435 W. Lisbon Ave., Milwaukee, Wis.	
Representing National Electrical Manufacturers Association:		
1964—Rawlings Brewer, assistant to vice president of engineering.	Emerson Motor Division, Emerson Electric Co., 8100 Florissant Ave., Station 2820, St. Louis, Mo.	
1965—J. H. Thornbery (alternate)	Penn Controls, Inc., Post Office box 486, Oak Brook, Ill.	
Representing National Environmental Systems Contractors Association:		
1969—Sterling E. Apgar, Jr.	Tri-Boro Corp., Post Office box 125, Bound Brook, N.J.	
Representing National Fire Protection Association:		
1962—W. L. Walls, gases field service	National Fire Protection Association, 60 Batterymarch St., Boston, Mass.	
Representing National LP-Gas Association:		
1959—Walter H. Johnson, vice president, technological services.	National LP-Gas Association, 79 West Monroe St., Chicago, Ill.	
Representing Southern Building Code Congress:		
1970—Willard L. Amann, operating manager, central plants.	Houston Natural Gas Corp., Post Office box 1188, Houston, Tex.	
Representing Underwriters' Laboratories, Inc.:		
1962—W. J. Smith, associate managing engineer, heating, air-conditioning and refrigeration department.	Underwriters' Laboratories, Inc., Post Office box 247, Northbrook, Ill.	
Representing U.S. Department of the Army (liaison representatives, with vote):		
1970—Edmund R. Lord, mechanical engineer, food systems equipment division.	General Equipment and Packaging Laboratory, U.S. Army Natick Laboratories, Natick, Mass.	
Representing U.S. Bureau of Mines:		
1955—Joseph Grumer, acting project coordinator, Safety Research Center (vice chairman).	U.S. Department of the Interior, 4800 Forbes Ave., Pittsburgh, Pa.	

Senator SPONG. These hearings will recess until 10 a.m., Monday morning.

(Whereupon, at 11:40 a.m., the hearing was adjourned, to reconvene at 10:00 a.m., Monday, July 26, 1971.)

CONSUMER PRODUCT SAFETY ACT OF 1971

MONDAY, JULY 26, 1971

U.S. SENATE,
COMMITTEE ON COMMERCE,
Washington, D.C.

The committee met, pursuant to recess, at 10:15 a.m. in room 5110, New Senate Office Building, Hon. Warren G. Magnuson (chairman of the committee) presiding.

Present: Senators Magnuson, Hartke, and Pearson.

OPENING STATEMENT BY THE CHAIRMAN

The CHAIRMAN. The committee will come to order.

The Commerce Committee has had a series of hearings on the consumer product safety proposals which are a result of the 2-year study conducted by the National Commission on Product Safety. As you will recall, the legislation which established that commission was engineered through this committee.

We are at about midpoint in the hearings and the public awareness in this matter has been even greater than we expected. We have had many requests by interested persons and organizations to testify, and we want to give everybody an opportunity to insert his opinion into the record.

I think we have made some progress in hammering out the terms of a solid, resourceful, comprehensive product safety law.

In particular, Secretary Richardson has demonstrated a willingness to meet us more than halfway in resolving problems concerning the administration's bill.

Certain crucial issues remain, however. Uppermost among them is the issue of the independence and integrity of consumer safety programs. The administration has moved to reorganize FDA and upgrade product safety within HEW. Frankly, I don't think that is enough.

Yes, it makes sense to house food, drug, and product safety regulation and injury data collection under one umbrella. But that umbrella ought to be opened to full public view, not packed away under levels of bureaucracy in HEW.

Unless the administration can demonstrate otherwise, I am convinced that the new Consumer Safety Administration must be made independent of HEW, directed by an Administrator appointed for a set term of office and confirmed by the Senate, with separate Commissioners responsible for food, drug, and product safety. The Administration must have the final authority on safety, without having

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to make political clearance with the Secretary or the White House, and it must be able to take its budget needs directly to the Office of Management and Budget, avoiding the pitfalls of departmental ambushes.

At every step of these hearings, we need to be reminded that we are dealing with human life and suffering. Weak standards, bureaucratic delays, and money problems mean unchecked deaths and injuries.

Today we will hear evidence that such glaring inadequacies in mobile-home standards have led to needless, avoidable tragedy. It is the image of such tragedies that we must carry with us in all our deliberations in this legislation.

Our first witness this morning is Capt. Norman S. Terry, Assistant to the Deputy Commander General's Office, Headquarters, School Command, Fort Lewis, Wash.

He has experienced a tragedy with his mobile home, because of its failure to meet adequate safety standards; an accident which may have been averted if there was a strong Federal presence in the product safety area.

Captain, we will be glad to hear from you.

STATEMENT OF CAPT. NORMAN S. TERRY, USATCI, ASSISTANT TO THE DEPUTY COMMANDER GENERAL'S OFFICE, HEADQUARTERS, SCHOOL COMMAND, FORT LEWIS, WASH.

Captain TERRY. Mr. Chairman, I am Captain Terry, presently from Fort Lewis, Wash.

On the 23d of December, 1970, just 2 days prior to Christmas, my wife and 2½-year-old daughter died in a fire which trapped us in our mobile home.

This was a 24-by-60-foot model, a 1971 model.

Having survived this nightmare, I feel that I can speak firsthand on what might have helped me save their lives and what can be done in the future to prevent other deaths.

The record will show that our mobile home did have two doors. There is a mobile-home standard that states that mobile homes must have two doors and separated by a sufficient distance.

My concept on these emergency exits is the fact that, yes, sir, these homes do have two doors. However, they are not located in the basic floor plan of the mobile home in such a way that a person can readily escape in case of fire.

It is my contention that if an emergency exit similar to that in an aircraft were available in the bedrooms, in the rear locations of the larger mobile homes, and even the 10-foot-wide mobile homes, my family would be alive today.

In the 10- and 12-foot-wide models there is usually a door located in the front one-third and rear one-third of one particular size of the mobile home.

You will notice in any of the mobile-home diagrams that the rear door is usually located directly across from the washer-dryer arrangement and also within a few feet of the furnace. They build these doors and exits in a mobile home for the convenience of the consumer, rather

than the safety of the occupants living there. If the front of these homes goes up in flames and a family awakens in time, a safe exit may be made from that door. However, if a fire starts in the furnace area or toward the rear, the family is now safe only if it was in front of the trailer, because the rear exit will be cut off, including the long hallway that leads to the front of the trailer, and they will not be able to reach either exit.

In the new double-wide models, again the second door is placed wherever the laundry room is located. This is, in fact, where the second door on my home was located. This is plainly toward the front, near the kitchen, where there is easy access for the housewife.

In all of these models an emergency exit that opens only from the inside could be placed at the very rear of the home, and this would save countless tragic deaths.

Many people have asked me personally, "Why can't you get out through a rear bedroom window? If you are cut off, just smash a window out through the rear of the trailer and climb out through the window."

Look at these windows sometime, and then ask that same question. Some will work, but the majority will not. If the home has jalousie, crank-out type windows, it is the same as being behind bars. Once you have smashed out the glass, the aluminum frames can be bent—but hardly broken. These aluminum frames sufficiently block the exit from the window as to prevent escape in case of fire or other emergency.

These rear windows are small and usually so high off the floor that it would make them almost impossible to get out of. I broke out a rear bedroom window from the outside of my trailer and used a step-ladder to enter in trying to save my family. It was a two-frame, crank-out type window, and—try as only a frantic husband after his family could—I was not able to get in.

How about the other windows in the house? During the winter months, most homes have storm windows that seal the mobile home tight. In a tightly closed area, fire needs only to burn for a short time when the inside area is heated and compressed to such a point that a sudden influx of outside air causes a flareup, sucking the oxygen from a person's lungs. This is what happened to my wife and child, causing their instant deaths.

I was able to dash through the flames and to reach the far exit inside the laundry room. When I opened the door to facilitate their escape, the sudden rush of this heated, compressed air to the outside flung me, door open, and pulled me out. However, it also sucked the air from my family's lungs, causing instant death.

This is why the bedroom windows are so very important, as the bedroom doors can be kept closed to keep out the fire while escape is made. If they refuse to put a single escape-type door in the rear of a mobile home, then the windows are second in importance: to get rid of the bars to where a safe escape can be made.

All of these safety features are fine to help a family escape, but how about something to slow the progress of the flames and retard the fire?

In all mobile homes the walls are 100-percent thin paneling, unless a special decorative-type wall is ordered. This paneling is usually coated with a varnish-type finish, and this just adds fuel to any fire and the flames race through it.

In my particular mobile home, it was 100-percent paneling on the walls, covered with a very thick coating of highly inflammable varnish. When I came out of the rear bedroom, the entire front of the mobile home was in such complete flames that escape was almost impossible. It was just through the grace of God that I myself got out.

In less expensive homes this is like living in a gas can with a match in your hand. Some sort of firebreak must be installed. An alternative is the extensive use of fire-retardant materials on the walls and ceilings.

I only had my home for 3 weeks, but I had installed a fireproof artificial break on two walls. These two walls were the only ones not completely destroyed in the fire. These walls were done strictly for a decorative effect, and no thought of fire at that time was in my mind. However, they were not located in an area sufficient to cause a firebreak to keep the fire from racing the entire length of the mobile home.

I now suffer the loss of my loved ones and continually wonder if I did everything that I could to prevent their deaths. Don't let them have died in vain. Only a strong, enforceable law can prevent similar tragedy from happening again and again.

Are money and profits more precious than a human life?

That is all I have, sir. If there are any questions, I will be glad to answer them.

The CHAIRMAN. Thank you, Captain.

We think that human lives are much more precious than money in these cases.

Where was your home located?

Captain TERRY. As far as the trailer park?

The CHAIRMAN. In what area? Was it right outside Fort Lewis?

Captain TERRY. It was right behind the McChord Air Force Base.

The CHAIRMAN. Does the base have an area for mobile homes?

Captain TERRY. No; not on the post.

The CHAIRMAN. You were outside the base?

Captain TERRY. Outside the post.

The CHAIRMAN. When you moved the home in, did anyone inspect the home with respect to whether it conformed to the rules of the area?

They usually have certain rules, don't they, in these parking areas for homes? Did anyone inspect it at all?

Captain TERRY. No one looked at it at all, other than the mobile-home park owner, who was only concerned with getting it situated in the proper location in his park and seeing that the water and electricity were hooked up to the outside connections on the mobile home.

The CHAIRMAN. But there was no inspection of any other part of the home?

I guess they have inspections as to sanitary facilities in a home. But there was no inspection as to fireproofing at all?

Captain TERRY. There was no inspection whatsoever of any kind. The trailer was moved in, and the personnel that we bought the trailer

from, the mobile-home dealership, had the person come out, hook the trailer up as far as hooking the two sections together. They just did the work of hooking it together and laying the carpet.

The CHAIRMAN. Do you rent the land?

Captain TERRY. The lot is rented from a trailer-park owner, who owns the whole park.

The CHAIRMAN. From the park owner?

Captain TERRY. From the park owner.

The CHAIRMAN. And as far as you know, there was no inspection at all? The park owner just said, "Here is the place," and that is where you parked your home?

Captain TERRY. That is correct.

The CHAIRMAN. You must have had some feeling or fear about the possibilitity of the lack of escape openings from fire when you started to install your brick walls, did you not?

Captain TERRY. Brick walls were—one blocked the master bedroom, and it was also in the family room, itself. The other one was in the living room and was also the backing for the wall where the kitchen range was located.

The CHAIRMAN. Between the kitchen and the living room?

Captain TERRY. That is correct.

The CHAIRMAN. And the only two outlets were on either side, almost directly across from each other?

Captain TERRY. That is correct.

The CHAIRMAN. How large were the windows in the bedroom? Do you remember?

Captain TERRY. I can't really remember the size of those windows. We had only had the mobile home, as I said, for approximately 3 weeks. It was a constant state of confusion getting moved in and getting situated and getting a new trailer orientated.

The windows were small, and it was almost impossible to get out—because I tried to get back in the windows and could not get inside.

The CHAIRMAN. Were they high on the wall?

Captain TERRY. From the inside I would have had to stand on the bed in the bedroom to gain access to the windows. From the outside I had to use a stepladder to get up to them.

The CHAIRMAN. What about the window in the family room? Was that a larger window?

Captain TERRY. The window in the family room was a very large picture-type window. It was all the way to the floor. This could have been used as an escape.

However, the fire was at such a location that my first thought was an exit that I could not see—and, therefore, did not know that it was cut off.

I also didn't know about the danger of the high buildup of the heated air that would suck the air from a person's lungs and was told later that if I had, in fact, smashed the family-room window out, I would not be here today.

The CHAIRMAN. What caused the fire? Do you know?

Captain TERRY. The fire cause itself was not determined. They have specified the location of the fire to the best of their ability, but the exact cause is debatable.

They have ruled out any Christmas-tree lighting or such as that. There was nothing that I know of left on the stove that was burning. The stove was not on. The coffee pot was not on—nothing like this.

I believe it was in faulty wiring in the trailer. This I cannot prove, because I am not an electrician.

The CHAIRMAN. What kind of fuel do you use in a home like this?

Captain TERRY. The home was entirely electric. It was an all-electric home.

The CHAIRMAN. Is that from from an outside outlet?

Captain TERRY. It comes in from an outside power connection.

The CHAIRMAN. Are there tanks outside?

Captain TERRY. No, sir, there are no tanks. It was all electric.

The CHAIRMAN. You see so many of these homes with heating tanks.

Captain TERRY. Many homes are connected to propane or butane gas.

The CHAIRMAN. But this was not?

Captain TERRY. No, sir. It was totally electric.

The CHAIRMAN. Did the people who sold you this home make any test of the major wiring into the area, whether it might be that the addition of one home might overload it?

Captain TERRY. No tests were made of any wiring. When the home was delivered, the electric furnace would not work, and we had to badger the firm, the dealer, for approximately 4 days before we could get somebody out there to repair the furnace.

The CHAIRMAN. But nothing was said about whether the conduits from the main electric line, which would probably be down the street or some distance away, might be overloaded?

Captain TERRY. There was no mention of that.

The CHAIRMAN. Were there other all-electric mobile homes in the area?

Captain TERRY. The one next door to me was another 24-foot-wide, and it was all-electric. However, I didn't know anybody else in the area due to the short time we were there.

The CHAIRMAN. Did it have an electric tripping system?

Captain TERRY. In the back bedroom it came with circuit breakers that would automatically trip.

The CHAIRMAN. When it gets overloaded, they are supposed to trip?

Captain TERRY. That is correct.

The CHAIRMAN. But that was in the home?

Captain TERRY. That was inside the home. We had circuit breakers inside the home.

The CHAIRMAN. What was the total damage dollarwise?

Captain TERRY. It was a $14,500 mobile home. It was completely destroyed, together with the complete contents.

The CHAIRMAN. Did the fire spread to other places?

Captain TERRY. No. The fire department got there and contained the fire. The damage was strictly to the mobile home itself and just slight heat damage to my automobile next to it.

The CHAIRMAN. Was that Fort Lewis Fire Department?

Captain TERRY. It was the Lakewood Fire Department that answered the call.

The CHAIRMAN. On the base?

Captain TERRY. No, off base.

The CHAIRMAN. I'm sorry. I didn't hear you. Which fire department came?

Captain TERRY. The Lakewood Fire Department.

The CHAIRMAN. And they haven't yet made any report as to the cause, as far as you know?

Captain TERRY. As far as I know.

The CHAIRMAN. But overloading and the wiring system were suspect?

Captain TERRY. Yes, sir.

The CHAIRMAN. I have no further questions.

We all sympathize with you about this tragedy that could have been averted. It seems to me that the windows ought to open easily in any of these mobile units so that they can be opened quickly.

Captain TERRY. This is my contention also. They should be located in the rear of the mobile home, where you could close that door and break out the windows for easy access.

The CHAIRMAN. There was no door in what I would call the front or the rear, just on each side?

Captain TERRY. On each side in the front one-third of the trailer. The rear bedrooms had no access whatsoever to the outside.

The CHAIRMAN. Your home was a Boise Cascade, was it not?

Captain TERRY. That is correct; the Rec Brookwood model.

The CHAIRMAN. Most of the other mobile homes have about the same arrangement, don't they?

Captain TERRY. Yes, sir.

I have three diagrams, of which you have copies.

The CHAIRMAN. We will put those in the record.

There is one here from the Wickton Homes which are also large mobile homes.

Captain TERRY. On the Wickton Homes you will also notice that the range and kitchen areas are located right adjacent to the wall of the bedroom. It is on the same wall.

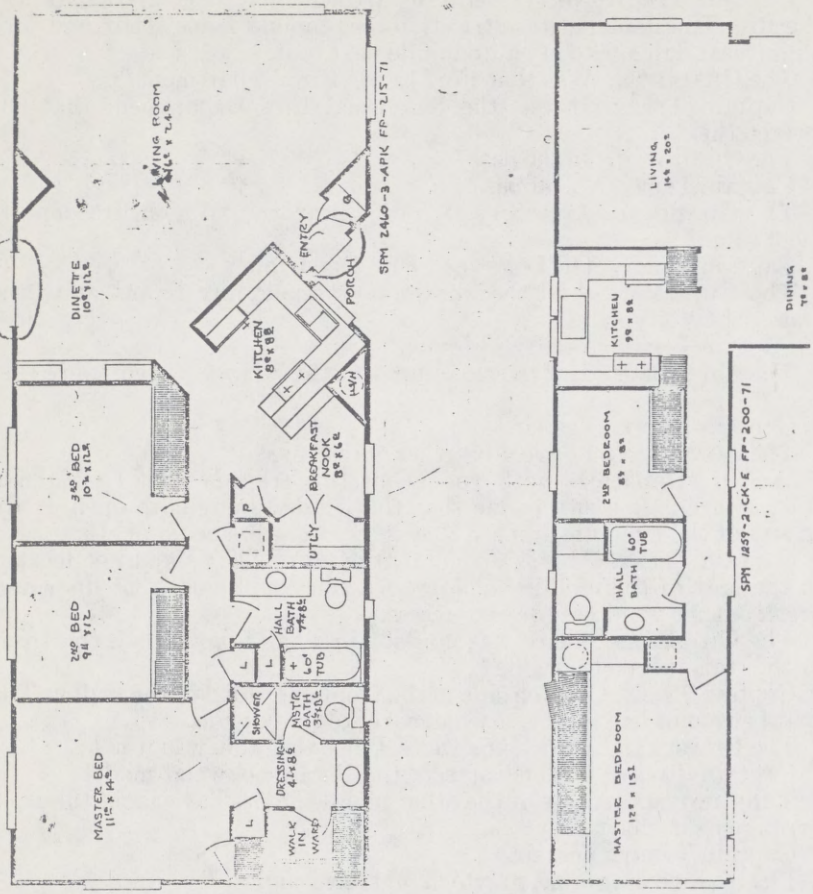
The CHAIRMAN. On one of these, except for the living room and a small dinette, the only way you could get out is through a very small entrance?

