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94-92 CONSUMER PRODUCT TESTING ACT

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HEARINGS

BEFORE THE

SUBCOMMITTEE FOR CONSUMERS

OF THE

COMMITTEE ON COMMERCE

UNITED STATES SENATE

NINETY-FOURTH CONGRESS

FIRST SESSION

ON

S. 643

TO REGULATE COMMERCE BY ESTABLISHING UNIFORM TEST
PROTOCOLS FOR CONSUMER PRODUCTS, AND FOR OTHER
PURPOSES

NOVEMBER 11 AND 12, 1975

Serial No. 94-92

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CONSUMER PRODUCT TESTING ACT

TUESDAY, NOVEMBER 11, 1975

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

The subcommittee met at 9:30 a.m. in room 4200 of the Dirksen Senate Office Building; Hon. Wendell H. Ford, presiding.

OPENING STATEMENT OF SENATOR FORD

Senator FORD. Good morning, ladies and gentlemen. I am substituting this morning for Senator Moss, whose plane has been delayed, and he should be here momentarily. But until he arrives, I will proceed with these hearings.

Today we begin hearings on S. 643, the Consumer Product Testing Act. This legislation, which was originally proposed by the Department of Commerce, grows out of our commitment to insure that consumers have the ability to make intelligent and discriminating purchasing decisions in the marketplace. While much information is available to the consumer about the cost, brand name, and warranty (due to the Magnuson-Moss Act), there is still no efficient method for informing consumers about the relative merits of competing products.

S. 643 is designed to remedy this problem by providing the consumer with meaningful information about products which he wishes to purchase. Informed consumers are an important force in a competitive marketplace and S. 643, while still only a working paper, is designed to meet that objective.

There are two major problems which we seek to remedy through this legislation. First is the absence of meaningful performance data by which to compare competing products. Which carpet will last the longest? Which dishwasher cleans the best? Which razor shaves the closest? Which tires offer the longest tread life? Which oven produces the most even heat? These are all characteristics which are not self-evident but which are important to consumers when they select products to purchase.

The second problem is deception which results when manufacturers use different testing procedures to measure the same characteristic, thus making comparison impossible. Before the Federal Trade Commission (FTC) acted several months ago, each auto manufacturer devised his own fuel economy test which was designed to shed the best light on that manufacturer's auto's performance. Some vehicles are more efficient at higher speeds; others at lower and the tests were

Staff members assigned to these hearings: Edward Cohen and Philip Grill.

designed accordingly. There was no universal industry-recognized means to test for fuel efficiency and inflated and deceptive test results were being advertised to the public. Likewise, there is no industry-wide means to measure the capacity of a refrigerator and thus two models, side by side in a store which are advertised to have equal capacity may, in fact, be of different size.

These are the objectives of the Consumer Product Testing Act. The bill does not establish performance standards for products—no product will “pass” or “fail” a Government test. The bill is not designed to inject Government into the free market. In fact, if anything, it actually will stimulate free market competition by giving consumers the opportunity to select the best product at the lowest cost and by rewarding the manufacturer for his creative efforts.

It is important to note that the legislation has not been set in concrete. The purpose of these hearings is to explore the need for a convenient method of comparing products and to discuss alternative approaches to obtaining this information. There are, in fact, several concerns I have with this legislation which we must confront in these hearings: How do we insure that these test protocols do not inhibit the development of technology? How do we insure that the consumer is not given too much information so as to be confused? Given the limitations of the offeror procedure, how do we best develop object test protocols? I urge the witnesses during these hearings to offer suggestions about these concerns.

I should note that it is not mere speculation that consumers will use comparative performance information. I have already noted the importance of the comparative information on fuel economy of new cars. The public is also apparently using the information on fuel economy of new cars. The public is also apparently using the information provided by the cigarette companies on tar and nicotine ratings. Carlton, the lowest tar and nicotine cigarette, has, since the publication of these ratings, joined the ranks of the top 25 cigarette brands.

I look forward to becoming better informed about the problems which the consumer faces in the marketplace, and the concerns which industry has with the development of uniform methods for measuring quantifiable aspects of durable goods.

This concludes the opening statement.

[The bill and agency comments follow:]

IN THE SENATE OF THE UNITED STATES

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

To regulate commerce by establishing uniform test protocols for consumer products, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That this Act may be cited as the "Consumer Product
4 Testing Act of 1975".

SEC. 2. Informed consumers are essential to the fair and efficient functioning of a free market economy. It is therefore declared to be the purpose of the Congress in this Act to establish reliable and uniform protocols for quality and performance testing of consumer products and to require

1 meaningful dissemination of the results of such tests to the
2 consumers of such products.

3 DEFINITIONS

4 SEC. 3. As used in this Act, the term—

5 (1) “agency” means any executive agency, as
6 defined in section 105 of title 5, United States Code, but
7 the term does not include the General Accounting
8 Office;

9 (2) “Commission” means the Federal Trade
10 Commission;

11 (3) “consumer product” means—

12 (A) any article produced or distributed (i)
13 for sale to a consumer for use in or around a per-
14 manent or temporary household or residence, a
15 school, in recreation, or otherwise, or (ii) for the
16 personal use, consumption, or enjoyment of a con-
17 sumer in or around a permanent or temporary
18 household or residence, a school, in recreation, or
19 otherwise;

20 (B) motor vehicles or motor vehicle equip-
21 ment as defined by sections 102 (3) and (4) of
22 the National Traffic and Motor Vehicle Safety Act
23 of 1966 (15 U.S.C. 1391) ;

24 (4) “consumer product test protocol” means a
25 standardized procedure for performing, pursuant to reg-

1 ulations promulgated by the Commission, objective tests,
2 inspections, or measurements which are required under
3 this Act, the results of which will provide a basis
4 for judging and comparing product characteristics;

5 (5) "product characteristics" means the features of
6 a consumer product which relate to its quality and per-
7 formance under conditions of normal use, including
8 reasonably foreseeable abuse, in or for the purpose or
9 purposes for which it is designed or adapted. Such fea-
10 tures of a consumer product include, but are not limited
11 to, (A) effectuation of purpose; (B) durability; (C)
12 average annual cost of operation; (D) maintenance re-
13 quirements; (E) frequency and nature of repair; and
14 (F) environmental impact in the manufacture, use
15 and disposal of such product;

16 (6) "retailer" means a person to whom a con-
17 sumer product is delivered or sold for purposes of sale
18 or distribution by such person to a consumer;

19 (7) "State" means any State of the United States,
20 the District of Columbia, the Commonwealth of Puerto
21 Rico, the Virgin Islands, Guam, American Samoa, and
22 any other territory or possession of the United States;
23 and

24 (8) "supplier" means any person, other than a

1 retailer, engaged in the business of making consumer
2 products available to consumers, directly or indirectly.

3 TEST PROTOCOLS

4 SEC. 4. Whenever the Commission determines that a
5 consumer product test protocol for a consumer product would
6 assist consumers in making informed purchasing decisions, the
7 Commission shall commence a proceeding for the develop-
8 ment of such a test protocol. In establishing priorities among
9 consumer products to be the subject of such proceeding, the
10 Commission shall consider all relevant factors, including, but
11 not limited to—

12 (1) the importance of each consumer product to the
13 average consumer, based upon an evaluation of the num-
14 ber of consumers who purchase such product, the fre-
15 quency with which such product is purchased, the cost
16 of such product and the per unit annual consumption
17 thereof;

18 (2) the ease with which the average consumer can
19 personally ascertain, and the likelihood that he will
20 know, the quality and performance characteristics of
21 each consumer product prior to purchase, based on the
22 technical complexity of each such product, the degree
23 of product differentiation between competing products,
24 and the rate of technological change of each such prod-
25 uct relative to the frequency of purchase; and

1 (3) the economic impact for suppliers, retailers, and
2 consumers of prescribing test protocols for each consumer
3 product.

4 DEVELOPMENT OF TEST PROTOCOLS

5 SEC. 5. (a) A proceeding for the development of a test
6 protocol for a consumer product shall be commenced by the
7 publication in the Federal Register of a notice in accordance
8 with this paragraph. Such notice shall—

9 (1) describe the consumer product as to which a
10 test protocol is to be developed;

11 (2) identify the product characteristics of such
12 product which can be reliably and uniformly tested,
13 measured, and reported;

14 (3) state the Commission's determination that a
15 consumer product test protocol would be of assistance to
16 consumers in making informed purchasing decisions; and

17 (4) invite any person, including any State or
18 Federal agency (other than the Commission), within
19 30 days after the date of publication of the notice (A)
20 to submit to the Commission an existing protocol as
21 the proposed consumer product test protocol or (B) to
22 offer to develop the proposed consumer product test
23 protocol.

24 An invitation under paragraph (4) shall specify a period
25 of time, during which the protocol is to be developed, which

1 shall be a period ending 180 days after the publication of
2 the notice, unless the Commission for good cause finds (and
3 includes such finding in the notice) that a different period of
4 time is appropriate.

5 (b) If the Commission determines that (1) there exists
6 a protocol which has been issued or adopted by any Federal
7 agency or by any other qualified agency, organization, or
8 institution, and (2) such protocol would, if applied, assist
9 consumers in making informed purchasing decisions, then
10 the Commission may publish such protocol as a proposed
11 consumer product test protocol.

12 (c) (1) The Commission may accept one, or more than
13 one, offer to develop a proposed consumer product test proto-
14 col pursuant to the invitation prescribed by subsection (a)
15 (4) of this section, if it determines that the offeror is tech-
16 nically competent, is likely to develop an appropriate stand-
17 ard within the period specified in the invitation under such
18 subsection, is providing for participation by technically
19 competent consumers, and will comply with regulations of
20 the Commission under paragraph (3) of this subsection.
21 The Commission shall publish in the Federal Register the
22 name and address of each person whose offer it accepts, and
23 a summary of the terms of such offer as accepted.

24 (2) If an offer is accepted under this subsection, the
25 Commission may agree to contribute to the offeror's cost in

1 developing a proposed consumer product test protocol, in
2 any case in which the Commission determines that such
3 contribution is likely to result in a more satisfactory standard
4 than would be developed without such contribution, and that
5 the offeror is financially responsible. The Commission shall
6 reimburse offerors for the cost of their professional services
7 rendered wherever such offerors are not so reimbursed,
8 directly or indirectly, by their employers. Regulations of the
9 Commission shall set forth the items of cost in which it may
10 participate, and shall exclude any contribution to the acqui-
11 sition of land or buildings.

12 (3) The Commission shall prescribe regulations gov-
13 erning the development of proposed consumer product test
14 protocols by persons whose offers are accepted under para-
15 graph (1) of this section. Such regulations shall include
16 requirements—

17 (A) that standards recommended for promulgation
18 be suitable for promulgation under this Act, be supported
19 by test data or such other documents or materials as the
20 Commission may reasonably require to be developed, and
21 (where appropriate) contain suitable test methods for
22 measurement of compliance with such test protocols;

23 (B) for notice to and an opportunity for interested
24 persons (including representatives of consumers and con-

1 sumer organizations) to participate in the development
2 of such test protocols;

3 (C) for the maintenance of records, which shall be
4 available to the public, to disclose the course of the de-
5 velopment of test protocols recommended for promulga-
6 tion, the comments and other information submitted by
7 any person in connection with such development (in-
8 cluding dissenting views, comments, and information
9 with respect to the need for such recommended stand-
10 ards), and such other matters as may be relevant to the
11 evaluation of such recommended test protocols; and

12 (D) that the Commission and the Comptroller Gen-
13 eral of the United States, or any of their duly authorized
14 representatives, have access for the purpose of audit
15 and examination, to any books, documents, papers, and
16 records relevant to the development of such recom-
17 mended test protocols or to the expenditure of any con-
18 tribution of the Commission for the development of such
19 test protocols.

20 (d) Whenever (1) the Commission has published a
21 notice under subsection (a) of this section; (2) has not
22 accepted an existing test protocol pursuant to subsection (b)
23 of this section; and (3) has determined that the develop-
24 ment of such a protocol by the Commission itself would be
25 of benefit to the public, then the Commission may proceed

1 to develop and publish in the Federal Register a proposed
2 consumer product test protocol, whether or not it has ac-
3 cepted offers to develop such a proposed test protocol.

4 (e) Not more than 270 days after its publication of a
5 notice of proceeding pursuant to subsection (a) of this sec-
6 tion (which time may be extended by notice by the Com-
7 mission upon a showing of good cause therefor and publica-
8 tion thereof in the Federal Register), the Commission shall
9 publish in the Federal Register a notice withdrawing such
10 notice of proceeding or publish a proposed rule which pro-
11 poses a consumer product test protocol applicable to any
12 consumer product subject to such notice.

13 (f) (1) Within 60 days after the publication under sub-
14 section (b), (d), or (e) of this section of a proposed con-
15 sumer product test protocol, the Commission shall—

16 (A) promulgate a consumer product test protocol
17 which will assist consumers in making informed purchas-
18 ing decisions with respect to the product or products
19 subject to such test protocol; or

20 (B) withdraw by rule the applicable notice of pro-
21 ceeding if it determines that such test protocol (i) would
22 not assist consumers in making informed purchasing de-
23 cisions with respect to the product or products subject
24 to such test protocol, or (ii) is not in the public interest,

1 except that the Commission may extend such 60-day period
2 for good cause shown (if it publishes its reasons therefor in
3 the Federal Register).

4 (2) Consumer product test protocols which have been
5 proposed under this section shall be promulgated pursuant to
6 section 553 of title 5, United States Code.

7 (g) Each consumer product test protocol shall specify
8 the date such protocol is to take effect not exceeding 180
9 days from the date promulgated, unless the Commission
10 finds, for good cause shown, that a later effective date is in
11 the public interest and publishes its reasons for such finding
12 in the Federal Register. The effective date of a consumer
13 product test protocol under this Act shall be set at a date
14 at least 30 days after the date of promulgation unless the
15 Commission for good cause shown determines that an earlier
16 effective date is in the public interest. In no case may the
17 effective date be set at a date which is earlier than the date
18 of promulgation.

19 (h) The Commission may by rule amend or revoke any
20 consumer product test protocol. Such amendment or revoca-
21 tion shall specify the date on which it is to take effect which
22 shall not exceed 180 days from the date the amendment or
23 revocation is published unless the Commission finds for good
24 cause shown that a later effective date is in the public inter-
25 est and publishes its reasons for such finding in the Federal

1 Register. Where an amendment involves a material change
2 in a consumer product test protocol, the provisions of this
3 section shall apply. A consumer product test protocol may
4 be revoked only if the Commisison determines that such test
5 protocol is not reasonably necessary to assist consumers in
6 making informed purchasing decisions.

7 DUTIES OF COMMISSION

8 SEC. 6. (a) The Commission shall—

9 (1) promulgate regulations governing the manner
10 in which suppliers or retailers may advertise that their
11 products have been tested in accordance with the re-
12 quirements of the Commission under this Act and the
13 results therefrom. Such regulations shall prohibit false
14 statements and misrepresentations; and

15 (2) encourage or establish programs designed to
16 furnish consumers with information which will enable
17 them to utilize information developed under the con-
18 sumer product test protocols.

19 (b) Whenever the Commission publishes a consumer
20 product test protocol and such protocol has become effective,
21 the Commission shall require, in such form and detail as it
22 deems necessary, each supplier or retailer doing business in
23 interstate commerce or whose activity affects interstate com-
24 merce, to make a copy of the complete results, or a summary
25 thereof, available without charge to each retailer who sells

1 or distributes the product or products of such supplier sub-
2 ject to such protocol. Such retailer shall make such results
3 available without charge to each consumer at the point of
4 sale prior to sale.

5 NATIONAL BUREAU OF STANDARDS

6 SEC. 7. (a) GENERAL.—The Secretary of Commerce,
7 through the National Bureau of Standards, shall develop the
8 resources, facilities, and expertise necessary to assist and ad-
9 vise the Commission in the exercise of its responsibilities
10 under this Act, at the request of the Commission and subject
11 to its direction. Whenever the Commission itself proceeds
12 to develop a proposed consumer product test protocol, it shall
13 utilize such resources, facilities, and expertise.

14 (b) CONFORMING AMENDMENT.—Section 1 of the Act
15 of July 22, 1950 (15 U.S.C. 272) is amended by inserting
16 after subsection (f) a new subsection as follows:

17 “(g) The development of consumer product test proto-
18 cols, pursuant to the Consumer Product Testing Act.”.

19 COMPLIANCE TESTING

20 SEC. 8. (a) AUTHORITY.—The Commission may con-
21 duct or contract, pursuant to subsection (d) of this section,
22 for compliance testing of consumer products subject to con-
23 sumer product test protocols in order to insure the veracity of
24 test results determined by suppliers, retailers, or any other
25 person who has tested such consumer products.

1 (b) DUTY OF SUPPLIERS.—Any person who supplies
2 a consumer product for which a consumer product test pro-
3 tocol is in effect shall furnish a reasonable number of such
4 products without cost to the Commission upon request. Con-
5 sumer products furnished to the Commission under this sub-
6 section shall be drawn randomly from regular production
7 runs of such product.

8 (c) RETURN OF PRODUCTS.—Upon completion of any
9 compliance testing, the Commission shall return to the sup-
10 plier from whom it was obtained any consumer product
11 which is tested for compliance with any applicable consumer
12 product test protocol. Such supplier shall, in any subsequent
13 sale or lease of such product, disclose that it has been sub-
14 jected to compliance testing and shall indicate the extent
15 of damage, if any, prior to repair.

16 (d) CONTRACTUAL AUTHORITY.—The Commission
17 may enter into and perform such contracts, leases, coopera-
18 tive agreements, or other transactions as may be necessary to
19 conduct compliance testing, and on such terms as the Com-
20 mission may deem appropriate, with any agency or instru-
21 mentality of the United States, with any State or political
22 subdivision thereof, or with any public or private person,
23 firm, association, corporation, independent testing laboratory,
24 or institution.

ENFORCEMENT

SEC. 9. (a) GENERAL.—Any person who—

(1) has reason to believe that another person is committing or intends to commit a violation of any provision of this Act; and

(2) can demonstrate that he will be adversely affected by that violation,

may bring an action against such other person in the district court of the United States for the district in which such other person resides, does business, or may be found, to obtain injunctive relief against such other person. The district courts of the United States shall have jurisdiction over such actions without regard to the citizenship of the parties or the amount in controversy. The provisions of section 13 (b) of the Act of September 26, 1914 (15 U.S.C. 53b) shall apply to any grant of injunctive relief under this section.