Captain TERRY. That is correct, sir.

These are extremely dangerous homes, in my estimation.

The CHAIRMAN. That would tie up three bedrooms and dressing rooms, and even the kitchen and the breakfast nook in one of them, if you couldn't get out of some of the windows.

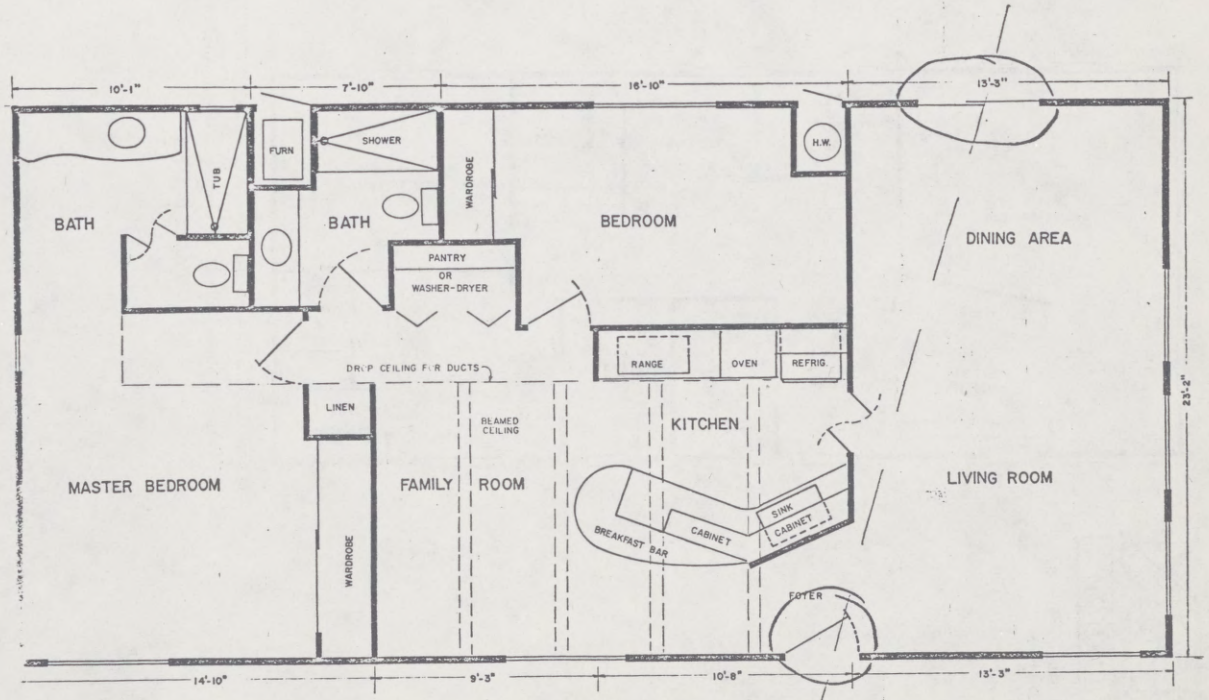
(The diagrams follow.)



BOISE CASCADE — BUILDER OF QUALITY MOBILE HOMES

Specifications Subject to Change Without Notification

Printed in U.S.A.



WICKTON HOMES
11182 Penrose
n Valley, Calif. 91352

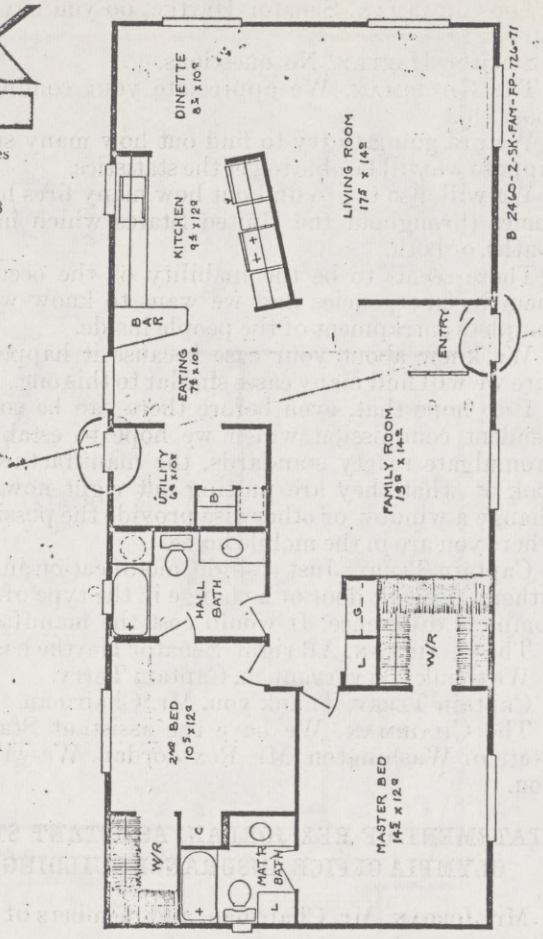
24' x 52'

5256K10

Melby Mobile Homes, Inc.
9701 So. Tacoma Way
Tacoma Wash. 98499
JU. 4-7055

REX
BROOKWOOD

Boise Cascade Mobile Homes
Rex Division
1801 Orchard Avenue
McMinnville, Oregon 97128



BOISE CASCADE — BUILDER OF QUALITY MOBILE

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The CHAIRMAN. Senator Hartke, do you have any questions of the captain?

Senator HARTKE. No questions.

The CHAIRMAN. We appreciate your coming here and telling us about this.

We are going to try to find out how many such homes there are. I suppose we will be able to get the statistics.

We will also try to find out how many fires have occurred in mobile homes throughout the United States which have caused injuries or deaths, or both.

There seems to be the inability of the occupants to escape from them in emergencies and we want to know whether the design is a complete entrapment of the people inside.

We knew about your case because it happened in my area. I am sure we will find many cases similar to this one.

I do hope that, even before there can be some action by an independent commission which we hope to establish with authority to promulgate safety standards, the manufacturers might take a long look at what they are putting out right now. They may be able to change a window or otherwise provide the possibility of exit no matter where you are in the mobile home.

Captain TERRY. Just a slight modification in the bedroom, as far as either a fire-exit door or a change in the type of window, would make a complete difference. It would cost the manufacturer a minimal sum.

The CHAIRMAN. All right. Senator Hartke has no questions.

We thank you very much, Captain Terry.

Captain TERRY. Thank you, Mr. Chairman.

The CHAIRMAN. We have the assistant State fire marshal of the State of Washington, Mr. Rex Jordan. We will be glad to hear from you.

STATEMENT OF REX JORDAN, ASSISTANT STATE FIRE MARSHAL, OLYMPIA OFFICE, INSURANCE BUILDING, OLYMPIA, WASH.

Mr. JORDAN. Mr. Chairman, and members of the committee, I would like to present——

The CHAIRMAN. First, let me ask you, Rex, were you familiar with this tragedy just described?

Mr. JORDAN. Yes, I am, Senator.

Our office does fire investigation, and we did investigate this fire.

I would like to enter into the record, a file dated July 26, 1971, entitled "Mobile Home Hearing," at this time.

I will briefly recap the contents of the file, if that would be acceptable.

The CHAIRMAN. We will put in the record the documents and your index of documents in full:[1] They are the findings of the fire as the result of the mobile home hearing held on January 6.

Was that this particular one?

Mr. JORDAN. Yes, sir.

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[1] See p. 377.

I would like to read into the record a statement of Karl Herrmann, Washington State insurance commissioner and fire marshal. [Reads:]

My primary concern is to save lives and prevent serious injury. The recent tragedy at Lakewood, Wash., which claimed the lives of a mother and the small daughter of a captain in the military service, has brought the need for safer construction of mobile homes to the attention of my entire department with shocking impact.

In serving in dual capacity as insurance commissioner and fire marshal of the State of Washington, I have reviewed the records of fires, including life safety, and the property damages and losses as reported by insurance companies.

The fact that the loss-to-value ratio in mobile home fires is several times that of permanent dwellings and that total losses are far more common is, in my opinion, positive evidence that much is to be desired in better, safer, and more fireproof construction standards.

The State of Washington has little control over these standards because most mobile homes are manufactured elsewhere and shipped into the State. We need stronger Federal regulation in this field.

I have appreciated Senator Magnuson's interest in our situation, and I will continue to work in close cooperation with him in his efforts to establish better minimum fire and life safety requirements for mobile home construction as well as other safer consumer products pertaining to fire and life safety.

Mr. Rex Jordan, chief State fire marshal, will testify before the Senate Commerce Committee and give full details on this situation as it pertains to Washington State.

My department stands ready to serve in every manner possible to supplement the regulations and provisions of Federal law that may result from these hearings.

The CHAIRMAN. We thank the insurance commissioner, Mr. Herrmann, for that expression of opinion.

Mr. JORDAN. Thank you, Mr. Chairman.

The CHAIRMAN. Do you have a statement yourself?

Mr. JORDAN. Yes, sir.

The CHAIRMAN. Where is that?

Mr. JORDAN. I would like to briefly recap the findings and recommendations of the public hearing.

If I might, Mr. Chairman, I would precede that with a recap. There was a notice of hearing mailed out December 30. It went out to approximately 150 interested persons in the State, as well as to the news media. It was a notice of hearing dated January 6, 10 a.m., Lakewood Center, Wash. [Reads:]

The Washington State fire marshal, by authority of RCW 48.48, has scheduled an informal hearing into the recent Lakewood mobile home fire in particular, and other mobile home fires in general.

This is not an inquiry into the cause, but rather the factors which contribute to the spread, severity and overall damage resulting from fire and the hazards presented to life safety, as well as current design, construction and placement of mobile homes and regulations pertaining thereto.

By this letter we are inviting you and any other interested persons to attend and present testimony which you feel is pertinent to this hearing. If you desire, you may submit written material which will be read into the record of the hearing.

The hearing was held, as called for, on January 6 at the Lakewood Fire Department, headquarters station, as called by Washington State Fire Marshal Karl Herrmann. The purpose was to inquire into the factors involved in the recent mobile-home fires occurring in the area and throughout the State, the most recent of which claimed the life of a young mother and her daughter on December 23 in a mobile-home park near Lakewood.

Representatives of the fire service, governmental agencies involved in mobile home regulation, the mobile home industry itself and the related sales, service and delivery business, operators and owners of courts and parks, and representatives of the public in general were invited to attend and give testimony. The hearing was open to the public and all the various segments were well represented, with approximately 80 registering as interested parties.

I might break that down, Mr. Chairman, that of the 80, 21 percent were of governmental or regulatory agencies, 40 percent were from local fire service agencies, and 31 percent represented the trailer industry; 2 percent were interested private parties, and 6 percent were insurance companies and news media. So I think we had a fairly good balance between public safety and the trailer industry.

Prepared testimony, informal statements, comments and suggestions were all accepted and duly recorded. These were studied and evaluated by the State fire marshal and the following facts established.

I won't read each of these, sir, because they are in the record, unless you would like to come back to them.

Relating strictly to the pending legislature, I will call your attention on page 1, to paragraph 2. The mobile home industry, in its phenomenal growth from a fairly insignificant specialty to one of the major suppliers of single-family homes, has not had the benefit of long years of experience in design and construction, resulting in a lack of adequate knowledge as to safety features needed and a less than satisfactory degree of quality control in certain instances in mechanical and electrical installations.

3. Regulatory agencies have not kept pace with the growth of the industry and nationally recognized standards were slow in development, incomplete in scope, and irregular in application and enforcement, resulting in confusion, contradiction and frustration to the builder, vendor and consumer alike.

4. Through the joint efforts of an organized mobile home industry and various research, regulatory, and governmental agencies, model minimum standards have been formulated, sufficiently broad and comprehensive in scope to provide a reasonable degree of standardization quality, and safety consistent with building codes governing conventional structures, if uniformly adopted, applied, and enforced.

5. Enforcement of minimum standards by State agencies have not been fully effective, due to the inherent, unique feature of the mobile home—its mobility; being built in one location and then moved, as a finished product for sale and use, to another. Continuous progress inspections during construction by the numerous State or local regulatory agencies in whose jurisdictions the units may later be sold in is impractical and occasional spot checks have not proven satisfactory. Voluntary compliance by all builders has not been obtained, possibly due in large to the pressures of competition.

6. Fire loss statistics have begun to emerge that indicate that the life loss per fire and the dollar loss per fire is many times that of the conventional dwellings; the most common reasons given by fire officials being more readily combustible construction, higher flame-spread ratings of interior finishes, lack of fire stops in concealed places, and inadequate means of emergency exit.

7. Locally, Washington regulations are far ahead of the national norm in design, construction, and mechanical standards, but have not kept pace with life safety requirements in the event of fire. Exit arrangements are not in conformance with nationally recognized standards for mobile homes but rather, use terminology from conventional building codes for door requirements, omitting the companion emergency exit and rescue requirements for windows in sleeping areas.

8. Numerous local fire officials have made inspections, surveys, and investigations and are aware of many of the existing problems but other than voicing their objections and warning of inevitable results, are seemingly helpless to obtain satisfactory corrective results.

After carefully weighing all testimony presented, in addition to the previous record, statistics, and reports available, giving due consideration to all sides of the problem and trying to remain neutral without prejudice toward any one or any segment involved, the Washington State fire marshal hereby makes the following recommendations:

1. The entire mobile home industry, either collectively or individually, should be encouraged to voluntarily adopt the standard for mobile homes, as published by the National Fire Protection Association, as the guideline and minimum standard under which their products are designed and constructed.

2. An appropriate Federal agency should be empowered and charged with the responsibility to require and enforce compliance with the aforementioned standard for any mobile home designed or intended for transport interstate.

3. The committee for the standard should review fire cause and loss factors involving mobile homes, and compare the data and knowledge so gained to existing requirements in the standard, to determine areas in need of strengthening, clarifying, or expanding, such as:

A. Combustibility standards for all structural and finish materials, rather than merely flame spread of interior surfaces.

B. Extending flame-spread requirements to include standard equipment furnishing and fixtures.

C. Evaluation of present flame-spread ratings, established the same for mobile and conventional homes alike, to determine if mobile homes present a special hazard and should be required to maintain a lower flame-spread rating to accomplish the same overall relative degree of fire safety to occupants.

D. Require doors, escape panels, or windows designed for emergency egress or rescue from all sleeping areas.

E. Define design requirements to provide fire separation between sleeping areas and the other portions of the mobile home, so as to be able to exit from all sleeping areas through individual or a common door without having to enter or pass through other portions of the structure.

F. Requiring or at least recommending some means of automatic detection of heat, flame, smoke, and/or products of combution and provisions for alerting the occupants.

4. More research should be done on present methods of testing surface burning characteristics of finished materials to see if these limited fuel/heat tests are really indicative of the conditions encountered in an actual fire, or if simulated full-scale testing methods should be developed and implemented.

5. The Washington State mobile home regulatory agency, the Department of Labor and Industries, should revise their present standards to conform with the standards for mobile homes, insofar as fire and life safety requirements are concerned, and go beyond the standard where it is felt that weaknesses or omissions exist, and should utilize their inspection and enforcement procedures to the utmost in discovering violations, seeking corrections, and punishing violators.

6. The Washington State fire marshal and the fire service in general, should cooperate with, assist, and support the Department of Labor and Industries in their efforts to formulate, adopt, promulgate, and enforce reasonable minimum standards for fire and life safety in mobile homes, consistent with standards adopted or recommended for other types of structures or occupancies.

7. The fire service should encourage municipalities or governmental subdivisions to adopt the standards for fire protection in trailer courts, as published by the National Fire Protection Association, on a local level and empower the fire department or other local agency responsible for fire protection, to enforce it.

8. All agencies or individuals having an interest in mobile homes, whether through the manufacture, sale, service, use, or regulation should join efforts in a campaign to educate the general public in proper safeguards and emergency procedures related to fire prevention, fire detection, fire suppression, and life safety in family homes, regardless of whether it be a mobile home, conventional home, single-family or multifamily occupancy.

It is the opinion of the Washington State fire marshal that substantive compliance with these recommendations will do much to improve the image, safety, and fire loss record of mobile homes and greatly increase life safety of the general public.

Mr. Chairman, we have in the file submitted to the committee some fire loss statistics, which, unless you would like to compare these at this time, I would pass over at this time, and come back to a little later, and explain some of the standards.

I do have some copies of some photographs that show some of the things I have just mentioned as a matter of recommendation.

The CHAIRMAN. Before you do that, I would think that we would like to dig a little deeper into this.

You say that there are some voluntary standards that have been set up by the mobile home manufacturers.

Is that the trade association for the industry?

Mr. JORDAN. They have an association; yes, sir.

There are standards established——

The Chairman. We will hear from one of them today?

Mr. JORDAN. I am sure we will.

The CHAIRMAN. Those are voluntary, is that correct?

Mr. JORDAN. Voluntary acceptance, I believe.

There is a National Fire Protection Association Standard, specifically 501(b) published in 1968, revised and being readied for issue now. However, it is held up in committee, or it would have been out in 1971. I am sure it will come out shortly.