(b) NOTICE.—Before bringing an action under this section, the person seeking relief must give notice by certified mail to the Commission and to the person or persons against whom the relief will be sought. Such notice shall be given not less than 60 days prior to commencement of the action. Such notice shall state the nature of the alleged violation, the relief requested, and the location of the court in which the action will be brought.

(c) COSTS.—In an action under this section, costs of

1 litigation, including reasonable attorney's and expert witness'
2 fees, may be apportioned to the parties whenever the court
3 determines that such an award is appropriate.

4 PROHIBITED ACTS

5 SEC. 10. No person—

6 (1) shall induce or encourage the purchase of any
7 consumer product by—

8 (A) falsely representing that the product has
9 been tested in accordance with consumer product
10 test protocols promulgated under this Act; or

11 (B) misrepresenting the result of any con-
12 sumer product test protocol applied to the prod-
13 uct;

14 (2) engaged in testing consumer products in ac-
15 cordance with the provisions of this Act shall—

16 (A) falsely represent that the product has been
17 tested in accordance with applicable consumer prod-
18 ucts test protocols; or

19 (B) misrepresent the results of any tests of any
20 consumer product conducted or asserted to have
21 been conducted in accordance with the applicable
22 consumer product test protocol; or

23 (3) shall advertise or distribute any consumer prod-
24 uct imported into the United States with respect to

1 which any statement or representation has been made
 2 which is in violation of this section.

3 PENALTIES

4 SEC. 11. (a) CIVIL VIOLATION.—It shall be a viola-
 5 tion, under section 5 (a) (1) of the Federal Trade Commis-
 6 sion Act (15 U.S.C. 45 (a) (1)), for any person—

7 (1) engaged in testing consumer products under
 8 this Act; or

9 (2) advertising or selling any product tested in
 10 accordance with the provisions of this Act,

11 to violate any provision or fail to comply with any applicable
 12 requirement under this Act or any regulation issued pursuant
 13 to this Act. Conduct prohibited under section 10 of this Act
 14 shall constitute unfair and deceptive acts or practices under
 15 section 5 of the Federal Trade Commission Act (15 U.S.C.
 16 45).

17 (b) CRIMINAL VIOLATION.—Any person who willfully
 18 violates any provision of this Act or any regulation promul-
 19 gated thereunder shall on conviction be fined not more than
 20 \$10,000 for each day of violation or imprisoned for not more
 21 than 2 years, or both.

22 REPORTS

23 SEC. 12. The Commission shall, not later than July 1,
 24 1976, and on or before July 1 in each succeeding year, re-
 25 port to the Congress on the implementation of this Act dur-

1 ing the preceding twelve months, and on the extent of com-
2 pliance with the Act and the regulations issued thereunder.

3 COOPERATION WITH OTHER FEDERAL AGENCIES

4 SEC. 13. The Commission may obtain from any Federal
5 department or agency such statistics, data, program reports,
6 and other materials as it may deem necessary to carry out its
7 functions under this Act. Each such department or agency
8 shall, to the extent practicable, cooperate with the Commis-
9 sion and furnish such materials to it.

10 AUTHORIZATION OF APPROPRIATIONS

11 SEC. 14. (a) COMMISSION.—There are authorized to be
12 appropriated to the Commission for the purposes of carrying
13 out the provisions of this Act not to exceed \$2,000,000
14 for the fiscal year 1976, not to exceed \$3,500,000 for the
15 fiscal year 1977, and not to exceed \$4,000,000 for the fiscal
16 year 1978.

17 (b) BUREAU OF STANDARDS.—There are authorized
18 to be appropriated to the Secretary of Commerce for the use
19 of the National Bureau of Standards for the purposes of
20 carrying out section 7 of this Act not to exceed \$5,000,000
21 for each of the fiscal years 1976, 1977, and 1978.

1 EFFECT ON OTHER TEST PROTOCOLS

2 SEC. 15. Trade regulation rules promulgated pursuant
3 to section 5 of the Federal Trade Commission Act (15
4 U.S.C. 45) which relate to quality and performance criteria
5 of consumer products shall be subject to the provisions of
6 section 6 and sections 8 through 14 of this Act. Amend-
7 ments or modifications to such rules shall be subject to sec-
8 tion 5 of this Act.

OFFICE OF THE SECRETARY OF TRANSPORTATION,
Washington, D.C., February 24, 1976.

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

DEAR MR. CHAIRMAN: This is in response to your request that the Department of Transportation provide you with its views on S. 643, a bill "To regulate commerce by establishing uniform test protocols for consumer products, and for other purposes."

The purpose of this bill is to promote competition in the consumer product markets. To this end, the Federal Trade Commission (FTC) would be authorized to establish uniform test procedures for evaluating certain characteristics of consumer products to provide consumers with information useful in making informed purchasing decisions.

The definition of this bill of "consumer product" would include motor vehicles and motor vehicle equipment, which are subject to regulation under the National Traffic and Motor Vehicle Safety Act (Vehicle Safety Act) and the motor Vehicle Information and Cost Savings Act (Cost Savings Act).

The "product characteristics" for which test protocols could be established would be the features of a consumer product relating to its quality and performance and would include, but not be limited to, effectuation of purpose, durability, average annual cost of operation, maintenance requirements, frequency and nature of repair, and environmental impact in the manufacture, use and disposal of such products. Safety, while not specifically mentioned, would be within the scope of the term.

After it determined that a test protocol should be established for certain characteristics of a product, the FTC would have discretion to propose as its own protocol an existing protocol issued or adopted by another Federal agency or any other qualified agency, organization, or institution; to permit an outside party to develop a proposed protocol; or itself to develop a proposed protocol.

After a test protocol became effective, falsely representing a product to have been tested in accordance with such protocol and misrepresenting the results of tests conducted in accordance with such protocol would be prohibited. Violation of these prohibitions would constitute an unfair or deceptive act or practice under section 5 of the Federal Trade Commission Act.

There would be no prohibition against selling a product which had not been tested in accordance with an applicable protocol or against selling a product, which had been tested in accordance with such a protocol, without disclosing the results of the testing. Apparently, it is anticipated that market forces will induce manufacturers to avail themselves of applicable test protocols and to make test results publicly known.

Implementation of this bill with respect to motor vehicles, aircraft and boats might at least duplicate parallel or related programs of this Department and have an inflationary effect on the economy. At worst, by causing the dissemination of inconsistent consumer information, such implementation would interfere with programs of this Department and reduce their effectiveness. Moreover, the bill would substantially increase the burden of government regulation and paperwork on the private sector, particularly small business. This increased burden would be especially severe if overlapping Federal requirements were created.

The National Highway Traffic Safety Administration (NHTSA) already possesses substantial authority for ensuring that consumers receive information regarding a wide variety of motor vehicle characteristics. Section 112(d) of the Vehicle Safety Act authorizes the Secretary of Transportation to require motor vehicle manufacturers to provide prospective purchasers with performance and technical data relating to safety. Pursuant to this authority, regulations have been established (49 CFR Part 575) specifying various types of information, such as vehicle stopping distance and acceleration and passing ability, that must be disclosed and describing how that information is to be determined. Under section 203 of the Vehicle Safety Act, NHTSA has issued a regulation for uniform tire quality grading. The regulation covers three aspects of performance: traction, treadwear, and temperature resistance. Finally, subchapter II of the Cost Savings Act requires the Secretary to compile and disseminate consumer information comparing the damage susceptibility, crashworthiness, and ease of diagnosis and repair of motor vehicles. NHTSA is currently completing studies to determine the feasibility of developing and implementing rating systems for these aspects of performance.

Entry of the FTC under this bill into the area of motor vehicle consumer information could result in consumer confusion and the establishment of requirements that directly conflict with the Department's vehicle regulatory statutes and regulations issued thereunder. The bill fails to prohibit the FTC from establishing test protocols for aspects of performance already covered by consumer information regulations of this Department. That failure is compounded by not requiring the FTC to adopt the regulations of this Department when establishing such protocols. Thus, the bill would permit the FTC to establish protocols inconsistent with our regulations. The result would very likely be consumer information inconsistent with that disseminated by this Department. Instead of consumer enlightenment, the bill would in those circumstances produce consumer confusion and a discrediting of the parallel Federal consumer information programs.

The FTC's establishment of inconsistent protocols could also place motor vehicle manufacturers in the untenable position of being unable to satisfy the requirements under the Vehicle Safety Act and the Cost Savings Act without simultaneously violating the provisions of this bill. The disclosure of consumer information by a manufacturer in accordance with regulations issued under the Vehicle Safety Act or the Cost Savings Act instead of protocols established under this bill might be deemed an unfair or deceptive act or practice pursuant to the first sentence of section 11(a) of the bill. Similarly, if a manufacturer failed to test his vehicles in accordance with NHTSA's consumer information regulations, he would be subject to civil penalties even if he had tested his vehicles in accordance with related FTC protocols.

Even if the FTC were required by this bill to adopt motor vehicle protocols consistent with vehicle regulations adopted by this Department, there would still be a potential for conflict. The following hypothetical situation will illustrate this point. Under such a consistency requirement, the FTC could establish a test protocol containing procedures identical to those in a Federal Motor Vehicle Safety Standard issued under the Vehicle Safety Act. Through different interpretation or application of those procedures, the FTC's compliance testing pursuant to section 8 of this bill could yield results inconsistent with those of the NHTSA. Once again, a potential would be created for a mutual discrediting of parallel Federal programs.

The adverse effects of this bill would not be limited to the programs of the NHTSA. Some of the same effects might be experienced by the Federal Aviation Administration (FAA) and the United States Coast Guard (USCG). For example, the FTC's adoption of test protocols similar to the test procedures in the technical performance standards of the FAA regarding aircraft or of the USCG regarding boats could lead to inconsistent compliance testing results.

This bill could be amended to eliminate most of the bill's present potential for creating conflict and confusion. However, the problem would still exist of unnecessarily requiring the FTC and its technical agent under the bill, the National Bureau of Standards, to duplicate the expertise which already exists in such agencies as the NHTSA, FAA and USCG. Such duplication would create unwarranted demands upon the Federal budget.

In view of the foregoing, the Department strongly opposes enactment of S. 643.

The Office of Management and Budget advises that there is no objection from the standpoint of the Administration's program to the submission of this letter to the Congress.

Sincerely,

JOHN HART ELY,
General Counsel.

DEPARTMENT OF JUSTICE,
Washington, D.C., April 26, 1976.

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

DEAR MR. CHAIRMAN: This is in response to your request for the views of the Department of Justice on S. 643, the Consumer Product Testing Act, a bill authorizing the Federal Trade Commission to establish uniform test protocols for consumer products.

At present, there are federal statutes and regulations requiring manufacturers of a limited number of products to perform uniform testing and to provide consumers with test results. Regulations promulgated by the Department of Transportation pursuant to the National Traffic and Motor Vehicle Safety Act, 15 U.S.C. 1301 *et seq.* require auto makers to provide test results to consumers regarding vehicle stopping distance, 49 C.F.R. 575.101; tire reserve load, 49 C.F.R. 575.102; and vehicle acceleration and passing capabilities, 49 C.F.R. 575.106. The Consumer Product Safety Act, 15 U.S.C. 2051 *et seq.* provides for the development of uniform product safety standards to assist consumers in evaluating the comparative safety of products. Furthermore, Congress has delegated to the Federal Reserve Board authority to promulgate regulations pursuant to the Truth in Lending Act, 15 U.S.C. 1601 *et seq.*, to enable consumers to compare the cost of credit. In addition, the Federal Trade Commission, acting pursuant to Sections 6, 9, and 10 of the Federal Trade Commission Act, 15 U.S.C. 46, 49, 50, compels manufacturers of a variety of products to submit data to substantiate advertising claims regarding safety, performance, efficiency, quality or comparative price, 36 Fed. Reg. 12058 (1971).

S. 643, like predecessor bills, H.R. 6891, 92d Cong. 1st Sess., and S. 3377, 93d Cong. 2d Sess., would require the Commission, in conjunction with the National Bureau of Standards, to promulgate uniform product test protocols which would provide a basis for judging and comparing "product characteristics." Product characteristics include, but are not limited to (A) effectuation of purpose, (B) durability, (C) average annual cost of repair, (D) maintenance requirements, (E) frequency and nature of repair, and (F) environmental impact in the manufacture, use and disposal of the product.

Section 4 of the bill directs the Commission to initiate proceedings for the development of test protocols when it determines that the protocols would materially assist consumers in purchasing decisions. Section 5 details the procedure for the development of test protocols. The Commission, in conjunction with the National Bureau of Standards, would have the responsibility of initially identifying product characteristics capable of objective measurement. Thereafter, interested persons would be invited to develop test protocols, or the Commission could develop a protocol, or adopt an extant protocol. A proposed protocol would be published in the Federal Register as a proposed rule. Protocols would be promulgated pursuant to the informal rule-making provisions of the Administrative Procedure Act, 5 U.S.C. 553.

Section 6 of the bill would authorize the Commission to promulgate regulations governing the manner in which manufacturers, distributors, and retailers may advertise that their products have been tested in accordance with a test protocol. Results of such testing would be required to be disseminated to consumers at the point of sale prior to sale. Section 8 provides that the Commission may conduct compliance testing to insure the veracity of test results.

The bill reflects the continuing evolution in economic relations "... from a philosophy of 'Let the buyer beware' to one of 'Let the seller disclose.'" *Mourning v. Family Publications Service, Inc.*, 411 U.S. 356, 377. Because of the large number of technically sophisticated products marketed today, it is difficult for the consumer to rationally compare performance characteristics. Furthermore, manufacturers presently engage in a myriad of non-uniform "tests" and "studies" to induce consumers to purchase their products. By requiring classes of consumer products to be subjected to uniform test protocols, S. 643 apparently would enable consumers to make more informed purchasing judgments. The objective basis for comparison furnished the consumer through uniform test protocols might stimulate more effective competition in the private sector by requiring sellers to rely less on advertising puff and more on the actual characteristics of their products. However, these positive philosophic aspects of the bills are strongly outweighed by a multiplicity of negative factors which militate against enactment of this legislation.

Quality and performance characteristics of consumer products often involve subjective judgments which cannot be quantified into measurable data capable of objective comparison. For example, automobile servicing varies extensively from dealer to dealer. Such variations can have a significant impact upon the useful life and maintenance requirements of a typical automobile. These bills do not take into account such significant variations which can serve to undermine the purposes of the bills. As a result, consumer confidence in the objectivity and reliability of the Federal Government may become distorted.

It is questionable whether it is necessary for the Government to become involved in product testing. A consumer seeking information concerning a product purchase has available a large body of periodical literature. Indeed, a consumer has a much greater opportunity to determine product quality than he does in choosing an attorney or a physician—two services not covered by these bills.

The Federal Government presently has statutory authority to police advertising claims for particular products. For example, the Federal Trade Commission has ordered manufacturers of automobile tires to substantiate advertising claims. Strict enforcement of the laws against deceptive advertising is the best method of insuring that consumers are not deceived by advertising claims. Governmental participation in product testing, as proposed by these bills, can only serve to lend credibility to advertising claims which inherently fail in objectivity.

Thus, in the final analysis, we see no justification for this legislation. In addition, it should be recognized that the imposition of this additional layer of governmental regulation will undoubtedly increase consumer costs. In view of our strong doubts as to the need for this legislation, the costs it would impose become a very strong factor in arguing against its desirability.

In addition, we have specific problems with several provisions in the bill. First, we have strong objections to the provision, Section 9, affording private persons the authority to sue in the district courts to prevent violations of the Act or regulations promulgated thereunder.¹ Private enforcement in the several district courts may endanger the orderly development of uniform commercial practices which the Commission, as a central administrative tribunal, is uniquely capable of developing. Private parties institute lawsuits for a variety of private reasons. Private enforcement is inherently unfair since it could require compliance by one manufacturer or retailer while competitors marketing in a similar fashion may remain free to violate the act. A multiplicity of suits in the district courts would burden the judicial system and endanger coordinated industrywide enforcement programs which the Commission is best adapted to resolve, often through voluntary compliance.

We further object to the inclusion of Section 9 in the bill on the ground that courts are ill-equipped to evaluate whether a settlement by private parties would be in furtherance of the broad public interest which is the very basis of the Act. Unlike private litigation under the Truth in Lending Act, where factual issues in need of resolution are relatively straight-forward, private suits under S. 643 would raise technical and scientific issues which are best resolved by an expert administrative agency such as the Commission. Intervention by the Commission in private enforcement proceedings or delegation to it by judicial referral under the doctrine of primary jurisdiction (where a court stays an action pending agency action) would seriously interfere with the Commission's overall functions. The Commission would no longer be able to control matters to be litigated in accordance with its priorities for enforcement goals. Private enforcement also raises the possibility of collateral attack of Commission rules. See *e.g.*, *Buckeye Power Inc. v. Environmental Protection Agency*, 481 F.2d 162, 173 (CA 6).

Furthermore, procedures presently in effect under the Federal Trade Commission Act and proposed by this bill adequately insure compliance without resort by private persons to private judicial enforcement actions. In the past, the Commission has demonstrated a broad capability for evolving innovative remedies to correct false advertising and to undo marketplace effects of deceptive trade practices, without the judicial intervention initiated by private parties. Furthermore, the provision in Section 11 providing for severe monetary penalties and/or imprisonment for not more than two years for willful violations should serve as a strong incentive for persons to comply with the Act. In addition, the recent amendments to the Federal Trade Commission Act, P.L. 93-637, 93rd Cong. 2nd Sess. Jan. 4, 1975, now authorize the Commission to commence a civil action in the U.S. district courts to redress consumer-competitor injuries which flow directly from violations of Commission Rules and orders, 15 U.S.C. 59. In light of all these factors, we recommend deletion of Section 9 of the bill.

S. 643 makes no provision for judicial review of test rules promulgating consumer test protocols. We believe such rules should be reviewed, utilizing the same

¹ Section 9 provides that private persons may bring suit in the United States district courts to enjoin violations of any provision of the Act. At least 60 days prior to the filing of such action, the potential plaintiff must give notice of the nature of the alleged violation to the Commission and to potential defendant.

standards and procedures as provided for other trade regulation rules, 15 U.S.C. 58(e) (1) (A). Therefore, Section 5(f) (2) of the bill should be amended by insertion of the following provision at the end of the first sentence. "Any such rule shall be subject to judicial review under 18(e) of the Federal Trade Commission Act in the same manner as rules prescribed under Section 18(a) (1) (B) of such Act, except that Section 18(e) (3) (B) of such Act shall not apply."