It is contained in exhibit 12 of the file that is presented. It talks about the design of the exits, the location of the exits, and the window sizes.

The argument that has been used in some States in the past is that a mobile home is no different than a dwelling.

That is not true. A mobile home is different than a dwelling if the dwelling is built under one of the model codes, or under the Life Safety Code, 101, as published by the same National Fire Protection Association. The code standard in the State of Washington, and some other 19 States happens to be the uniform building code as issued by the International Conference of Building Officials, one of four nationally recognized codes.

The CHAIRMAN. If you build a mobile home in the State of Washington, it will be subject to the regulations that have been laid down by the insurance commissioner and yourself, is it not?

Mr. JORDAN. It would be by the State of Washington, Mr. Chairman.

The CHAIRMAN. Are those a matter of law, or a matter of regulation?

Mr. JORDAN. In our State it is a matter of law, and the Department of Labor and Industry writes the standards.

The CHAIRMAN. A State department?

Mr. JORDAN. Yes, sir.

The CHAIRMAN. There are some mobile homes being built in the State of Washington, are there not?

Mr. JORDAN. Yes, sir.

The CHAIRMAN. Do you inspect them and see that they are conforming to the regulations?

Mr. JORDAN. Our particular State has regulations. They are also regulated so that if they are sold within the State, they must carry a State tag.

However, the point I wished to make, Senator, was this: The requirements for exits in the national standard call for two doors located remote from each other. The requirements under model building codes, and under the Life Safety Code for an ordinary one- and two-family dwelling, which is comparable to a mobile home, requires that in a sleeping area, unless you have a door that exits directly to the outside—and this is found in the documents in the file—you have to have a window not higher than 4 feet above the floor, with an area of not less than 5 square feet, with no dimensions smaller than 22 inches in the opening size.

The CHAIRMAN. Is that the State regulation?

Mr. JORDAN. No, sir; that is a building code regulation for a one-family dwelling, that is built in the State. But in the mobile home industry and in the mobile home construction, that feature is not found. You don't even have to—technically under the mobile home

standard—have a window that opens in a sleeping home area, if you have a ventilating system.

If you do not have a ventilating system in a mobile home, then you have to have a window that opens. But there is no minimum size and this is what we allude to in the fact of comparable standards equal to those of an ordinarily constructed dwelling.

In States that do not have building codes——

The CHAIRMAN. Who looks at these places, anybody?

You say they are in the city of Tacoma. It was in Lakewood in this case. Does anyone inspect them when they arrive at the site and say, "Mr. So and So, or Captain Terry, I would suggest that you get this changed, because this is a fire trap?"

Does anybody look at them when they come in?

Mr. JORDAN. They are brought into our State under a labeling system.

The CHAIRMAN. But obviously that is not working.

Mr. JORDAN. Because the standards are not adequate for the basic design.

The CHAIRMAN. And that is why you are suggesting Federal standards?

Mr. JORDAN. Yes.

The CHAIRMAN. Let's say the Product Safety Commission set the standards by regulation. They would have to build them that way and if they did not, then they would violate those regulations, by moving in interstate commerce, which most of them do.

We could have penalties and make them strong enough to force compliance, as well as inspection frequent enough to make sure that they manufacture them in accordance with some minimum safety requirements on fire.

Mr. JORDAN. They should be equal to those of an ordinarily constructed single-family dwelling built under a model code.

The CHAIRMAN. If Captain Terry had built a home there, I suppose there would have been an inspector to look at it?

Mr. JORDAN. He would have had to provide a bedroom with a door to the outside, or a proper window.

The CHAIRMAN. And the contractor would have to look at the plans before they could get the building permit approved.

When you bring in a mobile home, there is nothing to approve. It just comes in.

Mr. JORDAN. In the State of Washington, Senator, we do have more restrictions and probably more regulations than some other States. I am not qualified to speak on a Federal level.

The CHAIRMAN. I applaud the State for having a little better regulations, but obviously they are not enough.

You agree; don't you?

Mr. JORDAN. Yes, sir. That is why we asked for Federal assistance.

I might point out at this time, sir, that I have some pictures that will illustrate this, if you would like to see them, If not, I will leave them for the record.

The CHAIRMAN. We will put them in the record.

(The pictures follow:)

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FIGURE 1—Delamination of interior wall and ceiling materials caused by exposure to heat, creating increased surface area and multiple layers of thin, combustible material for fire to feed upon. There was no actual burning in this area yet and the heat development had not reached a high enough temperature to even distort the fragile light bulb on the ceiling or crack the plain-glass window directly beneath it, the two items that always fail first in fires in conventional dwellings.



FIGURE 2—A typical hollow-core interior door, showing the 1/8" hardboard facings and corrugated fiberboard filler. Burned areas were snapped off by hand by the photographer to illustrate construction.



FIGURE 3—Interior partition wall, showing results of fire exposure. Fire originated in approximately the spot where the photo was taken, extending along the ceiling and through the wall. Fire damage on both sides of the wall was about equal, indicating that the wall did not retard the spread for even a short period of time. Hole at bottom of wall resulted from burning material at top of wall falling through the entire length of the non-firestopped void between the wall surfaces and then burning back out through the wall on both sides.



FIGURE 4—Opposite side of wall from photo #3. The lone adult occupant, a young mother, had only minutes before, left the front room was in the rear bedroom preparing for bed when she smelled smoke. She went toward the front but was unable to proceed past the living room, as it was involved in fire. She backed up three or four paces to the center bedroom when her three month old child was sleeping in a crib, as per photo. Fire was already coming through the upper part of the wall, directly over the crib. She snatched up the child and was able to escape by way of the rear exist door in the back bedroom.

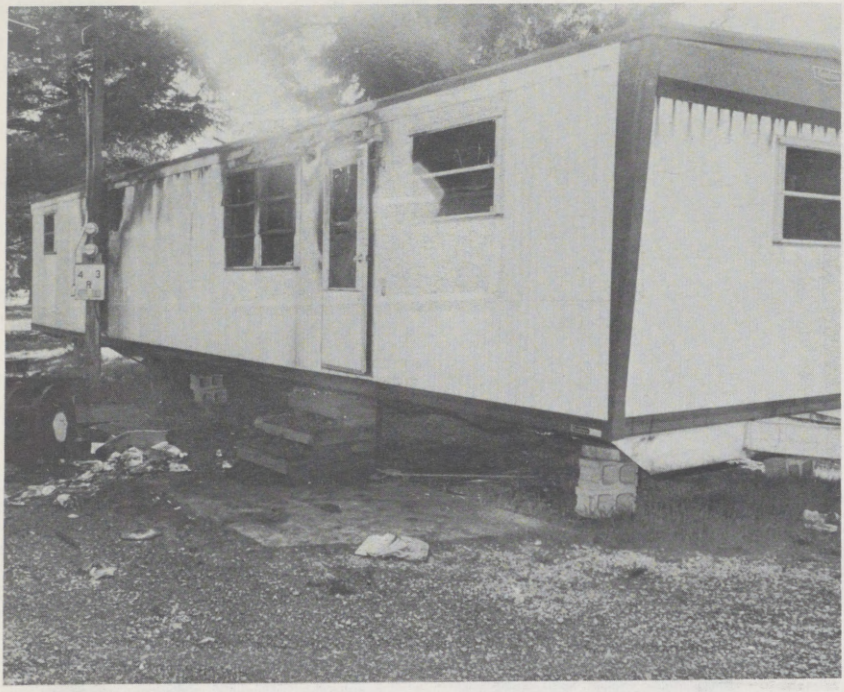

FIGURE 5—Exterior of mobile home, as described in photos 1, 3, 4. Exiting was by way of rear door, concealed behind power post. The door was left open, providing draft and drawing fire toward rear of mobile home. Also illustrates typical jalousie windows used in mobile homes, not meeting the intent or requirements of windows in sleeping areas of conventional homes or buildings.

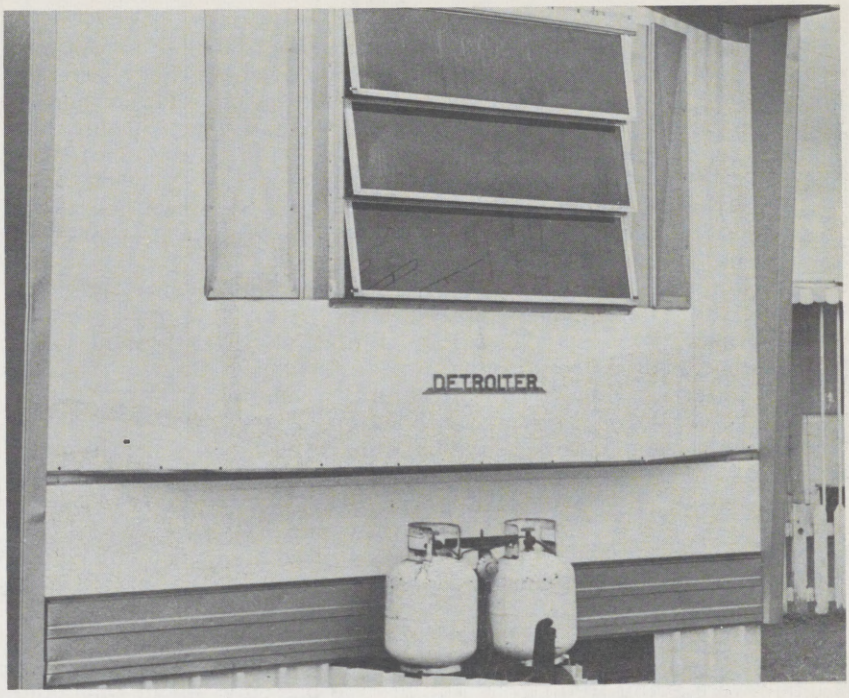

FIGURE 6—Another mobile home, illustrating jalousie windows, as described by Captain Terry.

The CHAIRMAN. We are trying to learn how we can establish not minimum uniform regulations which this committee could probably recommend to the Commission, but also how we can enforce them in interstate commerce, in conjunction with you people who also have some good State laws in the State of Washington.

You think they are better than some States. We could bring the States that are way down, up to some minimum level.

Mr. JORDAN. They should all be at an equal level of single-family dwellings.

The CHAIRMAN. You could do better with the enforcement.

Mr. JORDAN. Yes, sir.

The CHAIRMAN. You can still make a mobile home that has some minimum fireproofing and complies with the regulations.

Sometimes the things that they put in it will completely negate that; isn't that true?

Mr. JORDAN. Yes, sir; you can build—the mobile home industry is comparable to the history that was experienced in ordinary dwelling construction.

Going back a few years, we had what we called balloon construction in a frame building, dwellings as well as apartment houses and public buildings, which meant no firestops in the wall. If anything happened, it went into the wall and up through the attic and spread throughout the building, depending upon its configuration.

This was changed because of problems with life safety.

The mobile home industry in certain areas, do offer as options, certain types of interior finishes and location of doors. They have admitted in a letter that came from the association, that at one of their large annual mobile home displays, they had some 88 companies that showed. There were 88 homes displayed, and every one of them had at least two doors, and some of them, three.

But in the testimony we received, they may have two doors, but located as you have seen from the captain's diagram and others that are of random sampling.

The CHAIRMAN. Why do we let a home like that come in the State if they have the doors wrong?

Mr. JORDAN. The standards say 501 B and ANS1 A119 point something—they say two doors located remote from each other.

The CHAIRMAN. But I say they technically complied?

Mr. JORDAN. We ought to qualify one thing.

The single wide trailers, as we have surveyed them, generally have a door at the front and one at the back, discounting the window problem and so on. I have a photograph of one.

The CHAIRMAN. I think that all of this—and I am sure we will find this proven as we move along—shows again the inadequacy of voluntary regulations by the industry people.

Mr. JORDAN. I agree.

The CHAIRMAN. We have run into this in this committee in all facets of safety. Flammable fabrics are a good example.

They were going to do great things. We passed a bill in 1953, and the industry was going to do things voluntarily. They did not have a meeting for 12 years until I reintroduced another bill. Then they had a meeting the next day.

I suppose the industry plea here will be that there are some who want to comply and would want to do the thing, and the plea will be, "Leave it to us, and we will get it done."

I am interested to see how much of this is going on all over the United States.

We have had some other fires at home, of course, and I suppose this is true all over. They offer to do something about it voluntarily, but it never happens.

Mr. JORDAN. We would not want to imply that all manufacturers don't want to cooperate.

We did have some interesting letters. One of the major insurance companies in the country distributed this report nationwide, and we do have replies that they are very much concerned.

We have had some violent letters of disagreement that challenged us for even having the hearing in the first place.

Of course, that is the democratic process. We did make recommendations to the National Fire Protection Association for the 1971 change.

The CHAIRMAN. We appreciate getting your recommendations here, and they are good. But the industry hasn't carried them out and they haven't adopted them, have they?

Mr. JORDAN. They did not adopt them, or carry them out, and we were not contacted to further present our case.

The CHAIRMAN. That is the problem.

Mr. JORDAN. Mr. Chairman, I would like to spend just a minute and show you this construction. We appreciate very much this opportunity of appearing before you, and would urge some Federal legislation.

The CHAIRMAN. I think we are doing much better over the years.

The Coast Guard has some pretty tough regulations on fire protection for boats, and people living on boats, of which we have a great number at home. They go in there and take a look at them. If they are not reasonably safe, they just tell them to move out.

You read every day about some boat blowing up because of fumes collecting from the engines.

The mobile-home industry is getting to be a large one.

Mr. JORDAN. It is a very large and important industry.

The CHAIRMAN. It is very important to a lot of people.

Mr. JORDAN. I believe 400,000 mobile homes were sold last year.

The CHAIRMAN. We looked upon the mobile-home industry as trying to help solve part of the housing problem. In order to do that, maybe we are creating another crisis.

If they won't adopt these views voluntarily, then they will have to deal with some regulations across the board, nationwide, because they are all in interstate commerce.

Obviously, even the regulations now in existence have not been enough. I have no doubt that the Terry tragedy was a case of overloading that wire system. That is what happens.

You know how many fires are caused in that manner.

Mr. JORDAN. We have had a severe problem in the wiring systems, and use of aluminum connectors.

The CHAIRMAN. Nobody checks those things.

Mr. JORDAN. Our State does not now permit aluminum connectors.

The CHAIRMAN. When a person operates a mobile home lot, do they have to get a license in our State?

Mr. JORDAN. You can only sell those units that are tagged.

The CHAIRMAN. That is within the city?

Mr. JORDAN. It does not matter if it is the city or county. They have to be licensed and tagged.

The CHAIRMAN. What are the qualifications for the license?

Mr. JORDAN. Very minimal on fire and life safety, quite stringent on structural.

The CHAIRMAN. Are you short of inspectors?

Mr. JORDAN. Our agency does not inspect.

I would imagine the inspection personnel would be adequate in the agency. I can't speak for them.

The CHAIRMAN. They are usually short.

Mr. JORDAN. Everybody is short in Government, but you wonder sometimes if that really is true.

The CHAIRMAN. I regret that I have another engagement, an important meeting concerning transportation, which I must attend at this moment.

We will recess briefly.

Senator Hartke will be here momentarily, and I will return as quickly as possible.

(Whereupon, at 11:15 a.m., the hearing was recessed, to reconvene at 2 p.m., this same day.)

AFTERNOON SESSION

Senator HARTKE (presiding). The committee will come to order.

The next witness will be Mr. Larry C. Davenport, Washington affairs associate, Mobile Home Manufacturers Association. With him will be Henry Omsom.

STATEMENT OF LARRY C. DAVENPORT, WASHINGTON AFFAIRS ASSOCIATE, MOBILE HOME MANUFACTURERS ASSOCIATION, ARLINGTON, VA.; ACCOMPANIED BY HENRY OMSON, STANDARDS DIRECTOR

Mr. DAVENPORT. Good afternoon, Senator Hartke. My name is Larry Davenport, I am Washington affairs associate for the Mobile Homes Manufacturers Association. I also represent the Trailer Coach Association, which is a regional association having members producing mobile homes west of the Rockies. Jointly the two associations represent manufacturers who build approximately 75 percent of all the mobile homes manufactured in the United States.

The Mobile Homes Manufacturers Association standards director, Mr. Henry Omsom, is with me this afternoon. After I have made some comments excerpted from our testimony, and if it is permissible, I would like to have him respond to some of the earlier testimony regarding technical matters and the standards for mobile homes.

Of course, we would be happy to try to answer any questions you might have after that.

We are pleased to have the opportunity to speak to the subject of consumer product safety standards inasmuch as our associations originally cosponsored the American National Standards Institute Standard No. A119.1 which was adopted in 1963. We now share the sponsorship with the National Fire Protection Association which references it as Standard 501 B.

This standard covers plumbing, heating, electrical, and structural systems for mobile home construction. It has been adopted wholly, or in part, by 28 States and is required as a condition of membership in both the associations which we represent. A list of the States which have adopted this standard is attached. The States of Washington and Indiana have adopted this standard as State law. They do not require inspection in the State of Washington. However, they do require certification that the home was built in compliance with the standard.

I am not sure of the status of Indiana. Their law was just passed recently, but Mr. Omsom may know the answer and can refer to that later.

The National Fire Protection Association and American National Standards Institute (formerly the United States of America Standards Institute) are widely recognized by State and local enforcement officials. One of the most widely respected standards of these two organizations is the National Electrical Code which includes provisions for electrical installations in mobile homes.

The mobile home construction standard was developed by a broad committee of ANSI and many organizations had the opportunity to express their interest and vote in the development of it.

Among the groups participating in the creation of the standard were the Public Health Service, Federal Housing Administration, National Association of Home Builders, National Bureau of Standards, Building Officials Conference of America, Underwriters Laboratories, American Gas Association, International Association of Plumbing and Mechanical Officials, the Fire Marshals Association of North America, and many other professional and trade groups.