Provision should be made in the bill to require the Commission to publish a report where test results are compiled for various manufacturers' products. This would facilitate dissemination of comparative testing results and would benefit smaller manufacturers or suppliers who do not have the financial resources to advertise extensively how their products measured up in testing.

Section 15 makes the advertising regulations and penalty provisions of the bill applicable to existing trade regulation rules related to quality and performance criteria, promulgated pursuant to Section 5 of the Federal Trade Commission Act. Section 15 should be amended to reflect the fact that, prior to 1975, trade regulation rules were promulgated pursuant to Section 6(g) of the Federal Trade Commission Act, 15 U.S.C. 46(g), *National Petroleum Refiners Association v. Federal Trade Commission* 482, F.2d 672 (CA DC) *certiorari denied*, 415 U.S. 951, and that after January, 1975, trade regulation rules are promulgated pursuant to Section 18 of the Act, 15 U.S.C. 58.

Even with adequate amendments to incorporate these proposed modifications, the Department of Justice strongly recommends against enactment of this legislation.

The Office of Management and Budget has advised that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

MICHAEL M. UHLMANN,
Assistant Attorney General.

THE SECRETARY OF COMMERCE,
Washington, D.C., June 3, 1976.

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

DEAR MR. CHAIRMAN: In response to your request, this Department on November 12, 1975, submitted to you its views on S. 643, the Consumer Product Testing Act of 1975, a bill

"To regulate commerce by establishing uniform test protocols for consumer products, and for other purposes."

In this letter, former Secretary Morton stated our support for the objectives of S. 643 to provide meaningful information to consumers with respect to the performance of consumer products and indicated our support for a voluntary program in this area.

In Secretary Richardson's confirmation hearings before your committee he made the following statement: "I strongly favor the provision of consumer product testing information to consumers in those product lines where inadequate information exists. I intend to pursue the development of voluntary programs in which industry works with Government to make meaningful performance information available to the marketplace."

I am forwarding to you for your information an advance copy of a notice entitled *Proposed Voluntary Consumer Product Information Labeling Program and Procedures* which has been sent to the Federal Register for publication.

This notice announces the intention of the Department of Commerce to develop, in cooperation with consumers, manufacturers, producers, distributors, retailers, and other interested groups, a voluntary consumer product information labeling programs, provided that substantial need for support for such a program is demonstrated at three scheduled public hearings. These hearings will be held on Wednesday, June 23, 1976, in Los Angeles, California, Tuesday, June 29, 1976, in Chicago, Illinois, and Wednesday, June 30, 1976, in Washington, D.C.

The purpose of the program would be to facilitate consumer purchasing decisions by making available at the point-of-sale comparative information on key product performance characteristics and to provide manufacturers an oppor-

tunity to convey to the public the particular advantages of their products. To operate and carry out this program, proposed procedures are set out at the conclusion of the notice.

At these public hearings, the Department is specifically requesting comments on the following areas of inquiry: (1) Beneficial or adverse impacts on product cost, quality or availability; (2) product selection criteria and process; (3) information label designs; (4) consumer education approaches; (5) benefits to manufacturers; (6) methods of establishing fees to help defray program costs; and (7) monitoring and certification procedures.

The Department is also encouraging the submission of any other proposals or suggestions that better carry out a voluntary program to assist consumers in making accurate purchase decisions by providing meaningful point-of-sale information on key product performance characteristics.

The proposed procedures for carrying out the proposed Voluntary Consumer Product Information Labeling Program state that any person may request the Secretary to find that there is a need to label a particular consumer product with information concerning one or more specific performance characteristics. Upon receipt of such request for a finding of need and after investigation thereof, the Secretary may publish in the Federal Register a notice of a preliminary finding of need and the basis therefore.

This notice shall provide for at least 30-day public comment and, if requested, an oral hearing. After evaluating the comments received, the Secretary may publish a notice in the Federal Register making a final finding of need or withdrawing his preliminary finding of need. After the Secretary makes a final finding of need, he will then through informal rulemaking procedures develop a performance information labeling specification. The specification, *inter alia*, will include labeling instructions, provisions for participation of a manufacturer in the program, provisions for consumer education, and the coordination of the Department of Commerce program with State and local programs.

I will be pleased to receive any comments you may have on the proposed program.

With best regards,
Sincerely,

J. T. SMITH,
Acting Secretary of Commerce.

Senator FORD. The first witness today is the Honorable Lewis A. Engman, Chairman of the FTC here in Washington.

STATEMENT OF HON. LEWIS A. ENGMAN, CHAIRMAN, FEDERAL TRADE COMMISSION; ACCOMPANIED BY JOAN Z. BERNSTEIN, ACTING DIRECTOR OF BUREAU OF CONSUMER PROTECTION

MR. ENGMAN. Good morning. Thank you very much, Mr. Chairman. I am very happy to be here this morning to testify on behalf of the FTC.

I might say you have unanimous FTC support of the basic concepts of S. 643, the Consumer Product Testing Act of 1975.

As you know, I have an obligation to preside over the meeting of the Commission this morning at 10 o'clock, and I very much appreciate the willingness and thoughtfulness of the committee to schedule these hearings at 9:30 to accommodate me.

Accordingly, I have asked Joan Bernstein, who is the Acting Director of our Bureau of Consumer Protection to accompany me at the witness table and to remain after I must leave, to answer any questions, which the committee may have.

Compared to his parents or his grandparents, the American consumer today faces purchasing decisions of extraordinary complexity. He faces an assortment of goods which are technically complex, goods for which claims are made that are far beyond his capacity to evaluate.

Though the choice is complicated by the sheer number of options open to him, that is not the root of his dilemma. His problem, at bottom, is that he often lacks the information on which to base a reasonable choice.

The consumer approaching a purchase decision today has several sources of information that help him distinguish one product from another.

He has his own evaluative faculties, which will range from negligible to considerable depending on his education and experience and the technical complexity of the good in question.

But, by and large, the bulk of the information the average consumer brings to a product purchase decision he has learned from the people who are trying to sell it to him. In other words, he has learned it from advertising.

Now, that is not, by itself, a bad thing. Advertising plays an important role in informing the public about product characteristics. It may create competition among producers to address design and performance factors that have popular appeal. And it can provide a market entry vehicle for new producers willing and able to undersell the competition.

But, there is sometimes a gap between theory and practice. For in practice, the producer may have incentives which operate against his providing the consumer with all the information relevant to an intelligent product choice. There is a natural tendency for producers to dwell in their advertising on those product features calculated to increase total sales and a tendency to withhold information that might only lead to intensified competition within a market of static or even shrinking size.

Advertisers are disinclined to point out negative characteristics of their products even though those characteristics may be of crucial interest to the consumer. Even producers whose product is less endowed with a negative characteristic than those of the competition will not advertise the comparative advantage if they feel it might be quickly overcome or that public consciousness raised with respect to the negative characteristic might lead to general market shrinkage.

In other words, there are types of information which producers will provide only in response to a clear public demand.

You will recall that, as the chairman noted in his opening remarks, until the Government began publishing tar and nicotine content data for cigarettes, the tobacco industry rarely addressed itself directly to the health issue in its advertising. Similarly, until the Government began publishing gasoline mileage data by automobile model, operating economy was a subject the auto industry tended to deal with in its advertising in only the most general way. Although many factors are responsible for encouraging cigarette advertisements stressing "low tar and nicotine" and automobile ads stressing economy, clearly the availability of relevant and comparable data has been a major development.

A related problem is that, even where complete product information is made available, it may be of no value to the consumer seeking to make a comparison if there are not standard terms of reference and different words are used to describe similar characteristics.

We think the Consumer Product Testing Act will help correct both problems—deficiency and noncomparability of product information.

Basically, the bill establishes procedures whereby the FTC, with the technical support of the National Bureau of Standards (NBS), would develop test protocols to measure the comparative qualities of those consumer products for which the Commission has determined that a testing protocol "would be of assistance to consumers in making informed purchasing decisions." Each producer or supplier of a consumer product subject to a test protocol would be required to test the product and disclose the results or a summary of the results at the point of sale. Failure to comply with the act would result in civil and criminal penalties.

We believe enactment of S. 643 should help alleviate the problem of a lack of meaningful information by encouraging manufacturers voluntarily to utilize more comparable and informative advertising. Further, the bill should provide an incentive for them to improve their products to insure that those products will perform well as measured by the testing protocols.

The Commission believes that under present law it can establish test protocols for consumer products and require the disclosure of test results. Nonetheless, S. 643 should substantially enhance this present capability in two important ways: First, by providing a specific mandate along with the necessary funds for a product testing program; and second, by establishing a formal relationship between the FTC and the NBS. Technical support by NBS is important for the development of new test protocols and the improvement of existing protocols already developed by other governmental and private bodies.

Now, although the Commission supports the underlying principles of S. 643, there are several difficulties presented by the bill as drafted, which, we would like to discuss. I will only touch upon the most significant of these problems in my remarks. We will have some further recommendations by Commission staff with respect to less significant issues and drafting suggestions.

The language of section 5(a) seems to suggest that the offeror process would be the primary means available to the Commission in obtaining test protocols. Because the offeror process is time consuming, the Commission should have maximum flexibility in selecting the method most appropriate under the circumstances. Of course, in practice even if the Commission does not proceed by inviting offers to develop a test protocol or by accepting an offer after inviting offers to develop the protocol, the Commission would be prepared to engage in consultation with and encourage participation by industry and consumer groups before engaging in promulgation of a test protocol under section 5 of the act. Similarly, when amending test protocols, the Commission should be free to exercise discretion as to whether to follow the offeror procedure in the first instance.

Section 4 appears to require the Commission to commence a protocol proceeding whenever it determines that a protocol "would assist consumers in making informed purchasing decisions." The three factors listed in this section are to be considered only in establishing priorities and not in making the basic determination to go forward. We believe that factors such as those itemized in this section should also be considered in making this basic determination.

Section 6(a) authorizes the Commission to promulgate regulations prohibiting "false statements and misrepresentations" in advertising

products for which there is a Commission test protocol inexistence. Since the FTC Act uses the terms "unfair" and "deceptive," and since we have over 50 years of case law dealing with unfair and deceptive advertisements, the Commission recommends that S. 643 utilize the same language.

Section 6(a) should make explicit that section 4 of the Administrative Procedure Act (5 U.S.C. § 553) should be the method for promulgating regulations governing the manner in which suppliers and retailers may advertise test results.

Section 14(b) authorizes an annual appropriation of \$5 million to the NBS for the next 3 fiscal years to assist the Commission in carrying out the act. Since it is not clear to what extent NBS resources will be used over the first few years, the committee may wish to consider vesting the entire program authorization with the Commission. The Commission would then allocate appropriated funds as appropriate, including, of course, contracts with the NBS.

It is possible that the goals of S. 643 may be achieved to a large extent by voluntary action of producers. As consumers become accustomed to expect particular product information, producers may voluntarily test their products to keep them competitive with those producers who test and divulge the results. If a consumer has a choice between two appliances, only one of which is accompanied by a statement of the results achieved by that appliance when tested according to an FTC test protocol, a rational consumer is more likely to choose the product about which something is known. The producer who has not tested his product might, thus, find it necessary to test his product to make it competitive.

And it is because of this, that the Commission therefore recommends that the bill make it clear that the Commission has the discretion to make the testing of consumer products and the dissemination of the results, voluntary or mandatory, based upon its determination of which approach would best serve the public interest.

Finally, section 11(b) provides for criminal penalties for willful violation of the act or any regulation promulgated thereunder. Since the FTC Act does not presently provide for criminal penalties, the Commission questions whether criminal sanctions are really necessary for compliance with the provisions of S. 643 and related regulations. Present sanctions available under the FTC Act, including those provided by the Magnuson-Moss Warranty-Federal Commission Improvement Act of 1974, for which this subcommittee worked so hard, should be adequate to deal with violations of S. 643.

In closing, I would like to emphasize that, subject to the above-suggested revisions, the FTC unanimously supports S. 643 as a vehicle which can help consumers to obtain meaningful product information to assist in making informed choices, and in that way, help make our free market economy work better.

Thank you very much, Mr. Chairman.

Senator FORD. Mr. Chairman, I know you have to make another meeting. I would like to take one moment to ask a question, then we will direct the questions to Mrs. Bernstein.

Mr. ENGMAN. I would be happy to stay here and field as many questions as I can.

Senator FORD. One of the criticisms levied against this legislation, S. 643, is that it represents more Government regulation of business, and you have been one of the strongest, or let's say one of the most vocal critics of many forms of Government regulation. In fact, you have called for deregulation of many sectors of the American economy.

I would like for you to state again for the record why you have chosen to support this legislation with the stipulations you gave in your testimony.

Mr. ENGMAN. Thank you, Mr. Chairman. I have been an outspoken advocate of reexamining the regulations which are in this economy today. I do not necessarily say that all of them ought to be removed, but I do think they ought to be reexamined as to whether they make sense in today's economic situation. I view the basic mission of the Federal Trade Commission to use the statutes which the Congress has asked us to enforce to help make our economy work better.

We have a free market economy in this country, and the Commission can help that economy work better in two basic ways. We have, on the one hand, antitrust enforcement responsibilities which are designed to attack and remove those kinds of restraints which may interfere with the free flow of goods and services in the economy, by reason of collusive behavior, price fixing arrangements or abusive market power. The Commission is also charged with the responsibility of protecting the consumer.

The concern I have about many governmental regulations is that they may also introduce some of those same anticompetitive restraints. But there is no conflict where we are attempting to achieve as much fair and honest competition as possible and provide information in the marketplace needed for consumers to make the kinds of choices that permit a free market economy. When Adam Smith wrote "The Wealth of Nations" a couple of hundred years ago, we were dealing with situations where the consumer tended to know about the product he was buying and the product was a comparatively simple one. It was probably made by a neighbor of his. The situation was much less complex with respect to exchange of information.

I think the purpose of this act fits in with the philosophy of asking for a reexamination of governmental regulation. The suggestions for improving the bill which we indicated in our testimony would further that end as well.

First, the criterion factors in section 4 should be used by the Commission in determining when it is advisable to move forward with test protocols. In other words we ought to be able to justify our actions.

Second, I think consideration should be given by the committee to modifying or clarifying in the legislation the fact that the test protocols may be equally effective if they are voluntary.

I would summarize by saying this is one of those kinds of governmental actions which is designed to improve and not hurt the competitive product in the marketplace.

Senator FORD. Do you believe that the Federal Government has the ability to implement such a program? You have your fear of over-regulating. Here is a piece of legislation that you endorse that seeks to supply information and removes the veil, so to speak, and every consumer can look behind that veil and see what the product really

is, and what it is made of. Do you believe that the Federal Government can implement that program?

Mr. ENGMAN. I certainly do. I think the Commission can identify some of the problems about information which may be confusing to consumers today and together with technical expertise, such as that possessed by the NBS, provide meaningful assistance in this area.

Senator FORD. You stated under the present law, the Commission can establish test protocols for consumer products. What is your legal basis for this activity, Mr. Chairman?

Mr. ENGMAN. We believe we have broad authority under section 5 of the Federal Trade Commission Act. In fact, we have already moved forward with respect to requesting possible protocols for vacuum cleaners. In addition, we recently proposed a trade regulation rule with respect to energy efficiency rating of air-conditioning units. The action the Commission took for gasoline mileage advertising claims is also a related kind of action.

Senator FORD. Are you saying that that lack of information may be an unfair method of competition?

Mr. ENGMAN. That is correct. We have taken the position that in certain instances, the failure to provide information which may be of importance, can be deceptive or conceivably diversionary. If there is a category of information which is of importance to the consumer.

Senator FORD. There are a lot of traders around, and I use that term for lack of another term, and if you ask them a question they will tell you. If you don't ask the question, they won't tell you. The farmer has a cow and the neighbor is very anxious to buy the cow, and the neighbor forgets to ask him if the cow kicks, and so if he doesn't ask the question, he doesn't get an answer. Is this fair trading practices?

Mr. ENGMAN. I think you have to look at each case on its own merits, whereas it might be fair trading practice with respect to cows in Kentucky, in western Michigan, where I come from it might be different.

Senator FORD. It is a little colder up there today than yesterday.

Mr. ENGMAN. We must look at each area where there is a legitimate concern. For example, at the present time, with respect to energy use in this country, it may be in the national interest to encourage further disclosure about energy consumption. There are some areas which are much more questionable, however.

Mr. Chairman, I should probably be leaving in a minute or so. If you have any further questions for me, I would be happy to wait.

Senator FORD. I have a question I have always worried about, but I will ask Mrs. Bernstein about it. I think it might be more appropriate for her to answer anyhow. There are various organizations which sponsor so-called seals of approval. What is the basis for awarding these seals? Does this indicate that the consumers, can in fact, rely on these seals of approval in making purchases?

Mrs. BERNSTEIN. I would like to respond this way: One of the things that we think seals might be useful for, and, therefore, then should not be condemned across the board, is that they could be a very useful shorthand way of communicating information to consumers. So we look at them that way first. But beyond that, we then go to what does that seal represent? Is it qualified as to what it represents and do con-

sumers know what it means? The approach we have taken in those seals is in a product-by-product category. For example, there is a seal involved for certification in the sale of mobile homes. As our examination and investigation developed, it appeared that the seal only covered one specific part of the product and not to the whole product, so our effort will be toward saying, yes, you can continue to use the seal, but only if you say what the qualifications are with regard to that seal.

In the more general use of seals, there are only one or two that are widely used and widely relied upon by consumers, and we are looking at them in the same way.

A new wrinkle has developed with regard to those seals and that is they may, in fact, be warranties and if not warranties, they are certainly implied warranties and will be subject to some of the disclosures of the Warranty Act or rules covering warranties.

Senator FORD. Does the advertisement of a product in certain magazines and others automatically get you a seal?

Mrs. BERNSTEIN. No; not per se. Our information is that those which are advertised in magazines are increasingly attempting to do some of their own testing, so there is something more meaningful. They are establishing to some extent performance characteristics, before they award a seal of approval.

Senator FORD. Before they feel out advertising in the magazine?

Mrs. BERNSTEIN. Yes. Before they award the seal and would advertise it.