Both the Department of Housing and Urban Development and the Veterans' Administration require the standard as a condition of participation under their mobile home loan programs. During 1970 our organization hired additional staff and instituted a program aimed at having the A119.1 standard adopted in any State which does not have a mobile home construction standard.

Of particular concern to the various States—and an area of wide misunderstanding—is the safety of a mobile home in the event of fire. Comparison of the A119.1 standard with the Uniform Building Code, which serves as a guide for dwelling construction in many parts of the United States, will help to clarify some of the existing misconceptions.

For instance, the A119.1 standard under part I, section 8.3 states:

> Mobile homes shall have a minimum of two exterior doors located remote from each other. Doors shall be designed for exterior use, and in no case be less than 24 inches wide. Exterior doors shall permit opening from the inside by the simple operation of a single knob or lever.

By comparison, the Uniform Building Code requires two doors only when the occupancy of the structure exceeds 10 people and the size of the dwelling exceeds 3,000 square feet in area.

Part I, section 7.3 of the mobile home standard states:

> In all habitable spaces, interior exposed ceiling, wall, and partition surfaces shall be faced with materials whose flame spread classification shall not exceed Class C as defined in Section 6–2114 of the Code for Safety to Life From Fire in Buildings and Structures, NFPA No. 101–1967 (flame spread at more than 75 but not more than 200) when tested by the Standard Method of Test for Surface Burning Characteristics Building Materials (USAS A2.5–1963, ASTM E84–67, UL 723–1960, NFPA No. 255–1966).

By contrast, the Uniform Building Code does not require class C materials for interior finishes. Obviously, a mobile home built to this requirement would also exceed a conventional dwelling when a comparison of flammability of interiors is considered.

Part II, Section 6.3.2 of the A119.1 standard states:

> Fuel-burning heat-producing appliances, except ranges, ovens, and illuminating appliances, shall be designed or installed to provide for a complete separation of the combustion system from the atmosphere of the mobile home. Combustion air inlets and flue gas outlets shall be listed or certified as components of the appliance.

Again, by comparison, none of the model codes for conventional housing presently requires this type of heating installation which has proven to be quite effective in the prevention of loss of life.

While we feel that advances in mobile home construction and the writing of standards have been significant, we are by no means standing still in these areas. The ANSI standard is extremely viable and is subject to continual review. The latest revision is scheduled to be in print and available around September 15, 1971. As soon as they are available, we would be pleased to provide copies of the latest revision to the committee and staff.

I might say that the association's response to the job, or the industry's response to the job of creating standards, was done to fill a vacuum. We are not interested in the enforcement business but in the absence of the assumption of this responsibility on the part of the various States, the association had to get involved in this activity.

We are willing at any time to abdicate this responsibility in favor of the States. We would hope they would take standards, such as the voluntary standard which was created by industry and interested parties, and promulgate it. We did, in fact, create a State legislative office in our association to help accommodate this extension of standards.

The mobile home industry is fortunate that certain of its leaders recognized the necessity for a construction standard in the late 1950's and started the standards program which led to adoption of A119.1 in 1963. We feel that the buyer confidence which it generated has played a significant role in the subsequent growth of the industry.

While our support for product safety standards is a matter of record we, nevertheless, feel that the method by which they are promulgated and enforced is extremely critical. Also, those approving or creating standards at the Federal level should be charged with the obligation of determining whether any proposed standard is reasonable and appropriate for the product being affected and, further, determining the extent to which any such standards will advance the intended purposes of the Act.

Experience with other Federal safety programs has taught us that zealousness in behalf of consumer safety is not a virtue in and of itself, espescially when it leads to unnecessary standards which do not take cognizance of all readily available data.

It would appear at this juncture that HEW is capable of handling the collection and disclosure of information related to consumer product risks without the creation of yet another consumer agency.

The President's office, FTC, HEW, and DOT, among others, have programs designed to protect the consumer's interest.

others, have programs designed to protect the consumer's interest.

The creation of a Consumer Product Safety Commission appears to be unnecessary in view of the mechanisms which already exist and are capable of being adapted to facilitate product safety.

If, however, the Congress is intent upon having a separate Government entity to deal with product safety, perhaps it would be worthwhile to consider bringing all of the consumer product safety activities under one agency. In this way communications and coordination might be improved and, further, future activities could be evaluated in the light of the capabilities of a single agency rather than several.

Mr. Chairman, the Mobile Homes Manufacturers Association and Trailer Coach Association appreciate the opportunity to express their views here today. This concludes our formal statement. We would be pleased to try to answer any questions which the committee might have at this time.

I would like to ask if it is OK if Mr. Omson might relate this to some of the earlier testimony.

Mr. OMSON. Thank you.

Senator, as far as your particular State of Indiana is concerned, the law is in effect and has been signed by the Governor. However, the effective date of it is January 1, 1972. The rules by which it will be enforced are still in the development stage at the State capitol building.

We have this year had cause to have legislation introduced in some 15 States, of which we could make a list available to the committee if the committee so desires.

Senator HARTKE. That will be made part of the record at this time.

(The information follows:)

States that have signed A119.1 into law this legislative session

Alaska	#357
Colorado	#70
Indiana	#1326
Maryland	#559
Minnesota	#778
Montana	#429
North Dakota	#1147
South Carolina	#1383

States where A119.1 has been tabled or referred to next session

Kansas	#1280
Massachusetts	#2983
Missouri	#368
Oklahoma	#376
West Virginia	#1139

Mr. OMSOM. We can successfully say that we have six States that had adopted it this year since the introduction through our State legislative department.

One comment I would like to offer in rebuttal, if you will, of some of the testimony this morning was that it seemed to me as I was sitting there listening that there was quite a bit of comment with regard to windows and their accessibility.

One of the statements in the standard that I would like to read I believe will illustrate the point. This is in the ANSI standard that has been discussed and is in force in the State of Washington. It says this about habitable rooms:

> Habitable rooms shall be provided with windows or doors in which total glass area is not less than 10 percent of the floor area.

This happens to be standard in all the building codes in the United States, including that which we have checked.

It also says:

> An area equivalent to not less than 5 percent of the floor area shall be available for unobstructed ventilation.

What this means is that half that window has to open or be available to open. This, too, is a little more restrictive than you will find in the average building code.

The standard itself, really, in rebuttal, is a good standard if it is properly enforced. But enforcement is the key to anything. You can have all of the rules, the laws, that you want in the country but if nobody enforces them they are no good. We try to enforce them for our membership in lieu of the States or somebody else enforcing them.

Thank you.

Senator HARTKE. I was not here this morning when the testimony was submitted by Captain Terry.

Did that trailer meet the standards?

Mr. OMSOM. I do not know. That trailer is in Washington and falls under the jurisdiction of the Trailer Coach Association.

Senator HARTKE. It was manufactured in Oregon?

Mr. OMSOM. Everything east of the Rocky Mountains—if you draw a line right up through Colorado, Oklahoma, Texas, and right on north—is in the jurisdiction in which we function as the Mobile Homes Manufacturers Association; and our allied area, our sister, if you will, functions west of the Rocky Mountains.

I cannot honestly tell you about that particular model. I do not know. But I will say this: I looked at a floor plan that was passed around here and from looking at the floor plan the general layout could be built under the uniform building code. It could be built in Virginia. It could be built right here.

Senator HARTKE. I can understand your feeling that you should have no more strict standard than that of the building code in regard to an ordinary house. But that in and of itself does not meet the problem, does it? In other words, quite obviously the mere fact that you have a building code which is inadequate is no excuse for having a mobile home that is inadequate. Maybe the building code should be changed.

Mr. OMSOM. Quite true.

Senator HARTKE. The National Commission on Product Safety concluded that the so-called consensus principle, which is at the heart of all voluntary standardmaking, is not effective in that it does not elevate safety standards.

In addition, it stated: "It permits the least responsible segment of an industry to retard progress in reducing hazards."

Is that your experience in working with ANSI?

Mr. OMSOM. It might be as far as ANSI is concerned, but this also happens to be a National Fire Protection Association standard. It is a joint standard.

Senator HARTKE. Is the effect of the so-called consensus principle a situation whereby the least responsible manufacturer, in terms of the level of safety of this product, is the one who prevails in the voluntary standardmaking procedure?

Mr. OMSOM. It has not proved true in the case of the standards we have adopted.

Mr. DAVENPORT. Generally speaking you would not find the least responsible member of an industry even participating in an ANCI standard. As they have in the past, they would be going their way in the field of product safety and build the product outside the standards.

Senator HARTKE. Is there any provision for including the least responsible manufacturers in such an organization? Can they just escape the standards of the voluntary group?

Mr. DAVENPORT. Depending upon how that voluntary standard was implemented. I think the standard which we helped to cosponsor originally has been adopted in whole or in part by 28 States. I think that is some test as to the effectiveness of the standard or the integrity

of the standard. I don't believe the various States would have adopted it had it had any inherent deficiencies.

That is not to say it is perfect or cannot be improved, but what I am saying is that here is a specific example of where a voluntary product standard was created and has been accepted by over half the States.

Senator HARTKE. Let me give you a specific example. We will take Captain Terry's case. That was in the State of Washington, is that correct?

Mr. DAVENPORT. Right.

Senator HARTKE. Washington has adopted the standards. But if the home had been manufactured in another State it could still have been used in Washington, could it not?

Mr. OMSOM. According to the law that is in effect there right now that particular unit, if it moved into the State of Washington, must comply with the standard in effect in the State of Washington.

Senator HARTKE. What is it——

Mr. OMSOM. Washingon uses a 119.1 as its standard.

Senator HARTKE. Is that the only State that requires it?

Mr. OMSOM. No; California requires it, Indiana, Oregon, Utah—there are 28 States that have adopted this as standard. This mobile home may or may not have been manufactured in Washington but if it is anticipated that it will be sold in the State of Washington it must comply with the laws of the State of Washington and be so listed.

They sell a seal. The plans and specifications of the mobile home must be on file with the State authority and I believe in this particular case it is the fire marshal's office. He must approve these for manufacture for sale in that State. They carry a State of Washington seal.

Mr. DAVENPORT. Senator, I think what we are suggesting here is that it is not so much the integrity of the standard as the way that it is applied. If it is not applied uniformly or not enforced uniformly here is where the problem comes in.

The unit might have been made in Oregon and if only a certification was required to be admitted into the State of Washington, the unit could have come in and be certified as being correct but not in fact inspected to see if it was. There is the gap that creates a problem.

Senator HARTKE. What provisions under the voluntary standards are there for inspection?

Mr. DAVENPORT. For our association members who adhere to the standards, we inspect the product ourselves. Of course, there are a number of States which inspect. I don't believe, unless Mr. Omsom corrects me, that there is a provision in the standard, per se, which says homes being built to this standard must be inspected. I don't think the standard says that.

Senator HARTKE. The State fire marshal's report in Washington concluded that the life loss per fire and the dollar loss per fire in mobile homes is many times that of conventional dwellings. He also states that the most common reasons given by fire officials for this is that they are manufactured from more combustible materials, they have higher flame spread ratings of interior finishes, they lack firestops in concealed spaces and they have inadequate means of emergency exit.

Do you agree with that conclusion?

Mr. OMSOM. Not entirely, no, sir. I think that in the State of Washington, as far as residential construction is concerned, there are no flame spread requirements whatsoever, I think in the standard for mobile homes there are flame-spread requirements.

As far as firestopping, he makes a very good point. This particular section of the standard will be corrected at its next issue. It was taken under consideration at his request at the last meeting of the committee that considers these changes. Anything that is built over one story in height will have to be firestopped, and that is the same proviso that is in residential construction. It must be firestopped over one story high.

Senator HARTKE. Are you going to have changes in these regulations in September?

Mr. OMSOM. The changes are already underway. They have been approved by the National Fire Protection Association. They are before ANSI right now for consideration and we expect the publication of the new standards to be available within the next 2 weeks.

Senator HARTKE. Can you tell us what the principal changes will be, in what area?

Mr. OMSOM. There will be changes in the structural integrity part of the standard. There will be changes in the electrical portions of the standard. The standard covers four basic areas and there will be changes in effect in all areas for improvement and upgrading.

Standards are not perfect when they are developed any more than a piece of material or glass or anything else is perfect. There is always room for improvement and this is a continuing process. Whenever this particular standard was first developed it only included several sections. Now there are four specific sections. Each has been upgraded since the last publication of this book. There will be continual progress made.

Senator HARTKE. Will the new standards have anything in them concerning window space opening?

Mr. OMSOM. Yes. There will be a glazing standard added to the new standard for the first time.

Senator HARTKE. You spoke about the vent opening. If the windows had the so-called awning type of vents or any other type of vents of that kind that could still have a screen, as Captain Terry described this morning, they would in effect be like the bars of a jail.

Mr. OMSOM. A screen?

Senator HARTKE. And still meet the standards of today; is that right?

Mr. OMSOM. Not necessarily so. We test windows for the ability of a window to withstand a certain wind resistance. This window, whether it be for a house or a mobile home, has to be strong enough to withstand a wind pressure. That particular pressure could be anywhere from 15 to 25 miles per hour. A window has to do that or it would not serve its function as a window. But it must be operable. It has to be able to open and it has to be able to withstand leakage tests and so on.

Senator HARTKE. I have some more questions that I think would be appropriate and I would like for you to answer them for the record.

Mr. DAVENPORT. Yes, sir.

Senator HARTKE. Thank you, gentlemen.

Mr. Melvin Block from Brooklyn, N.Y., who is the first vice president of the New York State Trial Lawyers Association.

STATEMENT OF MELVIN BLOCK, FIRST VICE PRESIDENT, NEW YORK STATE TRIAL LAWYERS ASSOCIATION, AND EDITOR IN CHIEF, TRIAL LAWYERS QUARTERLY

Mr. BLOCK. Mr. Chairman, my name is Melvin Block. I am first vice president of the New York State Trial Lawyers Association, an organization of 3,500 lawyers, and also editor in chief of its official publication, the Trial Lawyers Quarterly.

I have participated in personal injury litigation, primarily in the field of products liability for over 20 years, and have had the privilege of appearing before your committee in support of the Child Safety Act of 1966.

It is an undiluted pleasure to appear again before you, but candidly it is a mixed blessing.

It is an undiluted pleasure in that the enactment of S. 983 would truly be the hallmark of a civilized society because it reveres soundness of body and mind and not merely soundness of dollar.

It is a mixed blessing in that it is a recognized fact that for too long the responsibility for safety of the public, to its unfortunate and tragic loss, has been entrusted to the patchwork mosaic of agencies, bureaus, and departments each separately amenable to special interest groups and intensive lobbying thus leading to reactive legislation when all along we should have had preventive legislation such as S. 983.

Unfortunately we do not have the power to resurrect those who have been maimed and blinded and died as a result of defective products. But you have done the next best thing, a cure for future repetition.

Anyone who has had to face bereaved parents, blinded and limbless children and adults in his everyday work can only say amen to S. 983 because it is a cure and not an illusory palliative as is S. 1797.

What good is it to occasionally hit a defendant "big" in his pocketbook at a trial if, to the defendant, the calculated cost factor of litigation still makes it profitable for him to do business as usual.

Ironically, my presentation is a plea and a challenge to enact S. 983 and help legislate us in the trial of products liability cases out of business in the products liability field by making a safer world.

I. We believe that an independent, separately funded Consumer Product Safety Commission consisting of commissioners appointed on a nonpartisan basis for staggered fixed terms, not competing for funds nor amenable to pressure vis-a-vis other units within a larger agency or governmental department is absolutely essential to bringing to fruition the humane purpose of this committee's deliberations. The Consumer Product Safety Commission set forth in S. 983 is the answer and not some ersatz product.

II. In an age when we give the putative defendant in a criminal case a public defender free from outside influence, how can we gainsay the need for a consumer advocate as envisaged in S. 983 in order to protect the recognized need of the consumer for an official champion.

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He will guarantee the consumer "his day in court" in all forums where he should rightfully have "standing." He will guarantee regulations and laws not only with which businesses can live as is exemplified by the present system but will guarantee laws with which people can live, a needed priority.

III. You don't have to be an Einstein or a Gertrude Stein to know that a defective product is a defective product is a defective product and when the need for action is apparent, the writing of safety standards must not drag on ad nauseam. It must be completed expeditiously and with finality so as to prevent further mayhem upon the public.

Again, I allude to the criminal law where there is a hue and cry for expeditious finality of proceedings. I hear no such consistent cry from the same quarters when setting standards for products adversely affecting the millions of our populace is the issue. In this regard where there is an imminent risk to safety, protection is needed immediately. Safety standards cannot be allowed to be a mathematical exercise for ascertaining the least common denominator. S. 983 guarantees this.

To exemplify the unwholesome delay inherent under existing departments and agencies, I cite the following two examples from personal experience.

Approximately 1 year ago on behalf of the National Society for the Prevention of Blindness, I filed with the FDA, objection to a proposed order banning only class B fireworks. The objection was based in part upon a report which I am holding in my hand, and I would like to have it marked and introduced in the record, if I may, Senator Hartke.

Senator Hartke. It may be included by reference.

Mr. Block. It sets forth the fact that more people are injured from class C fireworks than class B fireworks. Therefore class C as well as class B fireworks should be banned. The statistics were gathered by the National Fire Protection Association and the National Society for the Prevention of Blindness.

I was told by the FDA that due to the fact that they would like class B fireworks banned by July 4, 1970, they would treat the objections filed as a petition.

To date no proposed order has been forthcoming from the FDA concerning class C fireworks and we are told that the matter is still under investigation.

One wonders why July 4, 1971, was allowed to come and go without any regulation by the FDA pertaining to class C fireworks. The following is from the report of the National Fire Protection Association filed by the National Society for the Prevention of Blindness with the FDA:

The survey showed that Class C fireworks, which are exempted from the statutory ban—under the interpretation of the Commissioner of Food and Drugs—under the Federal Hazardous cases had 321, or 42 percent, of the property damage cases. Class B fireworks accounted for 322, or 24 percent, of the injury cases and 48, or 6 percent, of the property damage cases. The Class C firecracker, which is 1½ inches or less in length and considered to be rela-

tively harmless, was most frequently implicated in the injury cases. Class C fireworks were the cause of 22 percent of all such cases. Sparklers—another widely used device—were responsible for 6 percent of all the injury cases and 15 percent of all the property damage cases.