Senator FORD. What problems are the Commission encountering in developing the test protocol for vacuum cleaners?

Mrs. BERNSTEIN. We have had some difficulty in developing that test. Initially, we asked for proposals for test protocol primarily for cleaning ability of the vacuum cleaner or for carpets. We received two proposals, I believe, and in the course of receiving those proposals, it appears there were two problems we hadn't thought of or that emerged from the data. One was, as we worked toward that test protocol, did we risk encouraging certain types of performance characteristics which would, in fact, damage carpets, because of their cleanability and so forth, and the other was, there is another aspect of equal importance, probably, to the purchaser of the vacuum cleaner, namely above-the-floor cleaning ability, which needs to be factored into a total decision on vacuum cleaners. So we have submitted the data we received so far to the NBS for evaluation, in terms of those two, what we call "tradeoffs," as to vacuum cleaners.

We will be proceeding, but we have been held up a little bit.

Senator FORD. Are you receiving industry support and cooperation in this endeavor?

Mrs. BERNSTEIN. We have been working with ASTM on the development of that vacuum cleaner. In fact, they have a draft proposal on the above-floor-cleaning issue, which is not complete.

Senator FORD. How about the manufacturer?

Mrs. BERNSTEIN. The manufacturers, I believe, work through the standard-setting organizations, but the manufacturers themselves have been helpful, as well.

Senator FORD. For what other products do you plan to establish protocols and what is your basis for your selection of these products?

Mrs. BERNSTEIN. Our primary basis for selection is threefold complexity. High ticket items and infrequent purchases, that means big

ticket appliances primarily. We will be directed toward refrigerators, washing machines, dryers, and so forth.

Senator FORD. Why were vacuums selected as the first one for which to develop a protocol?

Mrs. BERNSTEIN. Well, one very significant reason for trying to do vacuum cleaners first, was we had information at that time that it was one of the few appliances for which some standard, some protocol had been developed, and at the time we were starting with this information program, there were very few appliances on which any hard data had been collected. Vacuum cleaners was one.

Senator FORD. Well, was there any indication in the selection that the consumers were being misled in advertising, and production of vacuum cleaners?

Mrs. BERNSTEIN. Yes, there were. In our monitoring, we discovered that there were various kinds of representations being made, such as the use of horsepower, which our evaluation suggested had nothing to do with cleaning or could not be related to cleaning. There were also numerous potentially false demonstrations in the use of vacuum cleaners during the sales, using this type of demonstration. So there was alleged deception, as well as the failure of the information in that area.

Senator FORD. There appears to be, I guess, a growing trend in the use of comparative advertising.

Do you envision that the Consumer Product Testing Act would promote this trend, and do you believe that this trend is healthy?

Mrs. BERNSTEIN. I believe that this type of legislation would certainly promote it. I also think there has been an increasing trend to use it over the last couple of years. My own personal view is that it is very healthy. I qualify that to some extent, because, obviously, any new technique creates additional problems. Some of the problems that we have seen are, for example, where the claim is one of superiority on a product, for one dimension of the product only, and the product is actually inferior on all the other dimensions, that might in itself create a problem with deception.

There are some other problems that are inherent, of that type, comparisons with several selected comparisons, implying uniqueness or superiority, while omitting references to comparable competing products.

I don't think you ought to throw the baby out with the bath water, because of potential problems, however. We have the requirements to require accuracy and honesty for comparative advertisement, as much as anything else.

Senator FORD. Some believe that with respect to products subject to comparative advertising, that the ads compare products produced by the same company under a different name. Is that true?

Mrs. BERNSTEIN. Not to my knowledge. They have usually been, and we do monitor comparative ads, as we monitor other national television advertising, primarily they have been between brands, naming names. We are not aware there has been a proliferation in intrabrands.

Senator FORD. It would be easy for a company to produce its name product and several name brands of its own products, to compare the products.

Mrs. BERNSTEIN. I guess it would be easy to do.

Senator FORD. It would be hard to sue yourself. In July 1972, John Ferguson headed the FTC task force on Industry Self-Regulation, and among the programs discussed in his report was one similar to this. Are you familiar with the Ferguson task force and could you summarize for the committee how it relates to this program.

Mrs. BERNSTEIN. Yes. The Ferguson report was initially directed to an examination of standard making procedures, primarily from an antitrust or competition point of view. As the project developed, there was an increasing concern with what the report calls the widespread failure to disclose consumer product information, and its concomitant impact on market forces. The conclusion, and this is a very broad conclusion, was that in the most general terms, the Commission should consider promulgating a trade regulation rule to require disclosure of all material facts in regard to the performance of products. That was a very broad-brush approach, and that was its basic conclusion.

Subsequently, in considering that report, as well as another report concerning affirmative product information, the Commission ultimately decided to take the approach it has followed the last several years. Rather than the broad-brush approach, to consider the failures of information on a product-by-product category. There was some indication that there are greater failures of information in some markets for some products than others, and beyond that, that the Commission could make more reasoned, discrete judgment, if they approached it on a product-by-product category, which we have done.

Senator FORD. One last question from me and then I will ask Senator Durkin if he has anything. In fact, I am going to ask him to continue with the hearing.

An important item for me is whether you believe that the legislation will have any competitive impact on small business?

Mrs. BERNSTEIN. We do not believe so. In response to that, I think probably the most important consideration for the committee would be, that it could be entirely avoided, if the commission has the flexibility to either go the mandatory or nonmandatory approach. But beyond that, and I think more compelling, is if the theory is correct, that the use of this kind of information is important to purchase decisions, that consumers will use it, it will be a marketing incentive and it will redound to the benefit of any businessman who attempts to produce the information and use it competitively.

We have no information that small businessmen are any less efficient than big, and if it becomes competitively advantageous, I would think it would be to their advantage to use it and use it effectively.

Senator FORD. I thought that was my last question, but I still have one little thing that bothers me. Both you and the Chairman have referred to "flexibility."

Mrs. BERNSTEIN. Yes.

Senator FORD. "Flexibility" bothers me just a little bit, its misuse could give you too much "flexibility." You could become a czar or something like that.

Mrs. BERNSTEIN. Or czarina, in my case. Will you buy that?

Senator FORD. I am having a hard time saying "chairperson," but if you want "czarina"—

Mrs. BERNSTEIN. I don't like "chairperson", but I would like "czarina."

Senator FORD. You will buy it?

What flexibility are you talking about? How much flexibility do you want? How broad of a brush do you want us to use to paint in the flexibility you think you need in this legislation?

Mrs. BERNSTEIN. I think the important areas of flexibility would be in the initial decision as to whether to seek the test protocols from all sources initially, or whether we could, for example, go directly to a voluntary standards organization, such as a nongovernmental source, ASTM, and see. Suppose ASTM had developed a test protocol, I think the type of flexibility the Chairman was talking about was why go through a general effort with everyone, if you know a perfectly valid, tested method which everyone agreed was valid, already exists, why not have the flexibility, cut out the delay and simply go to that source for the test protocol? Or why not go directly to the NBS if, in fact, you know that none exists, and that they have done the basic scientific research that could produce it most quickly? That was, I think, what the Chairman was talking about in terms of the first area of flexibility. Don't create a rigid procedure that must be followed, even though it might not be applicable in a given situation.

The second area of flexibility, I think, was that as we move under the legislation from one product category to another, there may be different considerations and, in one, it might be considered necessary to make both the testing and dissemination of the information mandatory. And in another it might be the position simply to make the test protocol standard and then permit the marketers who wished to, to test it and use the information as they see fit in the free market. Those were the two areas of flexibility that I think the testimony described.

Senator FORD. I would ask the staff to get the "czarina" an ashtray, so you can light up a cigarette. She knows the tar and nicotine count. Being from Kentucky, I would be derelict to my duty to my State. These are all the questions I have.

Mr. Durkin?

Senator DURKIN. I have none.

Senator FORD. Thank you very much. We appreciate your fine testimony this morning and your cooperation, and we look forward to working with you. Anytime the Chairman cannot come, we would be delighted to have you come and represent the Commission.

Mrs. BERNSTEIN. Thank you very much. I was delighted to be here and hope we can continue to work together on it.

Senator FORD. The next witness will be Gail Shearer, policy analyst, and Peter Schuck, director of the Washington office of the Consumers Union. Are they present?

I have to leave, as seems to be the habit around here, and I now turn the Chair over to my distinguished colleague, Senator Durkin from New Hampshire.

Senator DURKIN (presiding). Thank you.

STATEMENT OF GAIL SHEARER, POLICY ANALYST, CONSUMERS UNION; ACCOMPANIED BY PETER SCHUCK, DIRECTOR OF THE WASHINGTON OFFICE

Mrs. SHEARER. Mr. Chairman, on behalf of Consumers Union, I wish to thank this distinguished subcommittee for inviting us to testify

on S. 643, the Consumer Product Testing Act (CPTA). Consumers Union, an organization whose primary goal is to provide consumers with information and counsel about consumer goods and services, commends the subcommittee for holding hearings on this very important issue.

Consumers Union supports the objectives of the bill, but has reservations about some of its key provisions. Consumers Union believes that the bill would be more effective in addressing the consumer information problem if several changes were adopted—in particular, if the bill were amended to provide for experimentation with alternatives to the proposed consumer information program. Unless some of the program's key elements are clarified, there is a danger that S. 643 could actually decrease the amount of valuable product information available in the marketplace.

Our written testimony is organized into four sections: (1) the consumer information problem; (2) comparison of the CPTA with past and present consumer information programs; (3) Consumers Union's recommendation for experimentation; and (4) evaluation of the CPTA as proposed.

I will focus my spoken comments on part 3, Consumers Union's recommendation for an experimental program.

The basic problem that the proposed CPTA and other consumer information programs attempt to solve is that insufficient information is delivered to the consumer for use in the marketplace. The results are reduced purchasing power for consumers and restriction of competition.

A major source of comparative product information based on independent, impartial testing currently available to U.S. consumers is Consumers Union's monthly publication, *Consumer Reports*. While it reaches nearly 2 million subscribing households as well as consumers who borrow copies, buy newsstand copies, or look up results in the issues available at public libraries, its accessibility is limited because, among other things:

- (1) The information is not available at the point-of-purchase;
- (2) Subscribing to *Consumer Reports* costs money;
- (3) Subscribers generally belong to middle- and upper-income groups;
- (4) Making use of library issues requires a considerable cost in terms of time;
- (5) Consumers Union's limited resources allow it to test only a small portion of the numerous products available in the market each year.

There are a number of different approaches for increasing information available to consumers. These include comparative testing, labeling, quality certification, fact sheets, and the method in the proposed bill. These vary with respect to several factors including amount of information, degree of brand comparison, counseling, and convenience. I would like to refer you to page 7 of our written testimony for a comparison of these five alternative consumer information programs.

A number of European countries have had experience with labeling programs. In addition, there have been limited experiments in this

country with point-of-sale information programs that are not based on standardized testing procedures. The lessons from these projects and experiments include:

First, it is difficult to finance voluntary labeling programs; and

Second; we do not know what type of program is most valuable to consumers.

In light of the mixed results of European consumer information programs and the uncertainties about the value of different programs to consumers, we recommend that S. 643 be amended to authorize an experimental consumer information program. The purpose of the experiment would be to answer questions such as the following:

What type of program is best under various conditions? Who should develop the test protocols? How should conflict of interest by compliance testers be controlled? Who should translate raw test data into performance grades? What type of non-point-of-sale advertising should be allowed—or required?

As presently drafted, the bill would allow a certain amount of experimentation since it leaves to the FTC details such as format for point-of-sale information, selection of compliance testers, and selection of institutions to develop test protocols.

However, S. 643 does not provide for experimentation with point-of-sale information schemes that are not based on standardized testing—for example, fact sheet. Nor does the bill provide for a research component that would allow for evaluation of various elements of the program. In addition, the bill does not address the question of whether raw data or relative ratings are to be used. I will elaborate on the elements of our proposed experiment with respect to the questions above.

The first question is: What type of program is best? The experiment should test a number of types of consumer information programs. The recommended programs fall into two categories, programs based on protocols with standardized testing, and those not based on protocols with standardized testing. The first category includes three main types of programs:

Point-of-sale labeling, mandatory participation of manufacturers, retailers;

Point-of-sale labeling, voluntary participation of manufacturers, retailers;

Sheets with test results, prepared by manufacturers, according to an FTC-prescribed format.

The latter program would test three formats: (1) sheets available on request for salesperson; (2) "take-one" pamphlets on counter; and (3) display chart on counter. Each of the formats would test the use of raw data and data translated into performance grades.

The second category of programs, programs not based on protocols of standardized testing, should include two types of programs: Fact sheets without comparative product information; and labeling based on manufacturer-provided information without testing.

This part of the experiment should provide data about the likely response of manufacturers and retailers to a voluntary program, the relative value of raw data compared with "graded" test results, the percentage of people that request information from salespersons

means of motivating consumers to request information, cost of the programs, and the value to consumers. Note that different approaches may be appropriate for different products.

The next question is: Who should develop the test protocols? Alternatives include trade associations, consumer organizations, State agencies, independent testing laboratories, and the FTC.

The bill already provides for flexibility with respect to the development of test protocols. Questions the experiment can help answer include: (1) The ability of the FTC to develop a level of expertise capable of evaluating industry-proposed protocols, and (2) the willingness of nonindustry organizations in the development of protocols.

The third question is: How should conflict-of-interest by compliance testers be controlled? Alternatives are: Certification of laboratories that can participate, based on competence and independence, and limiting compliance testers to independent testing laboratories and Government agencies—subject to a definition of independent testing laboratories.

The bill does not restrict the FTC's choice of compliance tester. The experiment would help determine the supply of potential competent compliance testers, given alternative methods of controlling conflict of interest.

The fourth question is: Who should translate raw test data into performance grades? Alternatives are the FTC and the institution developing the test protocol.

As noted earlier, the bill does not specify whether or not translating raw test results into grades—for example, high-medium-low—is part of the responsibility of the organization that develops the test protocol. The experiment could help determine who should translate the data, based on time delays, expertise needs, and cost considerations.

The fifth question is: What type of non-point-of-sale advertising should be allowed or required? Presumably, the experiment will focus on point-of-sale information. Alternative approaches for print and media advertising include: Prohibiting advertising based on non-FTC-prescribed protocols; allowing advertising based on non-FTC-prescribed protocols; and requiring all—or some—of the results based on FTC-protocol testing to be included in all advertisements.

The bill, as presently drafted, allows the FTC to regulate advertising of products covered by protocols. The experiment would help to determine the effect of different approaches on the amount of valuable information in ads, and the effect on the number and type of ads run for products covered by protocols.

Extensive research would be a crucial ingredient of the experimental program. Careful data collection should begin well in advance of the provision of the new information, so that comparisons over a period of time can be made. Research should (1) measure purchasing patterns before the program, (2) measure whether or not consumers perceive a need for the information, (3) determine whether or not consumers value the new information, and (4) measure changes, if any, in purchasing patterns.

Once again, Consumers Union thanks you for the opportunity to present our views.

Senator DURKIN. Thank you. I assume you want the full statement in the record?

Mrs. SHEARER. Yes; we would like that.

Senator DURKIN. Have you done any studies on the impact your product testing has on the average consumer?

Mr. SCHUCK. We are aware of a number of studies, mostly conducted by others. The evidence varies. With some products there apparently is a considerable impact on the market and with other products there is little visible impact. Several other organizations, primarily manufacturers and retailers, have conducted studies of their own. We are generally aware of them. They indicate that in many cases, our reports are an important competitive factor but in other cases they are not.

Senator DURKIN. How do you determine which characteristics you would test for?

Mr. SCHUCK. We have a great deal of feedback from our readers. We solicit views on a systematic basis from our readers and we also get a great many unsolicited pieces of information from them. That in general informs us as to the product characteristics that seem salient, that they want to know about.

In addition, we do a good deal of market research and we are familiar with the market research done by commercial organizations.

So, in general, we have an assessment from our own readers and from consumers in general as to what they feel is important in products.

Senator DURKIN. Is that true for the categories that you test?

Mr. SCHUCK. Yes; our decision to test certain products rather than others is based on a variety of factors and include the factor Mrs. Bernstein mentioned: The price of the item, the frequency with which it is purchased, the ability of our information to make a difference to consumers, that is, the existence of adequate information or inadequate information already with respect to that product in the market, and a variety of other factors.

Senator DURKIN. You say the Consumer Product Testing Act received medium-low rating for degree of brand comparison. How did you arrive at that and why?

Mrs. SHEARER. Well, it is our understanding from the way the bill is drafted that manufacturers would provide information to retailers on some sort of sheet.

In a magazine like Consumer Reports product ratings are listed side by side so the consumer can see on one or two pages how the products compare. S. 643 seems to indicate a format whereby the consumer would pick up the sheets that the manufacturers supplied; it isn't clear that comparison is very easy.

Senator DURKIN. It is your recommendation that the Federal Trade Commission should utilize that type of display?

Mrs. SHEARER. Our position is that there are a variety of different alternative formats and we don't know which format is most useful to consumers. Maybe the labeling scheme would be most useful. It is not really clear from the draft bill what type of format was envisioned.

Senator DURKIN. I gather the general thrust is that you would like to see a controlled experiment which would answer some of these questions before we finalize in legislative language?

Mrs. SHEARER. Right.

Senator DURKIN. In any permanent form.

Mrs. SHEARER. We think legislation ought to authorize the experiments. We certainly don't think there should be no legislation on this issue until experiments are conducted but rather that the legislation ought to encourage and specify the nature of the experiments which would be conducted by the FTC.

Senator DURKIN. In other words, you are not coming in and saying this is a good idea, but it needs more study, why don't you sit on it?

Mr. SCHUCK. No. We are urging that the legislation itself specify the parameters within which the experimentation would proceed.

Senator DURKIN. You also note the Consumer Product Testing Act received a low rating for convenience in your comparison with the chart, because the consumer may have to request information from the salesperson. If the information was to be made available at the point of sale, prior to the sale, would it have received a higher rating?

Mrs. SHEARER. The rating certainly would vary by the format used. It could be a very high rating if it called for labeling directly on the product. It just wasn't clear to us what type of format was envisioned and the uncertainty led to those ratings.

Senator DURKIN. I instinctively assume if the salesperson is going to provide the information at the point of sale, we have just become a full circle. I don't know any salesperson that is going to indicate that a competing product has distinct advantages.