There were 1,325 cases of injury to various parts of the body classified as primary. In addition, five fatalities were reported from discharge of fireworks. Hands were the part of the body most often injured, with 30 percent of the cases. Eyes were second, with 27 percent. There were 38 cases in which eyesight was lost. Class C fireworks accounted for 42 percent of the hand injuries and 49 percent of the injuries to the eyes. In the cases where eyesight was lost, 42 percent were caused by Class C fireworks.

Burns were the most frequent type of injury reported. They accounted for 43 percent of all the injuries.

The greatest number of injuries occurred to children 15 years of age and under. Twenty-nine precent were 11–15 years of age, 23 percent in the 6–10 age group. Forty-six percent of the injuries were caused by Class C fireworks. Among those under 6 years of age, Class C fireworks, primarily Class C firecrackers or sparklers, accounted for 61 percent of the injuries. The children were most often either holding the device or in the vicinity of the device.

There were many cases of personal injury in which the victim was an innocent bystander. The victim was in the vicinity of the device as a participant or an innocent bystander in 34 percent of the cases. In another 15 percent the device was thrown at the victim. Females were most frequently such victims. The device was being held in 25 percent of the cases. In 54 percent of such instances Class C fireworks primarily the Class C firecracker, were involved.

The total amount of property damage resulting from the 774 cases reported cannot be estimated, since the amount was not reported in every instance. Fifty percent of the cases reported were grass and brush fires. Damage to one- and two-family residences resulted in 22 percent of the cases. Of the pyrotechnic devices reported as to type and size, Class C firecrackers and sparklers were most often responsible for property damage.

Despite this there is to date no ban on class C fireworks. Clearly there is no reason why class B and class C fireworks should not have been banned at the same time. We were a long time with the problem.

Parenthetically I might add that only after the National Commission on Product Safety filed its report concerning fireworks, were even class B fireworks banned.

The effect of the delay in banning class C fireworks can perhaps be seen in the report from the Rocky Mountain News, July 10, 1971, wherein it was reported that:

> Seven hundred fire calls answered by the fire department . . . in Denver alone the cost was $25,000,000 to answer 571 fire calls of the 700 . . . State Senator Ben Klein of Denver seeking a state law to ban all fireworks . . . 40 children and adults injured in Denver . . . 14 year old boy killed . . . Klein states fireworks have no beneficial value . . . creating a constant danger to life, limb, and property of innocent people.

The National Society for the Prevention of blindness has received to date at least 180 newspaper clippings involving multiple injuries for this 4th of July as a result of fireworks.

FLAMMABLE FRAMES

Allow me to present to you another example of piecemeal enforcement, another example of half a loaf regulation.

An omnibus eye safety bill covering impact resistant lenses and fire resistant eyeglass and sunglass frames was presented to the FDA.

Recently an order covering only impact resistant lenses was promulgated by the FDA. To date nothing has been done to prevent the importation and inundation of this country with flammable eyeglass and sunglass frames into this country despite injuries to the unwary who wear cellulose nitrate eyeglass frames. Again, parenthetically, I might state that the FDA acted only after the National Commission on Product Safety tendered its report and only after the matter was under consideration by this committee. Supplementing this statement is the statement of information and recommendations concerning the hazard from flammable eyeglass and sunglass frames presented to the National Commission on Product Safety by the National Society for the Prevention of Blindness, Inc.

I would like to have that entered into the record.

Senator HARTKE. That will be included by reference also.

Mr. BLOCK. The above relate to two products caught in the ribald punch line, "What are you selling this year, cancer?" Whereas treadmill of our present system. What is needed is a commission whose sole function is product safety and which can act with alacrity and tenacity. Such a commission is set forth in S. 983.

IV. S. 983 with its broad range of civil and criminal sanctions, and inspection, injunction and hearing procedures is public protection in substance and not merely in form as is S. 1797.

V. The authority to establish an injury information clearinghouse to disseminate information as to hazardous products, to have technical resources and facilities, to cooperate with and assist States and localities in programs germane to product consumer safety cannot be but beneficial.

VI. Federal class action procedures and treble damages for intentional violations of Federal safety standards will attest that we hold the human body as sacrosanct as we do economic loss under our antitrust laws.

Furthermore, S. 983 is superior to S. 1797 which I denote the "Ugly American" bill in that S. 1797 by its specifically stated exclusion gives carte blanche to the export of defective products. It reminds one of the ribald punch line, "What are you selling this year, cancer?" Whereas S. 983 states to the world, "We care; you are all my sons." The development of international consumer product safety standards tells the world that we will not inundate you with products which have not met our Federal safety standards unless we have obtained a waiver from you.

In the practice of many of us, Senators, we know of defective products that can't pass muster in this country and go overseas. We know of many products that are in litigation right now which go overseas without warning and which require a warning in this country.

In the longrun, I suggest, it will generate greater goodwill than ping-pong.

Gentlemen, in the field of product safety, I agree with Madison Avenue, that we should not be half-safe. S. 983 makes your whole body safe.

Thank you.

Senator HARTKE. Why do you think the FDA did not heed the recommendation to ban class C fireworks?

Mr. BLOCK. I cannot think of any logical reason other than perhaps pressure from those interested in perpetuating fireworks. The statistics are obvious. They are there for all to see. They come from highly credible sources. Why they don't do it, I don't know. It may be just a builtin pattern of piecemeal elongation of what should be a relatively simple and quick act to protect the public.

Senator HARTKE. Where do most of these fireworks come from?

Mr. BLOCK. They are bootlegged. There are only about two dozen States, Senator, which have——

Senator HARTKE. Where do they come from? Where are they manufactured?

Mr. BLOCK. Some are manufactured outside the country and some are manufactured illegally and legally in this country.

Senator PEARSON. If the Chair will yield; who manufactures fireworks? Are they small outfits that dedicate themselves to the manufacture of fireworks or are they national concerns that use this as an asset to their business?

Mr. BLOCK. That is hard to ascertain but the powder may come from national concerns.

I have with me Mr. James O'Neal, the director of Industrial Safety of the National Society for the Prevention of Blindness, if you would like to ask him some questions.

Senator PEARSON. I agree with you. If I had my way we would ban them completely.

Mr. BLOCK. It is actually criminal. I suppose certain kids get a kick out of it and certain adults get a kick out of fireworks on the Fourth of July, but just for a 1-day holiday to leave a tragic toll of maimed and injured people is really a sad commentary on our relative priority.

Senator HARTKE. What is your opinion of the proposed reorganization of the FDA to include the Office of Food Regulation, the Office of Drug Regulation, and the Office of Product Safety Regulations?

Mr. BLOCK. I don't think the proper province for product safety should be in any existing organization which has to allocate funds that come from one general pot, so to speak. Consumer safety is as important as any overall subject of any governmental cabinet department. It should be kept separate. It should not be amenable to the pressures and the politics of interdepartmental rivalry within an overall monolith. It should have its own budget. It should be independent and free from those who give them the purse strings.

Senator HARTKE. In other words, you are saying there is no substitute for an independent agency?

Mr. BLOCK. There is absolutely no substitute.

Senator HARTKE. Do you think the agency which provides the information should also have the power of enforcement?

Mr. BLOCK. That is a difficult one to answer. I would say that absent judicial review if the power of enforcement is kept divorced from those who supply the information where an objective analysis is made of the information by someone independent, perhaps it would work out. I feel that the enforcing part of any organization should be relatively free to make their own decision upon analysis of the information presented. I don't know if I have answered your question but I feel that you should not have needless delay under any procedure.

Senator HARTKE. I think I understand every word you said but I am not sure I understood the answer.

Mr. BLOCK. I believe that judge and jury, basically, should be kept separate. But, under fair administrative procedure where you have judicial review, the person or agency that ultimately makes the decision should take in all the information, even if provided and initiated by itself, including consumer complaints, consumer injuries. In fact, it is preferable to avoid delay. I don't see a separate agency gathering information. I don't see a separate agency enforcing it. Judicial review will take care of any cavalier procedure. In other words informal rulemaking is preferred to formal rulemaking by myself to protect the public to avoid multiple proceedings, and delay as is prevalent under the Flammable Fabrics Act, for example. I believe the enforcing office should be separate from the information gathering office where there is no judicial review. This is not the case here. There is judicial review.

Senator PEARSON. I think the Chairman is talking about a now ancient problem of administrative law. How do you fit into our Anglo-Saxon system administrative law proceedings where the agency promulgates the regulations, makes the findings of fact and then does the enforcement? I don't know that we can ever reconcile those types of things except by judicial review. I think both of these bills provide for judicial review.

Mr. BLOCK. There is no problem insofar as I see S. 983 and S. 1797. They both have judicial review and quite correctly, Senator. That may be what Senator Hartke was alluding to. That is the protective insulation of any overreaching or arbitrary or capricious conduct on the part of any agency.

I think the main factor in S. 983 is that it is a more expeditious bill with the protection of judicial review available. You don't first have to go to the attorney general to see what he says about this and then he may or may not bring an action. If he brings an action, then you have all the problems of delay connected with litigation.

Senator HARTKE. Thank you, Mr. Block. That is all I have.

We will recess until 9:30 a.m., Wednesday.

(Whereupon, at 2:40 p.m., the hearing was recessed, to reconvene at 9:30 a.m., Wednesday, July 28, 1971.)

(The following was referred to on p. 349:)

HOUSING GOAL: Safety and Protection for Mobile Home Owners with



MOBILE HOMES MANUFACTURERS ASSOCIATION
6650 North Northwest Highway, Chicago, Illinois 60631

Washington Office
1800 North Kent Street, Arlington, Virginia 22209

...Now in Effect in 22 States

January, 1971

Printed in USA

What are Standards?

A Standard is a rule, a principle, a set of specifications that establish what a thing should be. Standards can refer to measurements, performance, terminology, the methods of classifying.

Every day millions of Americans are buying or using products that conform to prescribed specifications of weight, material, size, safety, performance, or some other established unit of measure. In practically all instances, a particular standard acts as a controlled protection against recklessness and inexpertness.

Standards for Mobile Homes.

Mobile homes, too, have a standard to which they are built. More than 70% of the homes built today are built to established standards. These were developed by the American National Standards Institute (ANSI) and are called ANSI Standard A119.1 for Mobile Homes.

States Recognizing ANSI Standard A119.1.

(Correct as of November 1, 1970)

Currently there are 22 states that recognize ANSI Standard A119.1 for Mobile Homes, either directly or as a guideline. During 1971, nearly as many more states are expected to develop similar regulations.

California	Nevada
Colorado*	New Hampshire
Delaware*	New Mexico
Florida	North Carolina
Georgia	North Dakota*
Idaho	Oregon
Kentucky	Texas
Louisiana	Utah
Mississippi	Virginia
Missouri*	Washington
Nebraska	Wisconsin

* *Part of ANSI Code.*

What Are the Provisions of ANSI Standard A119.1?

A119.1 covers four basic areas of the mobile home.

1. Construction of the body and frame.
2. Plumbing System.
3. Heating System.
4. Electrical System.

Each section has a specific meaning to both the manufacturer and the home owner. First, the construction requirements tell the mobile home manufacturer he must build to established guidelines. Second, the home owner can rest assured he is obtaining a mobile home that has passed the ANSI A119.1 safety requirements.

Besides supplying greater impetus to safety and performance, ANSI A119.1 benefits the home owner in the areas of insurance and financing.

Both the Federal Housing Administration (FHA) and the Veterans Administration (VA) can guarantee a mortgage on a mobile home, provided the mobile home is constructed to A119.1.

ANSI Standard A119.1 emphasizes consumer safety and product (home) performance. It assures the owner that the mobile home will provide:

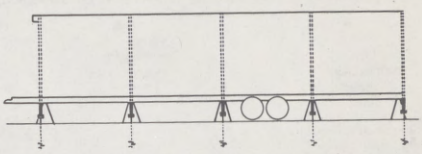
- Safe, healthful and comfortable living facilities with adequate storage space and economy of maintenance.
- Adequate natural light and ventilation.
- Structural strength and rigidity sufficient for design loads, both while the home is in transit and after it is set on site.
- Adequate running gear and hitch for safe transportation of the mobile home.
- Equipment designed and installed for safety of operation, ease of service, and adequate for intended use.
- Installed materials of adequate specification to resist deterioration.
- Protection against the entrance of water and winds at all joints, connections and openings in exterior surfaces.
- An arrangement of habitable spaces for fire and health safety.

A copy of ANSI Standard A119.1 for Mobile Homes (also National Fire Protection Association Standard 501 B) can be obtained for $2.25 from the Mobile Homes Manufacturers Association, Dept. STP, 6650 North Northwest Highway, Chicago, Illinois 60631.





Silver seal (above) certifying conformance to ANSI A119.1 appears on all homes built by MHMA and TCA Manufacturer members. New seal (left), effective July 1, 1971.

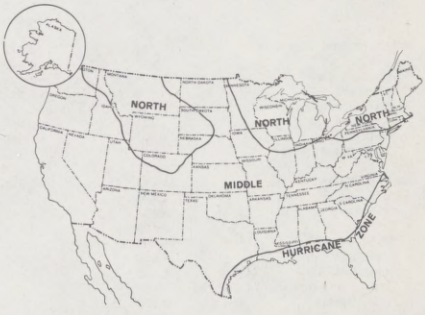


Manufacturers must provide this diagram in every mobile home to show position and number of placement piers and tie-down anchors, where required.

Manufacturers' Inspection and Enforcement.

Manufacturers of mobile homes who are members of the Mobile Homes Manufacturers Association and the Trailer Coach Association (West Coast) must build their mobile homes to A119.1 Standard. They know their construction lines will be subject to inspection at any time by MHMA standards engineers who visit their plants on an unannounced basis to determine that all specifications of A119.1 are being observed. These manufacturers must further certify that their homes were built to the requirements of ANSI Standard A119.1 by displaying a silver Standards Seal near the front door.

Other data regarding the placement of the home on its piers as well as the indoor temperature which the home can be expected to maintain must also be provided by the manufacturer.



Manufacturers must provide map indicating section of USA for which home was built, along with certificate stating performance that can be expected from heating system.

Home Owner's Benefits with ANSI Standard A119.1.

ANSI A119.1 has been designed to protect the safety and health of the mobile home owner and to assure a fair value on his home investment.

Coordination of the Mobile Home Standard with other nationally accepted standards provides assurance to the home owner that its design features are acceptable to regulatory authorities in any community to which the home can be moved. Equally important, A119.1-built homes protect owners where there is little or no enforcement of regulations.

Where are Mobile Homes Located?

Since 1965 sales of new mobile homes have more than doubled in the Midwestern, Atlantic and Southern Regional areas of the United States; on the national level, sales have increased by 90%. (See table at right.) The mobile home industry is currently building more than 1,000 homes a day, and by 1975 a 100% growth is anticipated.

Retail sales of new mobile homes are 2½ billion dollars yearly. Add to this the investment in parks and other services, such as insurance, financing, and park rentals, and the impact on the general economy becomes apparent.

Shipments of New Mobile Homes to Dealers 1965-1969

	1965		1966		1967		1968		1969	
	Homes	%	Homes	%	Homes	%	Homes	%	Homes	%
NORTHEAST	**25,649**	**11.8**	**28,563**	**13.1**	**30,342**	**12.6**	**37,283**	**11.7**	**44,917**	**10.9**
Connecticut	1,109		1,104		1,273		1,315		1,114	
Maine	1,692		1,885		1,775		2,686		3,827	
Massachusetts	1,293		1,239		1,433		1,716		1,716	
* New Hampshire	1,336		1,409		1,674		1,715		2,446	
New Jersey	1,281		1,558		1,261		1,544		2,706	
New York	9,103		9,183		10,132		13,031		13,415	
Pennsylvania	8,668		10,654		11,142		13,552		16,776	
Rhode Island	349		241		259		216		655	
Vermont	818		1,290		1,393		1,508		2,242	
EAST NORTH CENTRAL	**40,558**	**18.7**	**41,751**	**19.2**	**39,925**	**16.6**	**51,946**	**16.3**	**68,706**	**16.6**
Illinois	8,907		8,332		7,703		9,238		11,273	
Indiana	8,439		8,316		6,932		9,260		12,410	
Michigan	10,075		11,737		12,248		16,112		20,676	
Ohio	9,341		8,711		8,649		11,428		15,990	
* Wisconsin	3,796		4,655		4,393		5,908		8,357	
WEST NORTH CENTRAL	**17,985**	**8.3**	**19,033**	**8.8**	**23,434**	**9.7**	**27,707**	**8.7**	**36,356**	**8.8**
Iowa	1,861		2,116		2,528		2,658		3,889	
Kansas	3,206		3,296		4,029		4,828		6,408	
Minnesota	3,039		3,936		4,937		6,230		7,700	
* Missouri	5,171		5,331		5,936		8,413		10,147	
* Nebraska	1,474		1,468		2,455		2,353		3,941	
* North Dakota	1,527		1,376		1,558		1,325		1,773	
South Dakota	1,707		1,510		1,991		1,900		2,498	
SOUTH ATLANTIC	**48,973**	**22.6**	**49,812**	**22.9**	**60,764**	**25.3**	**78,178**	**24.6**	**108,156**	**26.2**
* Delaware	1,436		1,538		1,803		1,820		1,755	
* Florida	13,457		14,183		18,732		26,012		33,618	
* Georgia	9,198		9,379		11,680		16,109		24,268	
Maryland	1,806		2,092		2,096		2,275		2,789	
* North Carolina	8,545		8,884		11,790		14,616		22,678	
South Carolina	4,908		5,321		6,603		7,632		10,657	
* Virginia and District of Columbia	7,497		6,501		6,139		6,715		8,050	
West Virginia	2,126		1,914		1,921		2,999		4,341	
SOUTH CENTRAL	**43,835**	**20.3**	**39,578**	**18.2**	**47,652**	**19.8**	**67,812**	**21.3**	**94,597**	**22.9**
Alabama	5,701		6,755		7,521		8,304		12,718	
Arkansas	4,044		3,257		3,982		4,872		5,919	
* Kentucky	4,733		4,287		4,325		5,279		7,008	
* Louisiana	7,672		4,304		5,004		6,943		11,235	
* Mississippi	4,529		4,454		4,295		5,543		10,226	
Oklahoma	2,858		2,432		3,290		4,601		7,111	
Tennessee	5,996		6,256		5,348		7,850		11,353	
* Texas	8,302		7,833		13,917		24,420		28,987	
MOUNTAIN	**15,855**	**7.3**	**14,959**	**6.9**	**15,581**	**6.5**	**20,424**	**6.4**	**27,287**	**6.6**
Arizona	3,348		2,970		2,913		4,949		7,134	
* Colorado	3,385		3,469		4,572		4,773		6,333	
* Idaho	1,988		1,721		1,701		2,126		3,001	
Montana	2,345		2,342		2,476		2,379		3,410	
* Nevada	1,217		1,176		912		2,065		2,224	
* New Mexico	2,012		1,824		1,594		2,528		2,570	
* Utah	757		784		686		781		1,364	
Wyoming	803		673		727		823		1,251	
PACIFIC	**22,599**	**10.5**	**23,051**	**10.6**	**21,390**	**8.9**	**33,396**	**10.5**	**31,389**	**7.6**
* California	13,904		13,306		10,828		19,287		18,911	
* Oregon	4,920		4,919		4,351		5,975		5,033	
* Washington	3,775		4,826		6,211		8,134		7,445	
ALASKA	**1,016**	**.5**	**553**	**.3**	**1,242**	**.6**	**1,204**	**.5**	**1,228**	**.4**
HAWAII									**54**	**—**
TOTAL U.S.A.	**216,470**	**100%**	**217,300**	**100%**	**240,360**	**100%**	**317,950**	**100%**	**412,690**	**100%**

* *States currently enforcing ANSI Standard A119.1*

Who is ANSI?

The American National Standards Institute is one of the seven national coordinating institutions for **voluntary** standardization in the United States. Organizations concerned with standardization may cooperate through ANSI in recognizing, establishing and improving standards. Together these organizations represent hundreds of thousands of cooperating firms and trade associations — and literally thousands of standards that are observed in our everyday living.

Approval of a standard by the Institute is based on a consensus of those essentially concerned with its scope and provisions. **Many of these standards are, in fact, written into law by a federal, state or local governing body after they have been established.**

Who Developed ANSI Standard A119.1 for Mobile Homes?

Mobile homes manufacturers themselves were the first to recognize that they needed standards. Through their trade associations, the Mobile Homes Manufacturers Association (MHMA) and the Trailer Coach Association (TCA) they worked with ANSI, the National Fire Protection Association and other industries. The code itself was developed by a committee, established under the direction of ANSI.

The ANSI committee and its various sub-committees coordinated with certain existing standards in order to present in one package the basic requirements that apply to mobile homes. To establish all the specifications which cover the construction as well as the heating, plumbing, and electrical systems, coordination was made with the following agencies:

The American Gas Association, Underwriters' Laboratories, The National Sanitation Foundation, The American Society of Mechanical Engineers, The Federal Code of Regulations, The National Electrical Code, The Federal Housing Administration, The Building Officials Conference of America, The Southern Building Code Congress, and The New York State Division of Housing and Community Renewal.

ANSI Committee for Mobile Homes and Recreational Vehicles (as of October 1, 1970)

OFFICERS:

Chairman: **L. E. Henry,** Southern California Gas Company, Los Angeles, California (rep. American Gas Association)

Administrative Secretary: **George H. Tryon,** National Fire Protection Association, Boston, Massachusetts

Assistant Secretary: **Francis E. Greenleaf,** Standards Director, Trailer Coach Association, Anaheim, California

Assistant Secretary: **Philip N. Shrake,** Standards Director, Recreational Vehicle Institute, Inc., Des Plaines, Illinois

Assistant Secretary: **Henry Omson,** Standards Director, Mobile Homes Manufacturers Association, Chicago, Illinois

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R. D. Watson, Canadian Standards Association Testing Laboratories, Rexdale, Ont., Canada (Alternate to D. M. Manson)

John H. Watt, National Fire Protection Assn., Boston, Mass. (Liaison, National Electrical Code Committee)

(1) Findings and Recommedations of Washington State Fire Marshal as the result of Mobile Home informal public hearing held on Jan. 6, 1971:

MOBILE HOME HEARING, FINDINGS AND RECOMMENDATIONS

On January 6, 1971, an informal hearing was held at the Lakewood Fire Department, headquarters station, as called by Washington State Fire Marshal Karl Herrmann. The purpose was to inquire into the factors involved in the recent mobile home fires occurring in the area and throughout the state, the most recent of which claimed the life of a young mother and her daughter on December 23rd in a mobile home park near Lakewood.

Representatives of the fire service, governmental agencies involved in mobile home regulation, the mobile home industry itself and the related sales, service and delivery business, operators and owners of courts and parks, and representatives of the public in general were invited to attend and give testimony. The hearing was open to the public and all the various segments were well represented; with approximately 80 registering as interested parties.

Prepared testimony, informal statements, comments and suggestions were all accepted and duly recorded. These were studied and evaluated by the State Fire Marshal and the following facts established:

1. The concept of mobile homes and mobile home living has changed from that of portable temporary living quarters for travelers and transient workers of limited means to that of semi-permanent dwellings for a large portion of our population not limited to any one station in life or level of income and all trends seem to indicate a continued increase in popularity and use.

2. The mobile home industry, in its phenomenal growth from a fairly insignificant specialty to one of the major suppliers of single-family homes, has not had the benefit of long years of experience in design and construction, resulting in a lack of adequate knowledge as to safety features needed and a less than satisfactory degree of quality control in certain instances in mechanical and electrical installations.

3. Regulatory agencies have not kept pace with the growth of the industry and nationally-recognized standards were slow in development, incomplete in scope, and irregular in application and enforcement, resulting in confusion, contradiction and frustration to the builder, vendor, and consumer alike.

4. Through the joint efforts of an organized mobile home industry and various research, regulatory, and governmental agencies, model minimum standards have been formulated, sufficiently broad and comprehensive in scope, to provide a reasonable degree of standardization, quality and safety, consistent with building codes governing conventional structures, if uniformly adopted, applied and enforced.

5. Enforcement of minimum standards by state agencies have not been fully effective, due to the inherent, unique feature of the mobile home—its mobility; being built in one location and then moved, as a finished product for sale and use, to another. Continuous progress inspections during construction by the numerous state or local regulatory agencies in whose jurisdictions the units may later be sold in is impractical and occasional spot-checks have not proven satisfactory. Voluntary compliance by all builders has not been obtained, possibly due in large to the pressures of competition.

6. Fire loss statistics have begun to emerge that indicate that the life loss per fire and the dollar loss per fire is many times that of conventional dwellings; the most common reasons given by fire officials being more readily combustible construction, higher flame-spread ratings of interior finishes, lack of fire-stops in concealed spaces, and inadequate means of emergency exit.

7. Locally, Washington regulations are far ahead of the national norm in design, construction and mechanical standards, but have not kept pace with life

safety requirements in the event of fire. Exit arrangements are not in conformance with nationally recognized standards for mobile homes but rather, use terminology from conventional building codes for door requirements, omitting the companion emergency exit and rescue requirements for windows in sleeping areas.

8. Numerous local fire officials have made inspections, surveys, and investigations and are aware of many of the existing problems but other than voicing their objections and warning of inevitable results, are seemingly helpless to obtain satisfactory corrective results.

After carefully weighing all testimony presented, in addition to the previous records, statistics and reports available, giving due consideration to all sides of the problem and trying to remain neutral without prejudice toward any one or any segment involved, the Washington State Fire Marshal hereby makes the following recommendations:

1. The entire mobile home industry, either collectively or individually, should be encouraged to voluntarily adopt the Standard for Mobile Homes, as published by the National Fire Protection Association, as the guideline and minimum standard under which their products are designed and constructed.

2. An appropriate federal agency should be empowered and charged with the responsibility to require and enforce compliance with the aforementioned Standard for any mobile home designed or intended for transport interstate.

3. The Committee for the Standard should review fire cause and loss factors involving mobile homes and compare the data and knowledge so gained to existing requirements in the standard, to determine areas in need of strengthening, clarifying, or expanding, such as:

A. Combustibility standards for all structural and finish materials, rather than merely flame-spread of interior surfaces.

B. Extending flame-spread requirements to include standard equipment furnishings and fixtures.

C. Evaluation of present flame-spread ratings, established the same for mobile and conventional homes alike, to determine if mobile homes present a special hazard and should be required to maintain a lower flame-spread rating to accomplish the same over-all relative degree of fire safety to occupants.

D. Require doors, escape panels, or windows designed for emergency egress or rescue from all sleeping areas.

E. Define design requirements to provide fire separation between sleeping areas and the other portions of the mobile home, so as to be able to exit from all sleeping areas through individual or a common door without having to enter or pass through other portions of the structure.

F. Requiring or at least recommending some means of automatic detection of heat, flame, smoke, and/or products of combustion and provisions for alerting the occupants.

4. More research should be done on present methods of testing surface burning characteristics or finish material to see if these limited fuel/heat tests are really indicative of the conditions encountered in an actual fire, or if simulated full-scale testing methods should be developed and implemented.

5. The Washington State mobile home regulatory agency, the Department of Labor and Industries, should revise their present standards to conform with the Standards for Mobile Homes, insofar as fire and life safety requirements are concerned, and go beyond the Standard where it is felt that weaknesses or omissions exist, and should utilize their inspection and enforcement procedures to the utmost in discovering violations, seeking corrections, and punishing violators.

6. The Washington State Fire Marshal and the fire service in general should cooperate with, assist, and support the Department of Labor and Industries in their efforts to formulate, adopt, promulgate, and enforce reasonable minimum standards for fire and life safety in mobile homes, consistent with standards adopted or recommended for other types of structures or occupancies.

7. The fire service should encourage municipalities or governmental sub-divisions to adpt the Standards for Fire Protection in Trailer Courts, as published by the National Fire Protection Association, on a local level and empower the fire department or other local agency responsible for fire protection, to enforce it.

8. All agencies or individuals having an interest in mobile homes, whether through the manufacture, sale, service, use or regulation should join efforts in a campaign to educate the general public in proper safeguards and emergency procedures related to fire prevention, fire detection, fire suppression and life safety in family homes, regardless of whether it be a mobile home, conventional home, single-family or multi-family occupancy.

It is the opinion of the Washington State Fire Marshal that substantive compliance with these recommendations will do much to improve the image, safety, and fire loss record of mobile homes and greatly increase life safety of the general public.

(2) Recommendations of Washington State fire marshal made to local member of Committee on Mobile Homes, National Fire Protection Association on February 22, 1971:

PROPOSED 1971 STANDARD FOR MOBILE HOMES (ANSI A119.1, NFPA 501B)

Changes as recommended by the Washington State Fire Marshal:

4.5. Interior Finish. The surface material of floors, walls, fixed or movable partitions, ceilings and other exposed interior surfaces affixed to the mobile home structure including any material such as paint or wallpaper. Interior finish also includes decorations or furnishings which are not affixed to the mobile home structure but are furnished as an integral part of it.

6.7.1. Firestopping. Firestopping shall be provided in all mobile homes to cut off all concealed draft openings in all ceiling assemblies and stud walls and partitions, including furred spaces, so placed that the maximum vertical dimension of any concealed space is not over four feet and the maximum horizontal dimension of any concealed space is not over ten feet. In addition, firestopping shall be provided to form an effective barrier between stories and between the top story and roof space.

7.3. Interior Floors, Walls, Partitions, Ceilings and Furnishings. The interior finish of floors, walls, partitions and ceilings shall be of materials whose flame-spread classification shall not exceed Class B, except that moldings, doors, trim, cabinets, splash panels and furnishings shall be of materials whose flame-spread classification shall not exceed Class C.

Flame-spread classifications shall be as defined in Section 6–2114 of the Life Safety Code, 1970 Edition, NFPA #101 when tested by the Standard Method of Test for Surface Burning Characteristics of Building Materials (ANSI A2.5–1963, ASTM E84–68, UL1723–1968, NFPA #255–1969) or other equivalent nationally-recognized testing methods.

8.3.4. Emergency Egress or Rescue. Every sleeping room, unless it has two doors providing separate ways of escape or has a door leading directly to the outside, shall have at least one outside window which can be opened from the inside without the use of tools to provide a clear opening of not less than 22 inches in least dimension and five square feet in area, with the bottom of the opening not more than four feet above the floor.

(3) Fire Loss Statistics—Mobile Home versus Conventional Dwellings, 1970 Annual Report of Oregon State Fire Marshall, covering calendar 1969:

STATE OF OREGON, OFFICE OF STATE FIRE MARSHAL—1970, ANNUAL STATISTICAL REPORT FOR THE CALENDAR YEAR 1969

LOCATION OF FIRE RESULTING IN CASUALTY

	Number fires in which casualties occurred	Civilian casualties						Firemen casualties		
		By type		Total civilian	By age					
		Deaths	Injuries		Under 5	5–60	Over 60	Deaths	Injuries	Total
2. Buildings:										
(a) Residential:										
1. Dwellings of 1 and 2 family	98	44	68	112	9	90	13	----	28	28
2. Stationary trailers	11	7	5	12	----	11	1	----	----	----
3. Farm dwellings	1	----	1	1	----	1	----	----	----	----
4. Multifamily dwellings, apartments	27	8	19	27	1	20	6	----	18	18
5. Hotels, dormitories, etc.	9	6	4	10	1	7	2	----	2	2

STATE SUMMARY OF INSURED LOSSES BY OCCUPANCIES

Residence	Number of claims	Sound value	Actual loss	Percent of loss to value	Amount of insurance	Insurance paid
Dwellings	5,711	$76,545,369	$6,091,842	7.96	$74,912,479	$5,718,034
Duplexes	20	323,492	30,164	9.32	312,365	29,541
Tents	3	12,550	401	3.19	12,550	401
Apartments, tenements, flats	264	59,628,098	541,245	.91	59,248,040	484,153
Rooming, boarding, houses	1	14,400	328	3.27	14,400	328
Hotels, inns, lodges	36	14,585,496	157,983	1.08	14,454,509	122,231
Motels	91	15,503,819	216,371	1.40	15,308,377	215,411
School, college, university dormitory	4	4,856,670	1,990	.04	4,856,670	1,990
Fraternity, Sorority	4	523,200	1,018	.19	523,200	1,018
Convents, or other religious dormitory	1	110,000	148	.13	110,000	148
Bunk houses	6	66,137	11,486	17.37	60,696	3,765
Mobile homes	140	786,608	212,576	27.02	781,885	209,954
Travel trailers	1	7,000	540	7.71	7,000	540
Camping trailers	2	2,850	2,225	78.07	2,850	2,225
Campers	5	15,300	1,111	7.26	15,300	965
Total	6,289	172,980,989	7,269,428	4.20	170,620,821	6,790,704

PERCENTAGE ANALYSIS OF 1969 INSURED LOSSES BY OCCUPANCIES

Residence	Percent of total number of claims in State	Percent of total sound value involved in claims	Percent of State loss
Dwellings	72.84	20.92	36.73
Duplexes	.25	.09	.18
Tents	.04	.00	.00
Apartments, tenements, flats	3.37	16.30	3.26
Rooming, boarding, houses	.01	.00	.00
Hotels, inns, lodges	.46	3.99	.95
Motels	1.16	4.24	1.30
School, college, university dormitory	.05	1.33	.01
Fraternity, sorority	.05	.14	.01
Convent or other religious dormitory	.01	.03	.00
Bunk houses	.08	.02	.07
Mobile homes	1.78	.21	1.28
Travel trailers	.01	.00	.00
Camping trailers	.02	.00	.01
Campers	.06	.00	.01
Total	80.22	47.28	48.83

ANALYSIS OF INSURED LOSSES—OCCUPANCIES BY CAUSES OF FIRES—RESIDENCE

Cause	Building and contents					
	Number of claims	Sound value	Actual loss	Percent of loss to value	Amount of insurance	Insurance paid
DWELLINGS						
Chimney or flue	223	$2,380,627	$356,549	15.98	$2,285,326	$345,229
Electric heater (portable)	33	303,846	45,021	14.82	288,500	33,271
Electric heater (wall)	194	2,653,909	277,509	10.46	2,592,652	271,365
Fireplace	259	4,478,022	65,256	1.46	4,418,164	63,898
Furnace or stove, gas	26	338,211	38,663	11.43	310,320	35,012
Furnace or stove, hard fuel	53	539,673	98,075	18.17	522,433	87,135
Furnace or stove, oil	222	2,813,329	291,675	10.37	2,773,048	268,353
Furnace or stove pipes	47	483,199	52,348	10.83	455,599	50,417
Gas range or stove	10	150,342	9,222	6.13	150,342	9,222
Gas water heater	11	136,000	5,493	4.04	132,500	5,493
Gas appliance (other)	2	20,750	899	4.33	20,750	874
Motor on furnace or fan	16	222,500	9,648	4.34	218,000	9,648
Oil furnace backfire	8	97,800	1,935	1.98	97,300	1,935
Oven heating or bake oven	30	475,300	6,771	1.42	475,300	6,771
Overheated kettle	1,404	22,580,274	452,476	2.01	22,250,462	447,780
Space heaters (gas)	4	28,942	13,917	48.08	25,500	10,475
Space heaters (oil)	2	11,000	780	7.09	11,000	780
Other heating equipment	1	77,500	2,398	3.09	55,000	2,398
Candles	95	1,634,150	71,359	4.37	1,606,150	71,257