Mrs. SHEARER. I think that one important question with respect to convenience is whether or not the consumer has to actually request something from the salesperson whether there is something that the consumer can see without having to go to the trouble of requesting it. It may be that the consumer is shy or that the salesperson is busy; these factors would discourage the consumer from requesting the information. These considerations went into that rating.

Senator DURKIN. In your comparison chart you have a category called counseling, which is defined as meaning the presence or absence of a recommendation of approved or not approved. Do you believe the Government should be involved in making such a recommendation?

Mrs. SHEARER. I believe that our position is that it is useful to have ratings on a number of different criteria, and that the Government should not say whether a particular product is approved or not approved, unless perhaps there are safety considerations involved.

Senator DURKIN. So, you don't want the Government to approve or disapprove.

Mrs. SHEARER. That is correct.

Senator DURKIN. You recommend an experimental program and yet you indicate that the same approach in Europe has produced mixed results.

Mrs. SHEARER. The projects in Europe have been largely labeling programs. The research that measures the effect of these programs on consumers has not indicated extremely successful results. And the question that is still unanswered is: What is the best way to present information to consumers? It is not clear to us that the European programs have done that. It is for that reason that we feel experiments with alternative formats is needed.

Senator DURKIN. Having just completed a campaign with the new spending ceilings, we found leafletting can be very effective. If Con-

gress adopted a program for experimental programs, how much time and money would be required to conduct them in a meaningful manner, and to conduct a thorough test?

Mrs. SHEARER. I am afraid I can't give any exact figure but we believe that starting with the budget as proposed would allow for meaningful programs for a few products each year. We didn't intend this to be a high-budgeted experience that could deal with a large number of products, but rather a program with the budget as proposed, dealing with a few products each year.

Senator DURKIN. Another problem I have experienced, and I think others have experienced is in using some of the data in your publication, Consumer Reports. By the time a decision is made to purchase a product I, at least, refer to a previous edition of the magazine, and find that the serial or the manufacturers' numbers of the products tested have changed. This has been a very real problem in my own household, and I would like to know how we alleviate this in a major scale program such as this.

Mr. SCHUCK. That is a very difficult problem. We have certainly not found the answer to it. In the nature of the case, it requires a great deal of time to test a product adequately and then in the case of our publication, to translate the raw data into readable copy, which consumers can use and enjoy reading. There is delay sometimes and that sometimes occasions the problems you mention. My guess is that in a Government program those kinds of delays would occur as well, and perhaps would be even greater.

I am not sure how that could be resolved. I suppose there are experiments that could be performed to see whether and the extent to which that is a problem and perhaps experiments with various solutions, such as requiring advance testing pursuant to the required protocols prior to marketing, so that the time lag would occur prior to the marketing of the product. But that in itself would create many other problems.

I think we just don't know the answer to that.

Senator DURKIN. Perhaps an alternative would be to require the manufacturer to test the product he puts out and to make the test results available, when he puts out the new model or modification. What do you think about that?

Mr. SCHUCK. That is one of the alternatives I mentioned, yes. That a manufacturer might be required to make the information available at the time the product is marketed and not later.

Senator DURKIN. On your comparison of consumer information perhaps you have a category called amount of information. Isn't too much information just as harmful as not enough information?

Mrs. SHEARER. The answer to that really depends on the product being considered. In the case of a product such as clothes dryers, it may be that information on five different factors is enough for the consumer. But for a product such as stereos, one really needs the explanation of how the information was developed in order to make the judgment. It really depends on the product.

Senator DURKIN. Do you think that what might be too much information the first year of the program, may become adequate 2 or 3 years later into the program? Thinking back—we were proposing at one time back home, a cost comparison for life insurance, and there was too

much information, and we didn't think that the average consumer could assimilate and discern that much information.

Once the consumer has been conditioned to look for certain information, do you think this is a problem that will solve itself?

Mr. SHUCK. I think you are right. There may be varying optimal levels of information, and it is going to require some experimentation and experience to determine how much information is too much information. Consumers Union has a general sense as to how much information is just right, because it has been doing it for 40 years. I imagine that the FTC would require some experience before it could find that optimal level.

Senator DURKIN. Well, I would like to thank you both, and also on my own behalf I would like to commend Consumers Union for its fine work. I hope you will continue not only to report but advocate as well. There are never enough advocates.

Mr. SHUCK. Thank you. We hope you continue to buy the magazine. [The statement follows:]

STATEMENT OF GAIL SHEARER, CONSUMERS UNION OF UNITED STATES, INC.

Members of the Subcommittee: On behalf of Consumers Union,¹ I wish to thank this distinguished Subcommittee for inviting us to testify on S. 643, the Consumer Product Testing Act (CPTA). Consumers Union, an organization whose primary goal is to provide consumers with information and counsel about consumer goods and services, commends the Subcommittee for holding hearings on this very important issue. Consumers Union supports the objectives of the bill, but has reservations about some of its key provisions. Consumers Union believes that the bill would be more effective in addressing the consumer information problem if several changes were adopted—in particular, if the bill were amended to provide for experimentation with alternatives to the proposed consumer information program. Unless some of the program's key elements are clarified, there is a danger that S. 643 could actually decrease the amount of valuable product information available in the marketplace.

Our testimony is organized into four sections: (1) the consumer information problem, (2) comparison of the CPTA with past and present consumer information programs, (3) Consumers Union's recommendation for experimentation, and (4) evaluation of the CPTA as proposed.

(1) THE CONSUMER INFORMATION PROBLEM

The basic problem that the proposed CPTA and other consumer information programs attempt to solve is that insufficient information is delivered to the consumer for use in the marketplace. Advertising provides little information about the quality of goods. Even the value of potentially useful advertising claims is diminished by the lack of standardized performance measures—one manufacturer's "large" size package may be comparable to another's "giant" size package.

The direct result of this lack of useful information about consumer goods is that consumers spend more than necessary for consumer products, resulting in reduced purchasing power and consumer welfare. The ignorant consumer will often choose the more expensive of two products of comparable quality, or the worse of two products of equal price. Even if the consumer by chance chooses the better product, there is a cost associated with the worry of

¹ Consumers Union is a nonprofit membership organization chartered in 1936 under the laws of the State of New York to provide information, education, and counsel about consumer goods and services and the management of the family income. Consumers Union's income is derived solely from the sale of *Consumer Reports* (magazine and TV) and other publications. Expenses of occasional public service efforts may be met, in part, by non-restrictive, noncommercial grants and fees. In addition to reports on Consumers Union's own product testing, *Consumer Reports*, with a circulation of almost 2 million, regularly carries articles on health, product safety, marketplace economics, and legislative, judicial and regulatory actions which affect consumer welfare. Consumers Union's publications carry no advertising and receive no commercial support.

not knowing that the better product was in fact chosen. The value to consumers of good information is suggested by empirical evidence in the case of price advertising of eyeglasses and prescription drugs. Prices tend to be considerably lower, for equal quality products, where price advertising is permitted than where it is prohibited. Advertising also reduces price disparity.²

In the absence of comparative buying information, the consumer must rely on whatever price information, advertising claims, extent/visibility of advertising, brand name, and company reputation are available. Economist Tibor Scitovsky sums up the impact as follows: "Consumers' ignorance creates oligopoly power and oligopoly profits in three ways: it limits price and quality competition among established firms, it protects these firms from the potential competition of newcomers by setting a high entrance fee to their market, and it facilitates collusion by limiting the number of established firms."³

A major source of comparative product information based on independent, impartial testing currently available to U.S. consumers is Consumers Union's monthly publication, *Consumer Reports*. While it reaches nearly 2 million subscribing households as well as consumers who borrow copies, buy newsstand copies, or look up results in the issues available at public libraries, its accessibility is limited because, among other things: (1) The information is not available at the point-of-purchase; (2) subscribing to *Consumer Reports* costs money; (3) subscribers generally belong to middle- and upper-income groups; (4) making use of library issues requires a considerable cost in terms of time; or (5) Consumers Union's limited resources allow it to test only a small portion of the numerous products available in the market each year.

The case for Government intervention.—The market has failed to bring about a sufficient number of standardized protocols for advertising claims and, for the most part, has failed to induce the provision of any meaningful performance information at the point-of-sale. It is evident that some sellers can benefit from non-standardized testing and exaggerated claims. There is evidence that when a group of manufacturers in an industry decides that certain standards are desirable, it develops voluntary standards. Some of these standards have proved to be good, others mediocre, and still others so poor as to lead potentially to deception and confusion for consumers.

Why hasn't the market provided a point-of-sale information network? Necessary inputs into a successful point-of-sale information program include: standardized procedures for product testing; competent technical testing; translation of technical data into usable consumer information for the point-of-sale; coordination with manufacturers; an effective consumer education effort; and time for retailers and consumers to become accustomed to using the information. This total program would undoubtedly be expensive, with the payoff in terms of benefits to consumers, manufacturers, and retailers probably lagging several years behind costs. Furthermore, there is a risk that if any step were done incompetently, the benefits might be delayed and never achieved.

It is clear that consumers, whether organized or unorganized, are not capable of developing this total system. Even if individuals were aware of the potential value of a point-of-sale system, the high costs of organizing consumer groups, as well as the high costs of developing the system, would be prohibitive. In addition, consumers and consumer organizations lack the authority to mandate participation by manufacturers. Consumers Union's limited resources have prevented it from even experimenting with alternative forms of providing point-of-sale information.

Individual retailers also normally lack the resources to develop such a system. One store chain, Federated Department Stores, experimented with a labeling program that made information provided by the manufacturer accessible to consumers. The experiment took place in one of Federated's larger department stores, F. & R. Lazarus of Columbus, Ohio. It involved three small appliances—steam irons, blenders, and electric percolators. Information was transferred directly from manufacturer sources (e.g., booklets, instruction sheets) to a standard labeling form. Information on the blender label, for example, included number

² 1976 Budget Overview, Prepared by the Federal Trade Commission Office of Policy Planning and Evaluation, published by the Bureau of National Affairs, Inc., Washington, D.C. 20037, Dec. 17, 1974, p. D-7; L. Benham, "The Effect of Advertising on the Price of Eyeglasses," *The Journal of Law and Economics*, 1974, pp. 337-352.

³ "Ignorance as a Source of Oligopoly Power," *XL American Economic Review* (May 1950), p. 49.

of speeds, liquid capacity, and whether or not it had removable blades.⁴ Federated attempt to expand the program to include testing apparently ran into legal complications from the Federal Trade Commission.⁵ The limited evidence suggests that antitrust considerations and high start-up costs inhibit retailers from developing information programs. In addition, once manufacturers develop expensive testing procedures for one retailer, it is unlikely that manufacturers would be willing or even able to exclude the participation of other retailers.

Another problem facing the private sector stems from its inability to require participation by manufacturers. In other countries, the absence of voluntary participants has destroyed the financial viability of labeling programs.

One might also ask the following questions: Why, if consumers value comparative product information, don't consumer magazines such as *Consumer Reports* and *Consumer Bulletin* have more subscribers? Why aren't there many more such magazines? In this case, the market failure involves the "free-rider" problem: many consumers are able to borrow friends' copies or look up test results in the public library, at no out-of-pocket cost to them. While valuable because it spreads the information to more consumers, this practice limits the resources—resources that could have increased the number of products tested or could have developed point-of-sale information programs—available to testing organizations.

In sum, arguments for government intervention include the difficulty of organizing consumers to develop a program in the private sector, the lack of authority of the private sector to mandate manufacturer participation, possible antitrust problems if manufacturers cooperate in testing for a retailer, the inability of retailers to prevent other retailers from making use of test results performed by manufacturers, and the inability to charge all consumers for their use of testing results of the kind reported in *Consumer Reports*. While there is a lack of hard data on the costs of the shortage of comparative price information in the marketplace, it is clear that these costs are substantial. The success of Consumers Union, i.e., the fact that nearly 2 million households are willing to spend money to subscribe, suggests that comparative information is valued; it supports the inference that significant consumer benefits can be derived from further consumer information programs. As explained below, there are a number of consumer information programs that would help reduce these costs of inadequate information. Consumers Union believes that the alternatives should be explored fully. The goal of legislation should be to find the most effective—and cost/effective—means for narrowing the consumer information gap.

(2) COMPARISON WITH OTHER CONSUMER INFORMATION PROGRAMS

Comparison of the Consumer Product Testing Act with alternative types of consumer information programs is helpful in analyzing the proposed act. The four major types of programs are comparative testing, labeling, quality certification, and fact sheets. In *comparative testing*, an independent organization, such as Consumers Union, selects models of a product to test, decides which characteristics of the product to test, determines test methods to be used, performs the tests, and reports the results, typically in a magazine such as *Consumer Reports*. An overall rating to counsel the consumer (e.g., "acceptable", "not acceptable") may or may not be included. In an informative *labeling* program, a manufacturer might agree to measure certain product characteristics by standard test procedures, and report the results on a label, in a manner prescribed by the supervising organization. The program might be mandatory or voluntary; actual measurements (e.g., miles per gallon) might be recorded on the label or characteristics might be rated on a scale of 1 to 5 or 1 to 10. Manufacturer results are monitored in "compliance testing" programs by independent testing laboratories or by the supervising organization. Note that labeling programs are not always based on product testing; the Federated Department Stores' experiment, mentioned above, reproduced information already provided by manufacturers. Quality certification programs test products to determine whether or not they perform satisfactorily to meet a minimum norm or threshold level. Passing the test

⁴ Federal Department Stores, Inc., Pamphlet: "Buying Guide Tag Pilot Program."

⁵ According to Federated, its plan for developing the program would have necessitated cooperation among manufacturers to test their products in a similar manner. The planning was discontinued when lawyers at the FTC said that such cooperation might violate the anti-trust laws; small manufacturers would not have been able to afford to participate. (James Michaux, Operating Vice President, Federated Department Stores, phone conversation July 15, 1975.)

is symbolized through a seal, grade stamp, endorsement, or inclusion on an endorsed list. *Fact sheets* set forth criteria or guidelines rather than raw performance data. They do not involve any product testing. Fact sheets can be "take-one" sheets or display charts at the counter, or can be in the form of labels. While fact sheets do not contain any comparative ratings of particular models, they set forth the qualitative considerations of importance to the consumer in making his or her selection of a model.

Hans B. Thorelli has written extensively on the success of these programs throughout the world.⁶ The table below compares testing, labeling, certification, fact sheets and the CPTA with respect to (1) the amount of useful consumer information provided, (2) the degree of brand comparison, (3) counseling (the presence or absence of a recommendation of "approved" or "not-approved") and (4) convenience (accessibility of the information and the ease of understanding it). Provision of the information at the point-of-sale significantly increases "convenience", while lengthy and complicated descriptions of test results that may be difficult to interpret would rate low on convenience. It would be difficult for any product to rate high in all categories. In order to make informed decisions about complex products, it may be necessary to sacrifice some convenience in return for a detailed explanation of all characteristics of a product. Different products may require different kinds of information disclosure; while a "convenient" simple label may be an adequate description of a clothes dryer, sophisticated stereo equipment may require less convenient, more detailed, explanation of test results.

The table below helps to simplify the comparison of programs but a few words on its limitations are in order. First, there is an interaction between the alternative programs. For example, labeling becomes more like testing when the number of features included increases.⁷ In addition, several criteria (e.g., cost, income level of consumers reached) that are important for comparing the alternatives are not included. The ratings for all programs except fact sheets and the CPTA are from the Thorellis' book, *Consumer Information Handbook: Europe and North America*, *supra* at p. 4

COMPARISON OF CONSUMER INFORMATION PROGRAMS

Program type	Amount of information	Degree of brand comparison	Counseling	Convenience
Testing.....	High.....	High.....	Medium.....	Low.
Labeling.....	Medium.....	Medium.....	Low.....	Medium.
Certification.....	Low.....	Low.....	High.....	High.
Fact sheets.....	Medium ¹	Low (none).....	Low.....	High.
CPTA.....	Medium.....	Medium-low.....	Low.....	Low. ²

¹ Note that this is not comparative product information, but rather advice about general considerations important in the selection of a product.

² The proposed CPTA has a low convenience rating since the bill, as drafted, indicates that consumers may have to request the information from the salesperson, and that manufacturer-provided test results could be very difficult to interpret

Consumer information programs in other countries.—Several countries, including England and Sweden, have experimented with programs that involve innovative attempts to determine consumer needs, convince manufacturers to participate, and implement the informative labeling programs. It is difficult to form conclusions about the success and the effectiveness of the programs. Not only has there been very little research into their effects on consumers but, in addition, there have been major changes in the administration of such programs; some have even been discontinued.

Sweden's labeling program, which was founded in 1951 by Varudeklarationsnämnden (VDN),⁸ is often cited as the prototype for consumer product labeling programs. Until January 1973, when the VDN was absorbed by the State Con-

⁶ See, Hans B. Thorelli and Sarah V. Thorelli, *Consumer Information Handbook: Europe and North America* (Prague Publishers, N.Y., 1974), and Hans B. Thorelli (et al.), *The Information Seekers: An International Study of Consumer Information and Advertising Image* (Ballinger Publishing Co., Cambridge, Mass., 1973).

⁷ For a detailed exploration of interactions between consumer information programs, see Thorelli, "Testing, Labelling, Certifying: A Perspective on Consumer Information," *British Journal of Marketing*, Autumn 1970, pp. 126-132.

⁸ Thorelli and Thorelli, *Consumer Information Handbook*, *supra* at pp. 37-52.

sumer Board, the program was quasi-public; its board consisted of representatives of organizations of consumers, manufacturers, distributors, and technical experts.

Prior to 1973, the process for developing labels was as follows: Once it was decided (after a preliminary study) that a product should be labeled, a project leader from VDN prepared a draft specification (i.e., details of product characteristics to be tested by participating manufacturers). The draft was circulated widely, a hearing was held, and then the draft was submitted to the VDN Board for approval. Manufacturers and distributors were informed of the new specification and decided whether or not to participate. Participating manufacturers that used the VDN label were required to observe the VDN rules and to pay a license fee to cover the costs of periodic control (i.e., compliance) tests. There was no VDN pre-testing of the manufacturer's labeling claims, but random control tests were performed after the labeled products were on sale. A typical product was checked once a year by VDN. A license would be withdrawn if a product repeatedly failed to meet the requirements stated on the label.

Some of the products that were covered by VDN labeling specifications are kitchen knives, blankets, kitchen fans, life jackets and suitcases. The program did not grade products, but provided information about certain key product properties; for example, the label for electric irons included electrical data, weight, range of temperatures, time to heat up, soleplate material and hardness, and maintenance information. By 1969, VDN had completed 144 product specifications and had 903 outstanding licenses.⁹ In order of the number of licenses granted, the product areas ranked from high to low, as follows: clothing, food products, home furnishings, kitchen equipment and appliances, sporting goods, pet foods, and paper products.¹⁰

Little research has been done on the value of the VDN labels to consumers. One study done in 1966 had somewhat disturbing results. In a sample of 194 customers in bedding departments of three department stores, 47% of those interviewed claimed to know about the significance of VDN labels, and 40% claimed the labels influenced their product choices. However, 25% mistakenly thought the labels were actually "quality certifications."¹¹ The only other major study with widely reported results was done in 1959. One of its main findings was that 58% of the households surveyed (of a total of 1105) recognized the VDN label.¹²

England had a labeling program, "teltag"¹³ that lasted only a few years. Plans for the program were announced in 1964 by the Consumer Council, an independent, government-financed organization. The first teltag labels appeared in 1967. Development of the "Scheme of Supervision and Control" (SSC) (i.e., the characteristics of a product, test procedures for measuring them and details of compliance testing), began with preparatory work by consumers, trade associations, and the British Standards Institute. The Consumer Council, after consultation with trade associations, would then submit a proposed SSC to the Board of Trade for approval. After approval, manufacturers decided whether or not to participate. Participants rated their own products in terms of the teltag specifications. An independent laboratory then verified the manufacturer claims before labels were issued. Once the labels were in use, routine follow-up checks of the manufacturers' claims were done. Participating manufacturers had to pay a number of fees to cover the initial test, routine control tests, and, when necessary, "non-routine" control tests, which were done when the routine control test results were unsatisfactory.

During the program's short life, teltag labels were developed for products such as electric kettles, slide projectors, electric mixers, and floor rugs. Labels included product specifications (e.g., dimensions, composition) as well as performance characteristics. For example, the teltag for electric kettles included the maximum and minimum quantity of water that the kettle could hold, material, and time needed to boil different amounts of water. A product would not be allowed to use a teltag unless it met certain safety and health standards; health and safety were the only areas where minimum requirements were imposed.

In 1970, the British government abolished the Consumer Council, and the teltag

⁹ Thorelli and Thorelli, *Consumer Information Handbook*, *supra* at p. 45.

¹⁰ *Id.* at p. 42.

¹¹ Reported in Thorelli, *et al.*, *The Information Seekers*, *supra* at p. 196.

¹² Thorelli and Thorelli, *Consumer Information Handbook*, *supra* at p. 49.

¹³ *Id.* at pp. 174-184.

program was discontinued. The Thorelli's cite three of the program's problems: A lack of funds with which to promote the program, a lack of a marketing orientation in the Council, and a lack of industry support.¹⁴

The inability to mandate manufacturer participation discouraged the British Standards Institute from continuing the program after abolition of the Consumer Council.¹⁵

Consumer information programs in the United States.—In this section, we explore a few recent experimental programs as well as the experience with unit pricing. We propose that elements of these programs might be incorporated into the CPTA. We suggest that the potential success of the CPTA depends on adequate consideration and evaluation of all consumer information programs that have been experimented with over time. Two notable experiments are the J. L. Hudson Company's "fact sheet" program and the Federated Department Store's "Buying Guide Tag" program.

The J. L. Hudson program involved distribution at the point of sale of "fact sheets" that were designed to guide consumers about key questions that should be asked when buying a particular product. Fact sheets were distributed for products such as washers and dryers, refrigerators and freezers, bed and bath linens, fibers and fabrics, knit clothing, color television sets, and carpeting and rugs. The fact sheet on washers and dryers addressed such issues as capacity, amount of water used, the relative advantages and disadvantages of gas vs. electric dryers, and key considerations before purchase. The fact sheets did not provide any comparative product information.¹⁶

The "Buying Guide Tag" program (mentioned earlier) undertaken by Federated Department Stores in one of its department stores, F. & R. Lazarus of Columbus, Ohio, is more similar to the European consumer information programs. The experiment lasted for three months, and was limited to three types of appliances: electric coffee percolators, blenders, and spray irons. A total (for the three appliances) of 143 different models were labeled. The labeled information was *not* based on standardized comparative testing, but rather on information supplied by manufacturers.

Information provided in the electric percolator label included capacity (for 5 oz. cups), minimum brew capacity, brew time, immersibility, and whether or not it was listed by Underwriters' Laboratories.

The Buying Guide program was limited in scope and did not result in definitive conclusions about the effectiveness of such programs in changing buying decisions. Customer reaction to the tags was described as mildly positive.¹⁷ One of the major benefits was the usefulness and accessibility of the information to the salespeople, who were in turn more helpful to the consumers.¹⁸

Another type of experiment with point-of-sale provision of information is unit pricing. Unit pricing is now required in certain grocery stores in at least five states and three cities.¹⁹ It is also practiced in roughly one third of the super-market chains in metropolitan areas that are not covered by unit pricing laws.²⁰ Unit pricing has not been an overwhelming success. Even though it is relatively simple in concept in comparison with the CPTA, it is often confusing to consumers. Surveys show that consumers generally lack an awareness and understanding of unit pricing; they show that the range of consumers either not aware or not understanding unit pricing is 51 to 80%.²¹ On the positive side, approximately 34% of shoppers surveyed claimed to make use of unit pricing.²² A survey of the minority of consumers that actually uses unit pricing showed that 72% claimed to have purchased a different size of the same product and 52% claimed

¹⁴ Thorelli and Thorelli, *Consumer Information Handbook*, *supra* at p. 182.

¹⁵ According to Peter Sand, Consumers Association, U.S., conversation July 30, 1975.

¹⁶ A Hudson representative has said that response to the program was excellent, but we have no way of knowing what that meant. Letter from Linda Goodman, News Bureau Manager, J. L. Hudson Co., Detroit, Mich., to Mark Silbergeld, Consumers Union, Jan. 10, 1973.

¹⁷ "Buying Guide Tag Pilot Program," Federated Department Stores, Inc. p. 14. For example, a mail survey of shoppers who purchased an appliance with the Buying Guide attached found that 67 percent of the respondents considered the tag to be helpful. (*Id.* at p. 30).

¹⁸ *Id.* at p. 14; and phone conversation with James Michaux, Operating Vice President of Federated Department Stores, July 15, 1975.

¹⁹ Comptroller General of the U.S., Report to the Congress, Food Labeling: Goals, Shortcomings, and Proposed Changes, Depts. of HEW, Agriculture and Commerce, Jan. 29, 1975, p. 58.

²⁰ *Id.* at p. 59.

²¹ *Id.* at p. 70.

²² *Id.* at p. 72.

to have switched brands because of unit pricing.²³ The cost of unit pricing for a family of four has been estimated to be 11¢ per week.²⁴

Recent studies of consumer education raise serious questions about consumers' ability to understand techniques for communicating information. Test results show that 30 to 54% (depending on the particular problem) of adults have difficulty in reading and interpreting graphs.²⁵ This is disturbing because simple graphs could conceivably be part of the CPTA's point-of-sale information program.

(3) RECOMMENDATION FOR AN EXPERIMENTAL PROGRAM

In light of the mixed results of European consumer information programs and the uncertainties about the value of different programs to consumers, we recommend that S. 643 be amended to authorize an *experimental* consumer information program. The purpose of the experiment would be to answer questions such as the following:

What type of program is best under various conditions?

Who should develop the test protocols?

How should conflict-of-interest by compliance testers be controlled?

Who should translate raw test data into performance grades?

What type of non-point-of-sale advertising should be allowed (or required)?

As presently drafted, the bill would allow a certain amount of experimentation since it leaves to the FTC details such as format for point-of-sale information, selection of compliance testers, and selection of institutions to develop test protocols. However, S. 643 does *not* provide for experimentation with point-of-sale information schemes that are *not* based on standardized testing (e.g., fact sheets). Nor does the bill provide for a research component that would allow for evaluation of various elements of the program. In addition, the bill does not address the question of whether raw data or relative ratings are to be used. The main elements of the proposed experiment are explored below.

What type of program is best? The experiment should test the following types of consumer information programs:

Programs based on protocols with standardized testing: Point-of-sale labeling, mandatory participation of manufacturers, retailers; point-of-sale labeling, voluntary participation of manufacturers, retailers; and sheets with test results, prepared by manufacturers, according to an FTC-prescribed format: (1) Available on request from salesperson (raw data, graded data); (2) "take-one" pamphlets on counter (raw data, graded data); and (3) display chart on counter (raw data, graded data).

Programs not based on protocols of standardized testing: Fact sheets (without comparative product information) (e.g., Hudson experiment) and labeling based on manufacturer-provided information without testing (e.g., Federated experiment).

This part of the experiment should provide data about the likely response of manufacturers and retailers to a voluntary program, the relative value of raw data compared with "graded" test results, the percentage of people that requests information from salespersons, means of motivating consumers to request information, cost of the programs, and the value to consumers. Note that different approaches may be appropriate for different products.

Who should develop the test protocols? Alternatives include: Trade associations, consumer organizations, State agencies, independent testing laboratories, and the FTC.

The bill already provides for flexibility with respect to the development of test protocols. Questions the experiment can help answer include: (1) the ability of the FTC to develop a level of expertise capable of evaluating industry-proposed protocols, and (2) the willingness of non-industry organizations to participate in the development of protocols.

How should conflict-of-interest by compliance testers be controlled? Alternatives are: Certification of laboratories that can participate, based on competence and independence and limiting compliance testers to independent testing laboratories and government agencies (subject to a definition of independent testing laboratories).

²³ Lawrence M. Lamont, et al., "Unit Pricing: A Positive Response to Consumerism," the University of Colorado, pp. 5 and 7, reported in Comptroller General's Report, *supra* at p. 74.

²⁴ Comptroller General's Report, *supra* at p. 81.

²⁵ National Assessment of Educational Progress, *Consumer Math*, Mathematics Report No. 04-MA-02, June 1975.

The bill does not restrict the FTC's choice of compliance tester. The experiment would help determine the supply of potential competent compliance testers, given alternative methods of controlling conflict of interest.

Who should translate raw test data into performance grades? Alternatives are: The FTC and the institution developing the test protocol.

As noted earlier, the bill does not specify whether or not translating raw test results into grades (e.g., high-medium-low) is part of the responsibility of the organization that develops the test protocol. The experiment could help determine who should translate the data, based on time delays, expertise needs, and cost considerations.

What type of non-point-of-sale advertising should be allowed (or required)? Presumably, the experiment will focus on point-of-sale information. Alternative approaches for print and media advertising include: Prohibiting advertising based on non-FTC-prescribed protocols, and requiring all (or some) of the results based on FTC-protocol testing to be included in all advertisements.

The bill, as presently drafted, allows the FTC to regulate advertising of products covered by protocols. The experiment would help to determine the effect of different approaches on the amount of valuable information in ads, and the effect on the number and type of ads run for products covered by protocols.

Extensive research would be a crucial ingredient of the experimental program. Careful data collection should begin well in advance of the provision of the new information, so that comparisons over a period of time can be made. Research should (1) measure purchasing patterns before the program, (2) measure whether or not consumers perceive a need for the information, (3) determine whether or not consumers value the new information, and (4) measure changes, if any, in purchasing patterns.

(4) EVALUATION OF THE CONSUMER PRODUCT TESTING ACT, AS PROPOSED

The comments in this section are directed to the bill as presently drafted, although as noted above, Consumers Union prefers an experimental program that would test a number of alternative programs. The first section deals with some major policy issues, and the second includes some more specified comments.

General comments on S. 643

1. While the bill includes details about establishing reliable and uniform test protocols, it does not include a requirement that manufacturers perform actual tests. In section 6(b), the bill specifies distribution of test results. If the purposes of the bill are to be realized, it would appear that a requirement should be added that manufacturers of the products described in 6(b) test under the prescribed protocols and that they make those test results public in the manner provided in 6(b).

2. It is not clear what the status of non-FTC protocols will be. (§ 6(a)(1)). The bill leaves unanswered at least three major policy questions: (1) should the bill require manufacturers, who would not otherwise advertise, to advertise according to the protocols?; (2) if and FTC protocol has been issued, should a manufacturer nevertheless be permitted to continue to advertise its product according to the results from *other* tests?; and (3) should the bill require manufacturers to include the results from testing according to the protocols in *all* advertisements (including media, print and labeling)? The desirability of certain requirements probably varies among products, according to factors such as the amount of useful information currently in ads. If manufacturers are allowed to advertise based on non-FTC protocols, or if partial and/or voluntary advertising, based on FTC protocols, is allowed, consumers are likely to be confused and will not have sufficient information to make rational price/quality comparisons. One can predict that manufacturers will disclose only the results most favorable to their product. The logic of the bill as presently drafted seems to require that the language of section 6(a) be clarified so that the FTC has the authority not only to prohibit advertising based on non-FTC protocols, but to require partial or full disclosure of FTC-protocol-test results in media advertising, print advertising and labeling. One example of a possible FTC requirement, for vacuum cleaners, would be the requirement of disclosure of results of suction tests according to FTC protocols in all advertising (media, print, and labeling), with more detailed requirements (e.g., ratings of rug cleaning ability, bag capacity) for print and labeling advertising.

Resolution of the issues in 1 and 2 is crucial to the success of the bill. The bill is likely to be useless, or even counter-productive, unless they are resolved,

for the net result might be that manufacturers would provide less product information than before, for fear of contradicting information that might be generated by testing under FTC-approved protocols.

3. Consumers Union has reservations about supporting the proposed system of having outside, non-governmental institutions develop test protocols. This system is somewhat analogous to the "offeror" program at the Consumer Product Safety Commission (CPSC), through which outside organizations develop proposals for safety standards. CPSC's offeror program is still in an experimental stage. When Consumers Union served as offeror to develop a proposed lawn mower safety standard, CU incurred substantial costs that were not reimbursed by the CPSC. Unless there were assurance of funds to cover all direct and indirect costs of participation, it is unlikely that Consumers Union or other consumer groups could participate in the CPTA program. A second defect of the proposal is the absence of adequate safeguards to assure independence of the offeror from the manufacturers involved, without sacrificing expertise. There is a danger that a manufacturer-controlled offeror process, coupled with the absence of FTC expertise in the product under consideration, could result in test protocols which will reduce competition in the marketplace. A third weakness of the proposed system for developing test protocols is the failure to distinguish between the characteristics to be tested according to the protocols (for example, the number of cubic feet in a refrigerator) and the prescription of criteria for evaluating the data (e.g., translating the results to large-medium-small ratings); would the FTC or the offeror be responsible for this second step? While the proposed offeror-type system has its drawbacks, Consumers Union recognizes that total reliance on in-house work at the FTC has disadvantages; it would be both costly and difficult for the FTC to acquire the expertise that would be needed in the many different product areas.

4. Some details about procedures for *manufacturer testing* and FTC regulation of such testing are also needed in the bill. Can manufacturers be expected to objectively rate their products? While Section 8(b) specifies that products supplied by manufacturers for *compliance testing* be randomly selected from regular production runs, there is no similar provision for manufacturer-tested products. The bill legitimizes selection of the best samples for testing. There is the potential for a systematic bias, wherein manufacturer test results could be more favorable to the manufacturer than the compliance tests. One method for minimizing this potential bias would be mandatory random selection of products for the manufacturer testing. Consumers Union buys its samples anonymously at the retail level in order to ensure selection of representative products.

5. The bill does not adequately recognize the difficulties inherent in translating technical, complex test data into comparative information the consumer can use at the point of sale. No data exists on the relative usefulness of alternate formats such as labels, display table charts or handouts. The translating difficulties and the absence of data reinforce the need for experimentation with alternative formats.

6. The bill specifies that contracts for compliance testing may be entered into "with any agency or instrumentality of the United States, with any State or political subdivision thereof, or with any public or private person, firm, association, corporation, independent testing laboratory, or institution." (§ 8(d)). The potential for personal and organizational conflict of interest is great. If an industry organization were to perform the compliance testing, it might bias the results to favor a particular segment of its members. Even government agencies are susceptible to bias since they are frequently staffed with former or future industry people who have the needed expertise, as well as a special perspective on the products. As noted earlier, Consumers Union recommends experimenting with two alternative approaches for controlling conflict of interest: (1) certifying laboratories that can participate, based on competence and independence, and (2) limiting compliance testers to independent testing laboratories and government agencies.

7. It is not clear from the bill whether or not several different contractors may be involved in compliance testing for different brands of the same product. If they are, it is especially crucial that the bill require testers to minimize the testing errors which can occur due to inadvertent variations in testing instrument calibration and test techniques. One means of assuring consistency in product testing, and in monitoring the objectivity of testing, is through the common practice of round-robin testing, whereby the same models are tested with the same procedures at different labs.

Specific comments on S. 643

Section 3(3). This section should be clarified as to whether food, drugs, and other similar products which are currently regulated with respect to point-of-sale information are to be included.

Section 3(3) (B). It is not clear why this provision (inclusion of motor vehicles and motor vehicle equipment) is needed, given the inclusive definition of "consumer product" in § 3(3) (A). If left in, it could support a more restrictive interpretation of § 3(3) (A).

Section 3(4). The language defining a "consumer product test protocol" is not as clear as it should be. In order to clarify the fact that such a protocol, at least in this context, not only is a procedure for performing tests, but also a procedure for selecting product characteristics which are to be tested, perhaps §§ 3(4) and 3(5) should be combined so that the definition of a "consumer product test protocol" is self-contained in one section. Should the definition also include a third step: translating the raw data into a useable form? Is this step meant to be a part of the development of a test protocol? Since all 3 elements ((1) selection of product characteristics to be tested, (2) specification of test conditions for testing these characteristics, and (3) characterizing the test data so as to yield a performance grade) are critical, the bill should be reviewed to determine if "consumer product test protocol" is meant to cover all stages, and to determine which stages the FTC or the institution developing the protocol should be responsible for. Note that if the institutions that develop the protocol are also to be responsible for translating the raw data into a performance grade, this cannot be done until after the manufacturers have given them the test results according to the protocol.

Section 3(8). It should be clarified that "supplier" includes a manufacturer. "Supplier" should also include importers.

Sections 5(a) (3) and 5(f) (1) (A). A test protocol cannot, without more, assist consumers. Presumably, what is meant—and should be added—is "if the results of testing pursuant to that protocol were disclosed to the public at the point of sale prior to sale."