Children with fire and matches	131	1,525,404	229,627	15.05	1,492,045	220,929
Matches (other than children)	17	192,750	17,698	9.18	187,400	17,673
Smoking (cigarette, cigar, etc.)	738	7,599,334	436,770	5.75	7,462,157	424,624
Torch (cutting or welding)	7	107,500	34.297	31.90	102.500	31.514
Incendiary	61	560,271	158.039	28.21	539.693	143.084
Blow torch	14	144,699	49,205	34.01	137,750	46,450
Electric appliance (small)	83	1,279,880	46,337	3.62	1,264.180	46,181
Electric blanket or pad	71	885,499	59,376	6.70	867,074	59,353
Electric dryer	113	1,267,423	47,369	3.74	1,264,423	47,294
Electric fixtures (outlets and receptacles)	43	698,004	73,094	10.47	686,632	72,222
Electric iron	28	298,750	3,343	1,12	297,550	3,318
Electric light bulb or lamp (lighting fixtures)	111	1,503,550	67,526	4.49	1,482,050	67,501
Electric motor	2	22,830	9,340	40.91	19,500	9,340
Radio (short circuit in)	2	43,300	11,597	26.78	41,500	11,597
Electric range	95	1,315,350	75,336	5.73	1,296,900	75,097
Refrigerator and compressor motors	25	365,013	76,262	20.89	348,745	74,799
T.V. (short circuit in)	73	830,666	93,535	11.26	825,250	90,974
Transformer (short circuit in)	1	35,000	175	.50	35,000	175
Wire (short circuit or arc in)	357	4,809,229	1,049,301	21.82	4,622,135	956,466
Wire (short circuit to ground)	7	84,093	1,503	1.79	80,200	1,503
Overloaded electrical	6	56,900	10,142	17.82	55.600	10,142
Electric hot water heaters	10	115,000	17,120	14.89	115,000	17,120
Ballast—fluorescent light	1	15,000	23	.15	15,000	23
Misc. electric appliance (nonportable)	4	118,588	652	.55	118.588	652
Electric wall thermostat	69	1,148.550	6,444	.56	1,139,864	6,444
Bonfire or rubbish	25	412,000	26,144	6.34	412,000	26,078
Explosion (fireworks, bombs, etc.)	7	58,300	3,695	6.34	58,300	3,695
Explosion (pressure vessels—comp. gasse)	1	12,000	1,714	14.28	12,000	1,714
Friction (other than auto)	3	36,500	310	.85	36,500	310
Grass fire (cause unknown)	3	30,000	585	1.95	30,000	585
Hot ashes	39	565,010	21,782	3.85	561,010	21,732
Incinerator	6	73,000	2,385	3.27	70,500	2,385
Lightning	36	363,190	28,924	7.96	358,840	27,574
Molten metal	2	19,000	289	1.52	19,000	289
Open flame	43	649,346	46,655	7.18	633,546	46,655
Unreported	1	12,500	172	1.38	12,500	172
Sparks or embers	233	3,202,320	78,841	2.46	3,171,475	65,244
Spontaneous ignition (chemical action)	12	117,233	49,696	42.39	107,000	42,520
Spontaneous ignition (drying or oxidation)	16	176,500	8,751	4.96	175,000	8,751
Tar pot or kettle overheated or burning	1	15,000	159	1.06	15,000	121
Miscellaneous—Undefined	7	110,500	1,211	1.09	105,000	1,211
Magnification of Glass	7	57,000	6,818	11.96	54,000	6,818
Fusee	1	20,000	147	.73	20,000	147
Undetermined	329	3,973,000	1,250,195	31.47	3,717,795	1,124,515
Spread from adjoining occupancy	230	2,195,013	189,264	8.62	2,160,931	181,730
Total	5,711	76,545,369	6,091,842	7.96	74,912,479	5,718,034

MOBILE HOMES, TRAILERS

Chimney or flue	3	12,400	238	1.92	12,400	238
Electric heater (portable)	1	5,000	124	2.48	5,000	124
Electric heater (wall)	2	3,314	2,149	64.85	3,314	2,149
Furnace or stove, gas	5	19,500	5,598	28.71	19,500	5,598
Furnace or stove, oil	23	110,917	63,611	57.35	110,802	62,896
Gas range or stove	4	18,300	1,519	8.30	18,300	1,519
Gas water heater	2	6,350	3,305	52.05	6,350	3,305
Motor on furnace or fan	1	10,500	210	2.00	10,500	210
Overheated kettle	26	212,170	6,430	3.03	209,670	6,380
Children with fire and matches	3	6,600	1,804	27.33	6,600	1,804
Smoking (cigarette, cigar, etc.)	12	56,800	11,139	19.61	56,800	11,139
Torch (cutting or welding)	1	14,891	14,891	100.00	14,891	14,891
Open burning legal	1	3,500	14	.40	3,500	14
Blow torch	1	7,000	71	1.01	7,000	71
Electric appliance (small)	4	31,000	6,056	19.53	31,000	6,007
Electric blanket or pad	1	11,000	139	1.26	11,000	139
Electric fixtures (outlets and receptacles)	2	4,850	3,411	70.33	4,850	3,411
Electric range	1	2,500	329	13.16	2,500	329
Refrigerator and compressor motors	2	4,300	367	8.53	4,300	367
TV (short circuit in)	3	5,100	357	7.00	5,100	357
Wire (short circuit or arc in)	12	74,850	20,959	28.00	74,850	20,959
Electric hot water heaters	1	7,356	7,356	100.00	7,356	7,356
Explosion (pressure vessels—comp. gases)	2	10,000	1,636	16.36	10,000	1,636
Open flame	2	12,500	7,629	61.03	12,500	7,629
Sparks or embers	1	7,500	329	4.39	7,500	329
Undetermined	20	112,810	46,628	41.33	111,702	46,320
Spread from adjoining occupancy	4	15,600	6,077	38.95	14,600	4,577
Total	140	786,608	212,576	27.02	781,885	209,954

All fires in each occupancy—Initial materials ignited—Estimated time burning before detection—Room of origin—Probable source of heat or ignition (as reported by fire departments)

RESIDENTIAL PROPERTIES

Single family		5,878
Estimated total number in State	693,000	
Frequency ratio—One fire to every	117.89	
Initial material ignited:		*Number*
Ceiling, ceiling lining		14
Flooring		30
Insulation material		17
Roof finish		135
Shelves, cupboards, and similar structures		1
Timber members around chimney or fireplace		1
Timber or flooring under hearth or fireplace		1
Walls and internal finish		237
Walls and external finish		61
Bedding when off bed		13
Clothing (wearing apparel)		117
Curtains, blinds etc		38
Floor coverings (rugs, etc.)		35
Mattress and bedding on bed		259
Rags (polish cloths, dusters, etc.)		18
Upholstery (davenport, chair, etc.)		173
Cooking or vegetable oils		9
Flammable liquids		118
Gas (natural or artificial)		13
Gasoline		56
Grease, all types		146
Paints, lacquers, varnishes		4
Tar		2
Wax paraffin		12
Unreported		2,909
Brush, shrubs, or timber		3
Dust or soot		33
Electrical insulation		456
Grass		13
Lint		41
Loose fibers (shavings, sawdust, etc.)		19
Miscellaneous combustibles		429
Paper		194
Plastics		31
Rubbish or trash		58
Seat or cushion, auto		2
Straw, hay, chaff, etc		1
Unknown		98
Rubber, belts, tires, etc		5
Food		69
Wood in stove-fireplace		7
Estimated time burning before detection:		
Less than 15 minutes		1,646
Less than 30 minutes		1,020
Less than 45 minutes		143
Less than 1 hour		68
Less than 2 hours		6
Less than 6 hours		68
Less than 12 hours		5
Less than 24 hours		6
More than 24 hours		8
Unreported		2,908

Room of origin:	
Hallway, corridor	38
Exterior stairway, ramp	2
Interior stairway, ramp	4
Lobby, entranceway	4
Recreation room	57
Sleeping area	470
Dining area	39
Manufacturing area	2
Product storage room	1
Lavatory, locker room	49
Laundry room area	165
Stage, performance area	1
Maintenance shop area	1
Closet, storage room	60
Vehicle storage area	140
Chimney or flue	17
Machinery room area	2
Heating equipment room	81
Switchgear area	1
Incinerator room	1
Exterior balcony	90
Ceiling/floor assembly	15
Wall assembly	5
Exterior wall surface	131
Roof surface, exterior	128
Attic	85
Basements	34
Multiple location	16
Unable to determine	24
Undetermined	2
Unreported	2,916
Court, patio, terrace	1
Probable source of initial heat or ignition:	
Chimney or flue	1,608
Electric heater, portable	36
Electric heater, wall	112
Fireplace	104
Furnace or stove, gas	24
Furnace or stove, hard fuel	69
Furnace or stove, oil	132
Furnace or stove pipes	73
Gas range or stove	8
Gas water heater	20
Gas appliance, other	3
Heating or bake oven	9
Overheated kettle	404
Space heaters, gas	3
Steam pipes	2
Heating equipment not defined	97
Gas dryer	1
Oil furnance backfire	2
Candles	31
Children with fire or matches	218
Matches other than children	11
Smoking, cigarettes, cigars, etc	355
Torch, cutting or welding	13
Incendiary	127
Blow torch	20
Open burning, legal	1
Open burning, illegal	11
Electric appliance, small portable	23
Electric blanket or pad	28
Electric dryer	92

Electric fixture (outlet plugs, receptacles, etc.)	1
Electric iron	4
Electric light bulb	53
Electric motor	66
Radio, short circuit in	4
Electric range	92
Refrigerator and compressor motors	2
TV, short circuit in	74
Wire (short circuit or arc in)	689
Wire (short circuit to ground)	3
Static electricity	2
Electric hot water heater	5
Ballast	4
Overheated electric wiring	109
Thermostats	83
Bonfire or rubbish	24
Explosion (fireworks, bombs, etc.)	11
Explosion (steam boilers, etc.)	1
Friction other than auto	6
Hot ashes	27
Incinerator	5
Lightning	5
Open flame	10
Rekindle	16
Sparks from running machinery	1
Unreported	10
Spontaneous ignition (chemical action)	4
Spontaneous ignition (drying or oxidation)	11
Spontaneous ignition (bacterial)	1
Static charge	1
Undetermined source of ignition	145
Spread from adjoining occupancy	58
Sparks or embers	46
Sparks from internal combustion engines	1
Magnification of glass	4
Fuse	1
Under investigation	5
Backfire (auto, tractor, etc.)	1
Muffler or exhaust	1
Short circuit, auto	3
Wreck or wreck and fire (auto)	1

All fires in each occupancy—initial materials ignited—estimated time burning before detection—room of origin probable source of heat or ignition (as reported by fire departments)

Mobile homes	164
Estimated total number in State	37,000
Frequency ratio—1 fire to every	225.60
Initial material ignited:	
Ceiling, ceiling lining	1
Flooring	1
Shelves, cupboards, and similar structures	1
Walls and internal finish	22
Walls and external finish	11
Clothing (wearing apparel)	3
Curtains, blinds, etc	2
Floor coverings (rugs, etc.)	1
Mattress and bedding on bed	14
Rags (polish cloths, dusters, etc.)	1
Upholstery (davenport, chair, etc.)	9
Flammable liquids	10
Gas (natural or artificial)	12
Gasoline	2
Grease, all types	3

Wax paraffin	1
Electrical insulation	29
Lint	2
Miscellaneous combustibles	15
Paper	4
Plastics	2
Unknown	8
Food	2
Unreported	8
Estimated time burning before detection:	
Less than 15 minutes	91
Less than 30 minutes	49
Less than 45 minutes	5
Less than 1 hour	7
Less than 6 hours	3
Unreported	9
Room of origin:	
Hallway, corridor	8
Living room	34
Sleeping area	29
Dining area	1
Lavatory, locker room	2
Laundry room area	1
Kitchen cooking area	38
Closet, storage room	4
Heating equipment room	11
Exterior balcony	1
Ceiling floor assembly	3
Exterior wall surface	15
Roof surface, exterior	1
Multiple location	1
Unable to determine	2
Unreported	13
Static electricity	1
Overhead electric wiring	2
Thermostats	1
Friction other than auto	1
Undetermined source of ignition	20
Spread from adjoining occupancy	13
Unreported	5
Probable source of initial heat or ignition:	
Chimney or flue	2
Electric heater, portable	3
Electric heater, wall	2
Furnace or stove, gas	6
Furnace or stove, hard fuel	1
Furnace or stove, oil	20
Furnace or stove pipes	1
Gas range or stove	9
Gas water heater	5
Heating or bake oven	1
Overheated kettle	6
Candles	1
Children with fire or matches	3
Smoking, cigarettes, cigars, etc	17
Torch, cutting or welding	1
Incendiary	5
Electric blanket or pad	2
Electric motor	5
Electric range	1
TV (short circuit in)	2
Transformer (short circuit in)	1
Wire (short circuit or are in)	27

BUILDING OCCUPANCY BY AGE, WHERE LOSS OCCURRED—RESIDENTIAL

Occupancy and building age	Total number of fires	Heating equipment	Television set	Incendiary	Electric circuit	Thermostat	Careless smoking
Dwellings, 1 and 2 family:							
Single family	2,971						
Unreported	81	15	5	17	11		9
Less than 5 years	145	34	5	14	27		4
5 to 10 years	399	82	13	33	14	44	21
10 to 20 years	494	139	19	37	91	9	29
20 to 30 years	548	146	12	60	80	6	63
30 to 50 years	1,090	291	18	166	126	2	153
Over 50 years	214	59	2	28	31	2	26
Duplex	71						
Unreported	1						
Less than 5 years	8				1		2
5 to 10 years	13	1				1	1
10 to 20 years	6	1		3	5		1
20 to 30 years	11	2	1		2		3
30 to 50 years	29	2	1	2			9
Over 50 years	3						2
Mobile homes, trailers	155						
Unreported	20	5			2		2
Less than 5 years	38	5	1		14		6
5 to 10 years	63	15	1	6	8	1	6
10 to 20 years	31	17		1	5		3
20 to 30 years	3		1				1

(4) Fire Loss Statistics—Mobile Home versus Conventional Dwellings, 1971 Annual Report (tentative) of Oregon State Fire Marshal, covering calendar 1970:

SECOND DRAFT JULY 1971, OFFICE OF STATE FIRE MARSHAL, STATE OF OREGON

(Compiled from statewide statistics as reported by fire departments and insurance adjusters)

	Insured claims	Insured loss	Average fire claim	Loss to value	Deaths	Estimated number in State	Fires	Frequency of fires 1 to	Frequency of deaths 1 to
1965:									
Dwellings	8,923	$6,674,998	$748	7.12	55	605,000	[1] 8,923	67.80	162.23
Mobile homes	95	100,902	1,062	24.23	6	27,750	140	190.82	23.33
1966:									
Dwellings	7,867	5,482,192	697	6.25	57	635,000	4,409	166.70	77.35
Mobile homes	119	152,861	1,284	23.60	4	29,600	159	186.16	39.75
1967:									
Dwellings	4,874	4,530,237	930	7.63	51	660,000	5,915	111.50	115.98
Mobile homes	76	123,957	1,631	30.11	5	31,450	209	121.77	41.80
1968:									
Dwellings	6,386	5,145,258	806	6.49	37	693,000	5,489	126.25	148.37
Mobile homes	108	107,743	998	23.84	2	33,000	236	139.83	118.00
1969:									
Dwellings	5,711	6,091,842	1,066	7.96	44	693,000	5,878	117.89	133.59
Mobile homes	140	212,576	1,518	27.02	7	37,000	164	225.60	23.42
1970:									
Dwellings	5,700	6,707,850	1,176	7.21	47	703,000	4,846	145.50	103.10
Mobile homes	114	231,479	2,030	31.24	5	39,000	168	232.14	33.60

[1] Estimated.

The majority of fires occurred in mobile homes of 5 to 10 years of age; dwellings 30 to 50 years.

TRENDS INDICATED BY AVERAGES OF THE ABOVE STATISTICS COVERING A SIX YEAR PERIOD

The ratio of fatalities per fire in mobile homes is 3.29 times greater than for standard dwellings.

The loss to value ratio per fire in moblie homes is 3.80 times greater than standard dwellings.

Average mobile home fire losses are greater than average losses in standard dwellings by a ratio of 1.57 to 1. (Approximately $1,420 per fire average to $903 average for standard dwellings.)

The frequency of fire incidents in ratio to the total number of occupancies in the State indicates that a fire incident is more likely to occur in standard dwellings than in mobile homes by a ratio of 1.47 to 1.

(5) Letter of support from consumer, dated Dec. 29, 1970:

TACOMA, WASH.,
January 20, 1970.

Mr. KARL HERRMANN,
State Insurance Commissioner, State Capitol Building,
Olympia, Wash.

DEAR MR. HERRMANN: According to tonight's Tacoma News Tribune, you will be conducting a hearing into Fire and Life provisions for Mobile Homes on Jan. 6, 1971.

I have lived in a Mobile Home since Aug. 1966, which my wife and I enjoy very much, however, at the time we purchased the Unit, it did not have an exit beyond the center part of the structure; one opening off the kitchen and the other from the living room.

When we realized what a fire-trap we would be in if fire broke out in the central part or front part of the unit, we could no longer retire at night without fear of this situation, and immediately made arrangements to have a door put in the rear bedroom. We no longer have that fear.

This terrible disaster of a few days ago, where a mother and baby were lost, would not have happened if such an exit had been available to them.

In the Mobile Court where we live, there are around one hundred and fifty units, of which only a few have an extra exit for escape in case of an emergency. There have been some fires here but they have been very lucky.

I feel that something should be done by your Department to see that these conditions are corrected and that the manufacturers of Mobile Homes should be compelled to provide this safety feature in all Units before they can be put on the market. The small addition in price, if done at the time of construction, is very small to pay compared to the loss of human lives.

I trust this will receive serious consideration at your meeting.

Very truly yours,

MR. C. C. RAMLER.

(6) Letter of support from Whatcom County Firemen's Association:

WHATCOM COUNTY FIREMEN'S ASSOCIATION,
Everson, Wash., February 3, 1971.

REX JORDAN,
State Fire Marshalls Office,
Olympia, Wash.

DEAR MR. JORDAN: During a discussion on recent fires at the Jan. meeting of the Whatcom County Firemen's Assn., it was noted that several mobile home fires had been reported with severe damage in nearly every case. They are here to stay and we cannot outlaw them but the mobile homes could be constructed in a way to retard the spread of fire a lot better.

We have had 10 trailer fires in the last three months in this area. Some of the weaknesses in fire retarding was lack of good insulation. (Styrene commonly used in trailers completely disappears in heat.) No fire stops in long attic areas, letting fires spread fast. No exits near sleeping areas and window styles that prevent quick egress.

We know your office is interested in correcting this and we are behind you 100%. Also we would like to see the taxing of mobile homes corrected so the owners would pay their fair share of fire and police protection.

Sincerely,

GORDON J. NEYENS.

(7) Letter of support from Washington State Mobile Home Park Association:

BELMORE MOBILE HOME PARK,
Federal Way, Wash., February 3, 1971.

MR. KARL HERRMANN,
State Insurance Commissioner and State Fire Marshal, Olympia Office, Insurance Building, Olympia, Wash.

DEAR MR. HERRMANN: Mr. John Damitio and Mr. Bob McKean, Legislative Chairman, Washington State Mobile Home Park Association, attended the Mobile Home Hearing held January 6, 1971 in Tacoma at Lakewood Fire Department Headquarters Station.

We contacted our House and Senate Representatives after the meeting and they recommended that we do something now to aid your office in our industry.

Our Legislative Committee and our State Association has agreed to sponsor proposed American National Standards Institute standards A119.3 for mobile home parks and A119.4 for recreational vehicle parks.

We urge your office to lend its full support to this legislation.

Sincerely,

Bob McKean,
R. L. MCKEAN,
Legislative Chairman,
Washington State Mobile Home Park Association.

(8) Letter of support from Foremost Insurance Co.:

FOREMOST INSURANCE CO.,
Grand Rapids, Mich., March 4, 1971.

CARL HERMAN,
Insurance Commissioner,
Insurance Building, Olympia, Wash.

We have received a report of the mobile home hearing of January 6, 1971 at the Lakewood Fire Department. The information contained in this report is of such value that we would like to distribute it to most of the major manufacturers of mobile homes throughout the country. We therefore request your permission to reproduce the article in its entirety and to distribute it. Would appreciate your advice.

Thank you.

Very truly yours,

JOHN D. HOSEY,
Assistant Vice President, Product Research.

(9) Letter of criticism from Fleetwood Enterprises, Inc.:

FLEETWOOD ENTERPRISES, INC.,
Riverside, Calif., May 18, 1971.

Hon. DANIEL J. EVANS,
Governor of the State of Washington,
Olympia, Wash.

DEAR GOVERNOR EVANS: I am addressing myself directly to your office in the hope that you will institute proper action on the subject of the State Fire Marshal's hearing of January 6, 1971.

We take strong exception to Item No. 2 of the hearing, which makes reference to the fact that the mobile home industry "has not had the benefit of long years of experience in the design and construction, resulting in the lack of adequate knowledge as to the safety features needed and a less than satisfactory degree of quality control in certain instances in mechanical and electrical installations." Fleetwood has a research and development center employing more than seventy individuals, headed by a Director of Research and Development. All their time and efforts have been put into development of a product that, under all instances, is federally approved on F.H.A. bills and also under 235–236 housing program, as well as complying to the strong regulations of ANSI 119.1 in the case of mobile homes, and 119.2 in the case of recreational vehicles. ANSI's (abreviation for American National Standards Institute) standards are higher than generally set down by the Federal Housing Authority.

Further, with respect to Item No. 6, Fire Loss Statistics, the report states "statistics have begun to emerge to indicate that the life lost per fire, and the dollar lost per fire, is many times that of conventional dwellings, the most common reasons given by fire officials being more readily combustible construction, higher flames-spread ratings of interior finishes, the lack of fire stops and concealed spaces, and inadequate use of emergency exits." Again, we must take strong exception with this as being hypothetical and not factual, inasmuch as the industry and the supplier industry have worked towards developing in a more meaningful manner safer construction materials than the standard housing industry generally. However, we do not wish to use this as a podium in debating conventional housing versus factory-built housing inasmuch as we, as a supplier of housing throughout the United States, are quite aware of the fact that the conventional builder finds himself seriously opposed, competitive-wise, in quality and price for the delivery of excellent housing for the low-cost and low-income segment of our population.

We have found that there have been instances where the rate of fires in mobile homes seemed, by pure statistical application, to be more frequent than those in the case of conventional housing. We believe that this may have been caused by the fact that the electrical hookups at mobile home parks have not been, in many instances, handled properly by the utility people or electrical contractors in their hookup equipment, thereby causing surges as well as depressions in delivery of voltage to the design system. This has been the result, in some instances of improper electrical metering systems in the parks to units.

We are aware that recently a large mid-west publication directed to fire officials published an article that was very vociferous in the condemnation of the entire factory-built housing industry with specific direction toward the mobile home industry itself. We believe that all government agencies, as well as industry itself, should address themselves to the needs of the low-income people who need housing. We also believe in "intelligent" development of standards that can be adhered to and will, in fact, prevent the type of condemnation made by the Fire Marshal's office of the State of Washington. We are prepared at any time, at the convenience of the Fire Marshal and in the presence of the top state administrative department, to discuss at length the impropriety of many of the capricious findings of the hearings of January 6, 1971. At such a meeting, we would be most happy to attempt to have those major manufacturers of materials used, in both mobile and modular housing, attend to demonstrate the incorrect reference made to the dangerous materials being used by manufacturers in this industry.

Respectfully,

WILLIAM W. WEIDE,
Senior Vice President.

(10) Letter of disagreement from Trailer Coach Association:

COMMITTEE ON MOBILE HOMES AND
RECREATIONAL VEHICLES,
December 4, 1970.

Mr. GEORGE H. TRYON,
National Fire Protection Association,
Boston, Mass.

DEAR GEORGE: I appreciate receiving your letter of December 1 with the attached copies from Mr. Joseph A. Bergin, Fire Inspector for Pierce County Fire District No. 2, State of Washington. I most certainly appreciate the concern of any person dedicated to the program of life safety and hasten to point out that our Association is likewise committed to the same program as is evidenced by our participation in state code and standards work throughout the country. I am firmly convinced, however, that the industry has exceeded, in most cases, the model codes in providing for this protection, as I will point out in succeeding paragraphs.

Mr. Bergin stated that a recent inspection of mobile homes involving approximately 1,800 in number indicated that violations existed insofar as exit doors are concerned. At this point I would wish to state that in his letter he did not indicate the age of the mobile homes inspected. In all probability, many of the mobile homes were built prior to code or standards development and might not, therefore, have two exit doors. Since the development of the standard and its recognition in state enforced codes, *most* mobile homes have been constructed

with two exit doors. Their location in the structure, however, has not been controlled or specified until our recent revision of the A119.1.

At our recent Annual Mobile Home Show at Dodger Stadium, 88 mobile homes were displayed. This display encompassed every size built in the country today. Every display in that show contained at least two exit doors, and a large number contained three exit doors. In most of these units, the doors were extremely remote from each other.

In the great majority of the displays and especially in the double wides, one exit door was located in the rear section of the mobile home, usually in the bedroom area.

Mr. Bergin refers to Section 3302 of the Uniform Building Code which specifies the number of exits required in UBC structures. He further states that the locations for exit doors in mobile homes do not meet the standards for evacuation from a mobile home that has a long, open hallway to the rear with bedrooms on each side. I wish to point out that the mobile home rules and regulations adopted by California, Washington, Oregon, Utah, Nevada and New Mexico do not require compliance to the UBC. I further wish to point out that mobile homes built to the A119.1 Standard and to existing state enforced codes, exceed the UBC requirements insofar as exit doors are concerned.

When we analyze Section 3302 of the UBC, we must also consider Table Number 33–A which specifies the minimum number of exits required based on occupancy of the dwelling unit and square footage per occupant. In Table Number 33–A, it plainly states that a minimum of two exits are required where the number of occupants is over 10 and the square footage of the dwelling per occupant must be 300. Unless the dwelling was occupied by at least 10 persons and contained in excess of 300 square feet per occupant for a total of 3,000 square feet for the dwelling only one exit door would be required. Section 3302(b) states, "Width. The total width of exits in feet shall be not less than the total occupant load divided by 50. Such widths of exits shall be divided approximately equally among the separate exits." In interpretation, wherein the occupant load is 10 and that number is divided by 50, would this mean that a door would be 10/50 feet wide It would appear to the writer that the UBC is in error in this section in that 50 should be divided by 10, which would result in a required total footage for doors required as 5 feet. In section 3303(d) according to UBC, every required exit doorway shall be not less than 3 feet in width. In this respect the proposed standard varies from the UBC requirement.

In conclusion and based on the fact that mobile home requirements do exceed the UBC as to number of doors required (based on occupancy according to the UBC requirements) we must take the position that emergency action in connection with the 1971 proposed addition of the ANSI A119.1 is unwarranted and unnecessary.

Respectfully,

FRANCIS E. GREENLEAF,
Secretary, Mobile Home Parks Subcommittee.

(11) Current Washington State Mobile Home Code—exits.

STATE OF WASHINGTON DEPARTMENT OF LABOR AND INDUSTRIES—RULES AND REGULATIONS FOR MOBILE HOMES, COMMERCIAL COACHES AND RECREATIONAL VEHICLES

11–62. EXIT DETAILS

11–621. NUMBER, TYPE, AND ACCESS TO EXITS

11–6211. In any dwelling of more than 2 rooms, every room used for sleeping, living, or dining purposes shall have at least 2 means of egress, at least one of which shall be a door or stairway providing a means of unobstructed travel to the outside of the building at street or grade level. No room or space shall be occupied for living or sleeping purposes which is accessible only by a ladder, folding stairs or through a trap door.

11–6212. Every sleeping room, unless it has 2 doors providing separate ways of escape, or has a door leading outside of the building directly, shall have at least 1 outside window which can be opened from the inside without the use of tools to provide a clear opening of not less than 16 inches in least dimension and 400 square inches in area, with the bottom of the opening not more than 4 feet above the floor.

11–6213. No required path of travel to the outside from any room shall be through another room or apartment not under the immediate control of the occupant of the first room or his family, nor through a bathroom or other space subject to locking.

11–6214. No exit access from sleeping rooms to outside shall be less than 3 feet wide.

11–622. DOORS

11–6221. Each door providing means of exit shall be not less than 24 inches wide.

11–6222. Every closet door latch shall be such that children can open the door from inside the closet.

11–6223. Every bathroom door lock shall be designed to permit the opening of the locked door from the outside in an emergency.

11–623. STAIRS

11–6231. Every stairway shall comply at least with the minimum requirements for Class B stairs in existing buildings, as described in Section 5–3 in respect to width, risers and treads.

8 DESIGN CONSIDERATIONS

8.3 Exits. Mobile homes shall have a minimum of two exterior doors located remote from each other. Doors shall be designed for exterior use, and in no case be less than 24 inches wide. Exterior doors shall permit opening from the inside by the simple operation of a single knob or lever.

CHAPTER 14—REQUIREMENTS FOR GROUP I OCCUPANCIES

Sec. 1401. Group I Occupancies shall be:
Dwellings and lodging houses.

EXIT FACILITIES

Sec. 1404. Stairs and exits shall be provided as specified in Chapter 33.

Every sleeping room below the fourth floor shall have at least one window or exterior door approved for emergency exit or rescue. Where windows are provided they shall have a sill height not more than 48 inches above the floor.

Windows with an area of not less than 5 square feet with no dimension less than 22 inches shall be deemed to meet the requirements of this Section provided sill heights are not over 48 inches above the floor.

WAC 296–48–6221—Exits. (a) Each mobile home shall have a minimum of two exterior doors. Doors shall be designed for exterior use and one door shall be not less than six feet two inches in height and shall be capable of opening at least 90 degrees and still be so mounted that the clearance is not less than 28 inches. Exterior doors shall permit opening from the inside by the simple operation of a single knob or lever.

(b) Commercial coaches shall be provided with exits in accordance with Chapter 33 of the Uniform Building Code, 1970 Edition, as published by the International Conference of Building Officials.

(12) Current NFPA 501B, Standard for Mobile Homes—exits:

UNITED STATES OF AMERICA

STANDARD FOR MOBILE HOMES

BODY AND FRAME AND CONSTRUCTION REQUIREMENTS AND THE INSTALLATION OF PLUMBING, HEATING, AND ELECTRICAL SYSTEMS

USA STANDARD A119.1—1969; NFPA No. 501B—1968

THIS EDITION OF STANDARD ON MOBILE HOMES

This Standard has been developed by a USA Standards Committee on Mobile Homes and Travel Trailers sponsored jointly by the Mobile Homes Manufacturers Association, the National Fire Protection Association, and the Trailer

Coach Association. Personnel of the Committee are listed on pages A119.1–2 and A119.1–3. It has been approved by all three sponsoring organizations and approved by the United States of America Standards Institute under date of January 27, 1969. Action on behalf of the NFPA took place at the NFPA Annual Meeting, May 20–24, 1968, at Atlanta, Georgia. Tentative Interim Amendment No. 1–1968 has also been processed in accordance with NFPA procedures concernnig paragraphs 10.7, 10.10 and 10.11 of Part IV and this Amendment appears on page A119.1–106.

ORIGIN AND DEVELOPMENT OF STANDARD ON MOBILE HOMES

This Standard replaces the American Standard Installations of Plumbing, Heating, and Electrical Systems in Mobile Homes (A119.1–1963) and the NFPA Standard for Fire Prevention and Fire Protection in Mobile Homes and Travel Trailers (NFPA No. 501B–1964). The formation of this Committee under the aegis of the United States of America Standards Institute (formerly American Standards Association) combined the activities of the former ASA A119.1 Committee and the NFPA Committee on Trailers and Trailer Courts and resulted from action taken by the Boards of Directors of the three sponsoring organizations, with the approval of the ASA, in 1964. The principal changes made in this text as compared with the 1963 edition of A119.1 are indicated by vertical marginal rules opposite the affected paragraphs.
special heat loss need be calculated—if the cavity in which the duct is located is assumed to be at 70°F. The average temperature inside the supply duct shall be assumed to be at least 130°F. for the purpose of calculation.

8. DESIGN CONSIDERATIONS

8.1 Light and Ventilation. Adequate provisions shall be made for light and ventilation in accordance with the following:
8.1.1 Habitable Rooms. Habitable rooms shall be provided with windows or doors whose total glass area is not less than 10 percent of the floor area. An area equivalent to not less than 5 percent of the floor area shall be available for unobstructed ventilation. In addition, if the ventilation area in the kitchen is less than 3 square feet, a fan with a minimum rated capacity of 100 CFM shall be provided in the kitchen.
8.1.2 Bathroom. The light and ventilation in the bathroom shall comply with Paragraph 8.1.1. In addition, if the ventilation area is less than 1½ square feet, a fan with a minimum rated capacity of 25 CFM shall be provided.
8.2 Ceiling Height. The minimum ceiling height in the main structure of the mobile home shall be not less than 7 feet, 0 inch. Any habitable area of greater than 50 square feet, but considered at a secondary structure shall have a minimum ceiling height of 6 feet, 4 inches.
8.3 Exits. Mobile homes shall have a minimum of two exterior doors located remote from each other. Doors shall be designed for exterior use, and in no case be less than 24 inches wide. Exterior doors shall permit opening from the inside by the simple operation of a single knob or lever.

9. TESTS

9.1 General. Unless based on accepted engineering design (see 5.3 of Part I) for the use indicated, all new mobile home materials, equipment, systems or methods of construction not provided for in this standard, shall be subjected to the tests specified in 5.10 of Part I.
9.2 Structural Integrity. Basic structural integrity as defined in 6.11 of Part I shall be determined by tests as described in Appendix 1. This may be accomplished by the manufacturer or by a recognized testing organization.

(13) Proposed NFPA 501B, Standard for Mobile Homes—exits.

8.3 INGRESS AND EGRESS

8.3.1 Exterior Doors. Mobile homes shall have a minimum of two exterior doors located remote from each other and so arranged that if one becomes blocked as the result of a fire the other should be available. Doors shall be constructed for exterior use, and in no case be less than 24 inches wide (22 inches clear).

Exterior door hardware when in the locked or unlocked position shall permit opening from the inside by a single movement in either direction of a knob or lever. Where sliding doors are used, the release lever or handle shall operate to open the door in the direction in which the door opens.

(14) Current NFPA 101, Life Safety Code—exits from dwellings:

11–621. NUMBER, TYPE, AND ACCESS TO EXITS

11–6211. In any dwelling of more than 2 rooms, every room used for sleeping living, or dining purposes shall have at least 2 means of egrees, at least one of which shall be a door or stairway providing a means of unobstructed travel to the outside of the building at street or ground level. No room or space shall be occupied for living or sleeping purposes which is accessible only by a ladder, folding stairs or through a trap door.

11–6212. Every sleeping room, unless it has 2 doors providing separate ways of escape, or has a door leading outside of the building directly, shall have at least 1 outside window which can be opened from the inside without the use of tools to provide a clear opening of not less than 22 inches in least dimension and 5 square feet in area, with the bottom of the opening not more than 4 feet above the floor.

(15) Current Uniform Building Code—emergency egress from dwellings:

EXIT FACILITIES

Sec. 1404. Stairs and exits shall be provided as specified in Chapter 33.

Every sleeping room below the fourth floor shall have at least one window or exterior door approved for emergency exit or rescue. Where windows are provided they shall have a sill height not more than 48 inches above the floor.

Windows with an area of not less than 5 square feet with no dimension less than 22 inches shall be deemed to meet the requirements of this Section provided sill heights are not over 48 inches above the floor.

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