Section 5(a) (2). The words "and should" ought to follow "can"; surely not every product characteristic which *can* be measured and reported *should be* measured and reported.

Section 5(c) (3) (B). Consumers Union's experience with the CPSC's offeror program has demonstrated that it is more difficult to keep consumer representatives involved in such programs than it is to keep industry representatives. The latter typically receive their travel expenses and salaries as usual, while consumer representatives normally are reimbursed only for travel expenses. The bill should require some remuneration for consumer representatives, to ensure the continual participation of persons representing the consumer interest.

Section 6(b). The phrase "of those products" should follow the word "retailer". The document, sign or whatever that will embody the results or summary is likely to be extremely important—and potentially misleading. Indeed it is really "the bottom line" of the entire bill. Its format must be carefully regulated or the bill could make consumers far worse off. As noted above, we recommend experimentation with alternative formats.

The bill specifies that testing results be made available to the consumer "at the point of sale prior to sale." The bill should also specify that test results be available to consumers who are "shopping around" with no immediate intentions of purchase.

Section 8. There are no indications of when the FTC should initiate compliance testing. Would compliance testing be done every year on every model of every brand? Would selection of manufacturer be random? The bill should require the FTC to develop regulations or criteria specifying extent of compliance testing, to help prevent selection of products for compliance testing to be, or appear to be, arbitrary.

Section 8(b). As discussed in general comment 4, FTC purchase of products at the retail level would help to assure a representative sample.

Section 8(c). Consumers Union retains the samples it has tested for at least three months after publication of the article in *Consumer Reports*, in case questions are raised about the testing. It is recommended that the FTC also retain tested samples for several months, to help in resolution of any disputes arising from the testing.

Section 9(a). These remedies will be of little use to consumers, since actual damages in most cases be trivial or perhaps even nonexistent. We recommend a statutory minimum damages, as in the Truth-in-Lending Act.

Section 9(c). As presently drafted, this section would *discourage* litigation intended to enforce this bill. Consumers Union believes that the costs of litigation (e.g., attorneys' fees, expert witness' fees, and other costs of litigation) should be awarded to a "substantially prevailing plaintiff." See, for example, the Freedom of Information Act, as amended, 5 U.S.C. § 552. Such costs should be awarded according to the substance, rather than the form, of the outcome; a negotiated settlement should not preclude the award of costs. This provision should not simply authorize an award if the court deems it just, but should establish a statutory *presumption* that an award be made to a substantially prevailing plaintiff unless the interests of justice require that no such award be made.

There is no specific provision for judicial review of FTC decisions on protocols. Consumers Union recommends that special provisions be included because their absence would require litigating groups to waste considerable resources to settle procedural questions left unanswered by the Administrative Procedure Act. The provision should address the following issues: which court (District Court or Court of Appeals); amount of time that may elapse between promulgation of FTC protocol and filing of a petition, standing, provisions for additional evidence, standard for review, and finality of judgment.

Section 10. A further prohibited act that might be added: No person shall alter the design and materials of the product sold after testing without changing the retail designation of the product.

Once again, Consumers Union thanks you for the opportunity to present our views.

Senator DURKIN. We would like for the next three witnesses to be treated as a panel. We can summarize the formal testimony and hopefully be able to develop more information that way.

STATEMENTS OF J. EDWARD DAY, SPECIAL COUNSEL, CONSUMER ELECTRONICS GROUP, ELECTRONIC INDUSTRIES ASSOCIATION; BERNARD H. FALK, PRESIDENT, NATIONAL ELECTRICAL MANUFACTURERS ASSOCIATION; AND DANIEL H. BROWN, ON BEHALF OF GAS APPLIANCE MANUFACTURERS ASSOCIATION, TASK FORCE ON CONSUMER LEGISLATION

Mr. DAY. How long do you wish us to take, Mr. Chairman?

Senator DURKIN. 10 minutes.

Mr. DAY. I will take 5 minutes. I will start off. I promised your staff I wouldn't take more than 5 minutes.

I am J. Edward Day, special counsel for the Consumer Electronics Group of the Electronics Industry Association.

We represent the great preponderance of U.S. manufacturers of television receivers, audio products, phonographs and small calculators, and we also represent certain Japanese manufacturers.

In my brief testimony, I want to spell out a scenario of Mr. and Mrs. Brown coming into the A.B. Smith Department Store in Concord, N.H., in 1980 to buy a television receiver. Mr. and Mrs. Brown want a medium-priced receiver with a wood or a plain cabinet. Mr. and Mrs. Brown find a receiver in this store, which they think is about what they want, but it is covered with tags and labels.

The first tag relates to energy consumption by the receiver in question. It turns out this is required by provisions on appliance efficiency in the energy law passed by Congress in 1976. (That bill has already passed one House.)

The label described the tests and the assumptions by which the energy use of the television receiver is measured. They are extremely complicated.

The second tag relates to the composition of the cabinet of the receiver. The tag states that some of the cabinet is not wood, but is plastic processed to look like wood. This is required by regulations of the FTC.

The third tag, hanging on the front of the receiver says there is a 3-year limited warranty on the picture tube, and a 1-year full warranty on the rest of the receiver.

The tag summarizes other features of the warranty and directs Mr. and Mrs. Brown to consult the complete text of the warranty which is in a binder maintained by the store in its binder library. This is required by regulations of the FTC pursuant to the Federal law on warranties.

The fourth tag is very long and complicated. It tells Mr. and Mrs. Brown about the following characteristics of the receiver:

First, effectuation of purpose.

Second, durability.

Third, average annual cost of operation in various cities, probably not including Concord, N.H., or Kokomo, Ind.

Fourth, maintenance requirements.

Fifth, frequency and nature of repair.

Sixth, environmental impact in the manufacture, use and disposal of such product.

Under the first characteristic relating to effectuation of purpose, the tag—which is really a large piece of printed cardboard—tells Mr. and Mrs. Brown about ratings a test protocol has assigned to this particular receiver in regard to brightness, picture quality, color quality, sound quality, ease of tuning, convenience for servicing, antenna characteristics.

The tag also directs Mr. and Mrs. Brown to get further details on the test protocol from another binder maintained in the store's enlarged binder library.

This large tag is required by the FTC pursuant to a Federal law establishing uniform test protocols.

And Mr. and Mrs. Brown notice, in addition to the tags on the front of the receiver, that on the back there are a number of printed or embossed labels required by the FCC, the Bureau of Radiological Health, the Consumer Product Safety Commission and the FTC. And if the set was made in Japan, there is also a label required by the Bureau of Customs.

The Consumer Electronics Group represents the great preponderance of U.S. manufacturers of television receivers, audio products, phonographs, tape recorders and small calculators, and we also represent some Japanese manufacturers.

We oppose S. 643 on the grounds, one, that it is unnecessary; two, it is unworkable; three, it will confuse the consumer; four, it will interfere with free and fair competition in the consumer electronics industry.

How is one going to have a meaningful and fair test protocol for a product with as many versions and prices as a television receiver? Obviously, a small portable black and white receiver, which is priced at \$90 is not going to have the same characteristics as a large console color receiver priced at \$700.

In sensible merchandising it is usual to have tradeoffs of product characteristics and balance all of them against price. An example would

be that in buying an automobile some people are interested in luxurious upholstery and styling, but other people are primarily interested in fuel consumption. You balance the various possible features. No one of the products is likely to have every feature.

Television receivers are one of the few products which, in relation to the Consumer Price Index, have been continually going down in price.

The U.S. consumer electronics manufacturing industry, because of competitive and price pressures, is showing very poor profit performance. It does not need S. 643 with its new and onerous addition to the long list of regulations to which the industry is already subject.

I have had a great deal of experience with the Consumer Product Safety Act. I know S. 643 is copied in many respects paragraph after paragraph from that law. And I think that is very poor parentage for any law to have.

Thank you.

Senator DURKIN. Thank you, Mr. Day.

Mr. FALK. Good morning, Mr. Chairman. My name is Bernard H. Falk. I am president of the National Electrical Manufacturers Association, NEMA, which is the principal national trade association of electrical manufacturing industry. The association has some 550 member manufacturing companies affiliated with one or more of our 70 product sections.

The electrical products within NEMA's scope are used either as components or as equipment in all major phases of the generation, transmission, distribution, control, and utilization of electrical energy. Some of these products may be regarded as consumer products and numerous others are used as components of consumer products.

Our association is opposed to this bill both in concept and in form. Not only is there an absence of a demonstrated need; but passage of this measure would result in severe damage to the free market economy through such factors as distortion of consumer choice, significant increase in product cost to the consumer, adverse effects upon competition, and reduced innovation in product design, testing, and manufacturing.

Further, in reviewing the bill, section by section, we encountered numerous points wherein the proposal seemed unclear, inconsistent, unreasonable, and impossible of achievement. We have submitted written comments on a section-by-section basis in our letter of October 29, 1975, and we would appreciate the chairman making these comments part of the hearing record.

Let me start off first with the basic question of whether the cost that would be saddled upon the American consumer and the American taxpayer by this bill will truly be effective and worthwhile in "the fair and efficient functioning of a free market economy."

Considering the tens of thousands of consumer products, almost any amount of money could be spent in developing test protocols. The bill's authors have chosen to suggest an appropriation of approximately \$9 million per year of Federal funds to be spent by the Federal Trade Commission and the Bureau of Standards.

We submit, however, that these Federal expenses are the mere tip of an iceberg of expenditures that will be caused. First of such

additional expenditures that will be a burden on the economy is the participation by private parties in the development of the proposed test protocols.

Second will be the performance of new tests, some doubtless similar to those that manufacturers have continually been making on their products, but which will now have to be repeated at great expense in possibly modified form under auspices that will render them formally certifiable in accordance with detailed regulations to be issued by the Commission, and with a view to the penalties under the bill for any less than letter-perfect compliance.

This bill, rather surprisingly for such an innovative extension of governmental control, contains no foundation nor are we informed of or aware of any factual basis that supports the need for legislation of this type.

Furthermore, no actual prospect of any real usefulness to the consumer is demonstrated by this bill. Many characteristics of a given product are normally and readily evaluated by a consumer in his particular purchasing decision which may be quite aside from any federally decided "importance of each consumer product to the average consumer" or the "per unit annual consumption thereof." We therefore conceive the necessity of reasonable desirability for Government to supervise testing of all consumer products. In the absence of assuring that product testing is necessary in order to avoid an unfair or misleading trade practice; the Federal Government should not be placing this costly burden on the marketplace.

The imposition of Federal test protocols could only be seriously considered in cases where there are as a minimum:

(a) A finding that consumers are in fact being deceived by test procedures customary within an industry.

(b) A finding that the benefits from subjecting a class of products to testing are substantially greater than those costs, and

(c) A finding (not a guess) that the normal consumer is unable to satisfactorily evaluate for his own purposes, the quality and performance characteristics of competing products with existing free market informational sources.

Additionally, it should be considered whether a Federal product-rating system might, in itself, have an anticompetitive effect and might be disruptive of existing marketplaces thus limiting the availability of products to various classes of consumers.

Even if the development of test protocols by the FTC made sense, we believe that there are many aspects of the bill which are excessive, unclear, and improper.

For instance, there are numerous aspects of the bill which have obviously been copied from the Consumer Product Safety Act, including the offeror process, the time constraints, and particularly the broad definition of consumer products going far beyond those products which the consumer actually purchases or is in a position to choose. There may be reasons for protecting the personal safety of people through Government constraints on products he encounters but does not purchase.

Where only quality and performance are involved, there is no such justification for such a wide-ranging definition of "consumer product"

or such haste in developing tests standards. Nor do we see justification for the concept that the average man needs or wants the Federal overseer to be guiding him in his personal decisions as to quality and performance in relation to his particular personal needs. If he contemplated such assistance, probably one of the first items of information that he would want would be the addition to his tax bill and to the cost of the product occasioned by such Government involvement. Unfortunately, revelation of these important aspects is not among the information dissemination requirements of the bill.

The provision in section 4 that the Commission, whenever it determines that a consumer product test protocol would "assist consumers" in making informed purchasing decisions, shall commence a proceeding for the development of a test protocol goes far beyond those few cases where test protocols might reasonably be considered necessary for proper consumer choices, and essentially puts the Commission in the position of eventually providing test protocols for every consumer product. It seems to be implicit in various portions of the bill that wherever a test protocol has been established, all products of that particular class must be tested.

In section 5 of the bill covering the development of test protocols, the concept of independent outside "offerors" follows the innovation of the Consumer Product Safety Act. However, the experience so far under the other act leads to the feeling that such an offeror process does not take advantage of the existing private economy's consensus standard development expertise but rather provides a basis for new bodies to be created, interposed between industry and Government to the satisfaction of neither and with little hope of satisfying the time schedules which are also indicated in this section of the bill.

The requirements of section 6, calling for each supplier or retailer to make a copy of the "complete results" available to each retailer, and by the retailer available to each consumer prior to sale would involve a printing and distribution effort almost beyond comprehension. The binders the FTC has recently proposed to require each retailer to assemble warranties in would be small in comparison with the library the retailer would need for the complete results of all tests on all consumer products that might be the subject of protocols.

Providing samples of products for which test protocols are in effect for verification tests to be made by the Commission will probably represent one of the lesser cost burdens. However, the provisions of section 8(b) forcing the supplier to furnish such samples without cost to the Commission is unreasonable and unfair, particularly to the small businessman. If the Commission needs samples for public purposes, they should be paid for out of the public treasury.

The bill would set the FTC up in the process of establishing technical standards, an activity generally foreign to its experience and expertise. While putting this agency into standards and testing activity, the bill is silent on how conflicts and duplications with activities of other Federal agencies would be avoided—for instance, Department of Commerce test procedures on energy efficiency of certain consumer products, GSA's specifications, including test procedures on numerous consumer products, EPA's activities on automotive mileage, FDA's requirements, Department of Agriculture grading standards,

and even CPSC's testing procedures. Also, the bill is deficient in having no preemption provisions respecting State and local regulations.

It is our conclusion that the present authority of the FTC to monitor truth in advertising is useful and is fully adequate. The Commission's present power to determine whether claims made are deceptive or misleading provides adequate basis for monitoring to see that the test basis of claims for quality and performance are legitimate. The Commission is in a position adequately to protect the consumer through these existing powers without instituting a costly new cumbersome and rigid imposition on the marketplace of federally mandated specific test procedures.

We have read carefully Chairman Moss' statement, as recorded in the Congressional Record, when he introduced this bill. We think there are many points where the information he was depending upon might be questioned, but in particular we would like to mention his indication that the bill would work against large manufacturers and against what has been described as an oligopoly and would favor the entry of new manufacturers. We suggest that to the contrary, the costs of having the prescribed tests performed and the results disseminated in accordance with the provisions of the bill may work very strongly against the introduction into the marketplace by a new or low-volume manufacturer who may not easily be able to fulfill these costly new governmental requirements.

Chairman Moss' introductory statement included the comment that, "It is clear to me that industry, as well as consumers, would welcome a program such as that which I propose in the Consumer Product Testing Act."

Senator Durkin, as a representative of one branch of industry, I must controvert that statement and say that we do not believe that the expenditure of Federal and of private funds that would be necessitated by this bill are desired by industry or are needed by the consumer.

We read this bill as a total intrusion into the market process by the Government, guiding competition solely into those characteristics selected by the FTC for test protocols (which surely could not cover all aspects of every product that may enter into some consumers' choices).

In summary, we regard this bill as one with not only many technical deficiencies in its specific provisions, but one that is unneeded, one that will add to the cost of consumer products, and one that will cause fundamental disruption to the free market economy, and even with these liabilities, will not fulfill its intended purpose.

Thank you.

[The letter referred to follows:]

NATIONAL ELECTRICAL MANUFACTURERS ASSOCIATION,
New York, N.Y., October 29, 1975.

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

DEAR MR. CHAIRMAN: During your Committee's review of the subject bill, which would establish uniform test protocols for consumer products, we request you to give consideration to the following comments.

By way of introduction, may we first mention that the National Electrical Manufacturers Association is the principal National Trade Association of the electrical manufacturing industry. The Association has some 550 member manufacturing companies affiliated with one or more of our 70 Product Sections. The

electrical products within NEMA's scope are used either as components or as equipment in all major phases of the generation, transmission, distribution, control and utilization of electrical energy. Some portion of these may be regarded as consumer products and numerous others are used as components of consumer products.

1. Following the sequence of the Bill, we comment first on one of the definitions in Section 3, namely that of "Consumer Product", which appears on Page 2, at lines 11-19.

The definition proposed seems essentially the same as that in the Consumer Product Safety Act and we suggest to you that it is inappropriate here, for two reasons. The definition includes not only products for sale to a consumer, but also those which might be used by a consumer even though it is the property of others, in a school, in recreation, or otherwise. As we understand the purpose of the present Bill, it is to assist the consumer in making informed purchasing decisions to assist in the fair and efficient functioning of a free market economy. For this purpose, it would seem that the bill would require test protocols to be established on products which the consumer does not himself purchase and therefore will not be making judgments in the market economy. Secondly, the lengthy involved definition of this term in the Consumer Product Safety Act has engendered great uncertainty among all parties including particularly the manufacturers in the distribution chain as to which products are "consumer products". Numerous advisory opinions have been rendered by the General Counsel of the CPSC based on a variety of rationales, none of which has yet been firmly tested. As a result, producers are often in doubt as to which products are subject to the Act and its reporting requirements. It would be most unfortunate if similar uncertainties existed as to what classes of products should have testing protocols under the present Bill.

We suggest that a definition that seems much more appropriate to the purpose of this Bill is that which is employed in the recently adopted Magnuson-Moss Warranty-Federal Trade Commission Improvement Act, namely: "the term 'consumer product' means any tangible personal property which is distributed in commerce and which is normally used for personal, family, or household purposes (including any such property intended to be attached to or installed in any real property without regard to whether it is so attached or installed)".

2. The definition of "product characteristics" lists several features of a consumer product which may be included in the test protocols. Some of these we feel to be unnecessary, confusing, and indeed impossible of attainment. We realize that this may become evident through the working of Section 5 which calls for identification of the product characteristics which can be reliably and uniformly tested, measured and reported, but we think that there should be limitation and clarification of these features in the definition so that an attainable objective would not be called for.

To mention some of these specifically, we refer to Page 3, line 11, where "durability" is mentioned. If durability is intended to be understood in terms of a certain number of test cycles under specified testing conditions, it would be one thing, but if there is an intention that durability be expressed as a specified level of performance over a specified period of time, it is not likely that appropriate test protocols could be developed.

On Page 3, lines 11 and 12, another feature is given as "average annual cost of operation". We believe that there are too many variables in usage, geographical location, cost of energy, other supplies necessary for operation, and other matters for such costs to be determinable in developing any test protocol.

On Page 3, line 13, another of the product characteristics is stated to be "frequency and nature of repair". We think it would be virtually impossible to meaningfully establish this before a product is put into use.

Finally, at Page 3, lines 14 and 15, one of the product characteristics is stated as "environmental impact in the manufacture, use and disposal of such product". The environmental impact in the manufacture of the product (as distinct from use and disposal) is generally not an attribute of the product itself, but of the manufacturing procedures. A test protocol on the product, therefore, could hardly cover it and if covered would be of little use to the consumer. Moreover, we believe that the environmental impact in the manufacture is largely covered by regulations of other agencies.

3. In Section 4 there are listed three relevant factors which are well stated matters that should be considered with respect to the development of test protocols. We are disappointed though, that in the introductory statement on Page

4, at lines 8-11, these factors are to be used only with respect to establishing priorities. We believe that these factors should be evaluated not only in establishing priorities but in the determination of whether a protocol should be developed at all. The present wording eventually would lead to the development of protocols for every consumer product on the basis that they would be of at least minimal assistance in making purchasing decisions.

4. Section 5(a) describes the initial steps in commencing a proceeding for the development of a test protocol, and at Page 5, lines 14-16, the Bill indicates that the Federal Register notice of the commencement state the Commission's determination that a consumer product test protocol would be of assistance to consumers in making informed decisions. The Commission should be required also to provide a statement of the basis for that determination, and that statement should be subject to public comment with the requirement that such comments be dealt with before development of the protocol is proceeded with.

5. We believe that the 180 day period of time provided at Page 6, line 1, for a test protocol to be developed is unrealistically short, as seems to be borne out by the experience of the Consumer Product Safety Commission. Recognizing this unrealistic time provision in the CPS Act, the House passed measure, S. 644, CPSC Improvements Act, incorporates a provision extending the standards development time.

6. In Subsection (c) on Page 6, at lines 18 and 19, the person or organization offering to develop a proposed consumer product test protocol would be required to provide for participation by technically competent consumers. In addition to consumer participation, it is essential that there be participation by manufacturers and other interested parties. This is somewhat better stated beginning at Page 7, line 23, and the two provisions seem redundant.

7. Section 5(c) (2), relative to contribution by the Commission to the costs of an offeror, reads essentially like the corresponding provisions of the Consumer Product Safety Act except for an added sentence which seems ambiguous. This sentence, appearing on Page 7, at lines 5-8—not only permits—but requires the Commission to reimburse offerors "for the cost of their professional services rendered whenever such offerors are not so reimbursed, directly or indirectly, by their employers". It is not clear what services are "professional services" in this context or how the cost of such services would be determined. It seems strange, moreover, that reimbursement for these particular costs should be mandated whereas other costs, including out-of-pocket expenses, would be covered only to the degree that the Commission agrees to do so and only in cases where the Commission determines that such contribution is likely to result in a more satisfactory standard.

8. We think that a considerable confusion of terms has crept into the Bill, as exemplified particularly in Section 5(c) (3) (A) which appears on Page 7 at lines 17-22. This paragraph relates to "standards recommended for promulgation". Elsewhere, the Bill provides no authority for promulgation of standards but rather for promulgation of the rather artificial term "consumer product test protocols". The words "test protocols" are also mentioned in this paragraph and it is not evident that any distinction is intended. Also, since such a test protocol is itself "a standardized procedure for performing . . . objective tests, inspections, or measurements," we cannot perceive a sound rationale for any reference to test methods for measurements of compliance with such test protocols. A test method for measuring compliance with a test procedure seems illogical.

9. In Section 5(f) (1), on Page 9, starting at line 13, the Commission is given 60 days to publish or withdraw a test protocol. Indications to date are that such a period has not been sufficient for the Consumer Product Safety Commission to review proposed standards or even offers to develop standards.

10. In Section 5(h) on Page 11, lines 3-6, there is the limitation that a consumer product test protocol may be revoked only if the Commission determines that such a test protocol is not reasonably necessary to assist consumers in making informed purchasing decisions. We believe that this provision is much too limiting and that there should be opportunity for revocation whenever a test protocol no longer is merited on the basis of the relevant factor listed in Section 4.

11. Section 6(b) starting at Page 11, line 19, calls for the Commission to require each supplier or retailer to make copies of "the complete results". The paragraph does not state the results of what. It seems to imply that whenever a consumer test protocol has become effective, all products covered by it will be tested in accordance with the test protocol. However, nowhere in the Bill, so far

as we can see, is there any requirement for products to be tested in accordance with the test protocol, and presumably each supplier would be free to use or not use the test protocol.

Even assuming that the tests have been made and the results of those tests compiled, making them available to each retailer without charge, and the retailer in turn making them available to each consumer, at point of sale, without charge, would seem to present an enormous publishing expense, would unduly burden retailers and would eliminate the alternative of the manufacturer covering the information in his general advertising.

12. In Section 8(b) on Page 13, lines 1-4, the requirement that a supplier furnish a reasonable number of consumer products for testing to the Commission without cost is plainly unreasonable and raises serious constitutional questions.

13. If Federal test protocols are to be promulgated, it would be desirable that they preempt State and local test standards and informative labeling provisions on the same products. Consumers will be confused if there are differing test results published due to lack of uniformity of specified test procedures.

14. After reviewing the details of the Bill, we must inform you of our opposition to its apparent overall content. It is difficult to be specific in general comment because the Bill is very hazy in a number of important aspects.

At the minimum, we see the Federal Trade Commission diverted from its existing duties so as to be set up as a new technical standards-writing body, doubtless leaning on, and borrowing from, many existing consensus standards developed through many years of experience and experimentation. If such "test protocols" are made available for anyone to use or not to use, the Bill would be undesirable as creating an additional and unneeded standards-writing organization.

On the other hand, if, as we surmise (see our comment No. 11 above) from an implication in Section 6(b) and from Section 2, there is an intent to require suppliers of consumer products to conduct performance tests pursuant to the FTC test protocols and to supply copies of the test results to each consumer, the Bill would have an economic impact of very great magnitude. The \$9,000,000 per year authorized to the two Federal agencies would be the merest tip of the iceberg of total costs imposed on the marketplace.

We would hope that, before final action on this Bill, the question as to whether testing under this legislation is to be mandatory will be resolved. At the scheduled hearings, views may be expressed to assist you in determining the economic impact of the Bill as well as its usefulness in consumer decisions.

As per our request of October 24, 1975 to testify at these hearings, we will appear to amplify NEMA's position based upon these written comments.

Very truly yours,

H. P. MICHENER,
Technical Director.

Senator DURKIN. Mr. Brown?

Mr. BROWN. Mr. Chairman, I am pleased to have the opportunity today to make known our views on S. 643, a bill to establish Federal testing of consumer products.

I am Daniel H. Brown, vice president, general counsel of Rheem Manufacturing Co. Our corporate offices are in New York City, and we make central heating and air-conditioning units, water heaters and a wide variety of other products.

I appear before the subcommittee today as the spokesman for the Gas Appliance Manufacturers Association and, of course, for the companies which comprise this association. Our association, GAMA, represents essentially all the manufacturers of appliances which are fired by natural and LP gas. Most of the appliances made by GAMA member companies would be included in the definition of "consumer product" as set out in section 3 of S. 643.

My appearance today is for the purpose of expressing, unequivocally, opposition to S. 643 because of the basic concepts underlying this bill. This opposition is founded on a firm conviction that no need has been shown, and, indeed, cannot be shown, for granting a very

broad power to a Federal agency to require widespread consumer product testing in accordance with federally developed test methods. In the absence of a demonstration of need, the Congress should not authorize a further intrusion on the working of the marketplace. This is our general thesis, and it is in support of this thesis that the balance of my statement is directed.

In initially analyzing S. 643, our methodology was the usual section-by-section approach, an approach which disclosed a number of specific objections. However, after considering these in their entirety, it was the unanimous conclusion of our study group that the basic concepts were the real culprits and could not be made acceptable simply by an amending process. For that reason, and in view of the time, my comments will not address the details of S. 643, except to the extent that the details are patently supportive of my thesis.

Since my thesis is "no need," it would follow that if an actual need could be shown, all of us would support any reasonable approach to satisfying that need. That is, indeed, as in the past, the case, and I can give you several good examples. As the awareness of the need to conserve energy developed, our association supported marketing approaches which disclosed to prospective purchasers a means of distinguishing more efficient from less efficient consumer products. We worked with the Department of Commerce and the NBS in the development and implementation of a voluntary appliance efficiency labeling program. We also worked very closely with the Senate Commerce Committee in the development of S. 349, passed earlier by the Senate. We supported these programs, because a need relative to the public interest had been shown convincingly.

Our experience with these programs is relevant today in at least one respect that may be of interest to you. In the appliance efficiency labeling program, we were dealing with the need to develop a test method to support a fair and reasonably accurate disclosure of one performance characteristic of a product; namely, energy consumption. This proved to be a very difficult and complex task.

Many, many meetings were required to develop a test method for perhaps the easiest of the products in the program—water heaters. On the basis of our experience, we suspect that many might fail to appreciate the difficult problems inherent in the development of test protocols.

GAMA and its members have also been involved very deeply in the development of test methods related to another consumer product performance characteristic and, again, where an actual need for such testing has been demonstrated. The need, in this example, is safety. For over 40 years, a very considerable effort has been directed toward the development of safety standards. These standards provide a basis for product design and for testing at independent laboratories for conformance with the design.

The issue of need, or as we see it, lack of need, requires an understanding of how the marketplace for gas appliances actually serves at present to make available to prospective purchasers all of the information required or desired to enable the making of an intelligent purchase decision. I propose now to describe for you consumer educational practices, additional to those mentioned earlier, which are customary

in our industry—practices which we believe clearly demonstrate the lack of need. These practices may not necessarily be the result of altruistic motivations, but are the natural results of the free competitive system and the need to satisfy and retain customers as the main condition precedent to staying in business. Possibly later you might want to suggest—specifically—how much more you think we should be doing. We are entirely open to receiving suggestions and constructive criticism.

By way of documentation, I have brought with me a small representative sample of the type of literature presently made available at the point of sale or available to a consumer at no cost should he or she request it.

Frequently, the advertising of our products urges prospective purchasers to request information and compare. I will be happy to leave these samples with your staff, if you wish, for such analysis as it might wish to make, and ask only that when they have served their purpose, they be returned to us, as I suspect we may have a similar need for them in connection with the companion bill, H.R. 10177.

I hope you will find that the literature is descriptive, in detail, of product characteristics. Any consumer who wants to inform himself prior to sale can do so in as much detail as he cares to go with respect to the performance characteristics of gas-fired consumer products.

But more than this, how else does our industry make an effort to assure the satisfaction of consumers? There are indirect efforts as well as the direct methods I have mentioned.

For example, in our association we have an active senior level consumer affairs board charged with the responsibility of developing, recommending, and implementing policies in such areas as product safety, product service, service training, and warranties, to mention a few.

To assist this board level group in its activities is a customer service committee which, in turn, has a number of task forces to deal with specific consumer affairs matters. Particularly in point to this presentation is a task force established for the very purpose of developing guidelines on a presale information. Other task forces deal with such matters as consumer information, complaint handling, parts distribution, service literature, and technical training and management.

In order that the customer service activities may coordinate on an industrywide basis, and by that I mean with elements of the gas industry who are not manufacturers and, therefore, not members of GAMA, there is a joint American Gas Association—GAMA Customer Service Committee. By means of this joint committee, there is a constant interplay of consumer interest matters between the manufacturers of gas appliances and the gas utilities who deal directly with consumers fortunate enough to have gas service.

In the same manufacturer—utility context, there has been established a program called GAIN—the acronym for gas appliance improvement network. Through this program the servicing departments of utilities report back to manufacturers on specific problems encountered with respect to a manufacturer's product. This program has been in effect for several years and has proven useful in alerting manufacturers early-on to problems or potential problems.

As we know, Senator Moss is personally aware of the work of MACAP—the major appliance consumer action panel—in addressing and resolving appliance users' complaints. This innovation on the part of the appliance industry has been widely acclaimed for its effectiveness in serving consumers—and in so doing, also providing a service to manufacturers.

While S. 643 looks to the presale availability of information, our consumer activities continue beyond the sale to assuring satisfaction throughout the life of the product. A vast amount of money and effort goes into the production of users' manuals which are made as simple as possible to understand. The real problem is to get the consumer to read them—or even keep them for future reference. We are also continually developing safety pamphlets or other instructional literature which is made available for distribution to consumers. You have perhaps seen some of these pieces used as bill stuffers by your gas utility.

To help utilities, distributors, dealers, and home economists understand the differences in the performance characteristics or utilitarian features of competing products, we assemble data, collate it and make it available to serve customer or consumer information ends. This was one recently prepared on gas ranges. It identifies each product by name and its product characteristics.

We believe, Mr. Chairman, that where a need has been demonstrated—as with the cases of product safety and energy efficiency disclosure—our industry has responded quickly and in an entirely adequate manner. In fact, our industry has been commended by the Chairman of the Consumer Product Safety Commission for initiatives directed toward improved product safety. But where a need has not been shown, we feel strongly that the Congress has no reason for legislating.

While I have been addressing a thesis associated with “need,” I am not unmindful of the fact that S. 643 is really not based on “need” but on the supposed desirability of “assisting” consumers in making informed purchase decisions. The language of section 4 makes this very clear. However, the issue presented by this difference is a fundamental and far-reaching one; namely, the extent to which the Federal Government should, or is even wanted to, take the individual consumer by the hand and lead him through the retail outlets of America.

I am not sure what your constituents are telling you, Senator Durkin, about the role they believe the Federal Government should play in “assisting” in all aspects of life. “from the womb to the tomb,” but unless I am not wired in on the right frequency, less rather than more Government—more capsulized assistance—more marketplace regulation—is what the people of this Nation and our President are calling for. S. 643 strikes us as not merely being out of touch with reality, but in direct opposition to the desires of the citizenry.

Moreover, the possible benefits to the consumer from S. 643 would be greatly outweighed by the costs of compliance with this legislation which would be in the main passed on to him.

The Congress has already empowered an agency to act with respect to unfair or deceptive trade practices. The Congress has already acted with respect to a need to involve the Federal Government in

prescribing minimum Federal standards for warranties. You may recall that GAMA supported such legislation, for there we could see a need. The Congress has already acted with respect to consumer product safety, again where need had been demonstrated.

Other examples could be cited. As citizens, as well as business people, we ask—is this not enough—at least until such time as a case has been made to support a need for more.

With all due respect, Mr. Chairman, our recommendation is that S. 643 not be favorably reported, and I thank you for listening to our statement.

[The attachment referred to follows:]

COMMENTS ON S. 643

GENERAL

One general observation is that S. 643 is poorly drafted. For one thing, there is no language which spells out the obligations of a manufacturer. This is the result of oversight rather than any inclination to support a voluntary program. The definitions need tightening up. The criteria for initiating a test protocol proceeding are very broad. The Act would use the very cumbersome offeror process that was first introduced by the Consumer Product Safety Act. The rule-making authority of the FTC departs from the requirements imposed by Title 2 of the Magnuson-Moss Warranty/FTC Improvement Act. The bill does not include a preemption clause. In short, the bill is a bad bill associated with a bad concept.

1. SPECIFICS

The bill contains no statement of Congressional findings. While it is not obligatory to include a Statement of Findings or a Declaration of Policy in the body of a bill, it is frequently done, as, for example, in the Consumer Product Safety Act. A number of other examples could be provided. A Statement of Findings represents good legislative drafting, for it exposes legislation to scrutiny on the basis of analyzing the need for the legislation. Without a Statement of Findings, there is no assertion of a need for a protocol testing Act. It would be appropriate to recommend the inclusion of such a statement, particularly since the bill would give very broad authority to the Federal Trade Commission with respect to *all* consumer products, and the power to determine which products should be included and which might be excluded from a requirement to test to federal protocols.

2. SECTION 3, DEFINITIONS

a. The definition of "consumer product" bears no relationship to the purpose of the bill which is to insure that consumers are informed prior to the making of a purchase decision. Any use of the product subsequent to the making of the first purchase would be irrelevant insofar as the purposes of the bill are concerned. Therefore, the definition could be revised to read—"Any article offered for sale to a consumer for use in or around a permanent or temporary household or residence, a school, or in recreation; or for the personal use, consumption or enjoyment by the person to whom the product is offered for sale."

b. The definition of "product characteristics" is bothersome in several respects. For example, are quality and performance distinguishable characteristics? How do you measure quality apart from performance? How do you measure and test in anticipation of "reasonably foreseeable abuse," or for a purpose for which a product may be adapted by a consumer? With respect to the question of durability, a statement to the effect that a product tested so as to indicate a durability for a stated period of time would very likely give rise to a written warranty under the Magnuson-Moss Warranty Act. Maintenance requirements are very frequently the responsibility of the consumer or user and might very well vary depending on the faithfulness of the consumer in accomplishing those requirements. The frequency and nature of repair would be extraordinarily difficult to quantify. The environmental impact in the process of manufacturing a product should not be a factor in the making of a purchase decision by a consumer. If the manufacturing process meets duly established requirements of the Environ-

mental Protection Agency, it is suggested that this subject should not be made the subject of FTC jurisdiction.

The definition of "product characteristics" is stated in mandatory terms so far as the specified features are concerned, and is open-ended so far as the FTC is concerned in adding to the features. It is questioned whether any specific features should be mentioned in the bill, for to be specific might very well require the testing of product characteristics for which no need to test has been demonstrated. At the very minimum, the definition of "product characteristics" should be discretionary with the FTC or should be limited to those specific product features for which there can be made a showing that a failure to adequately disclose would constitute an unfair marketplace practice.

One of the apparent difficulties in administering the Consumer Product Safety Act arises from the Commission's practice of addressing products on a multiple-risk basis rather than on a single-risk basis. To attempt to deal with a number of risks simultaneously obviously compounds the complexities of risk analysis and solution. We have believed for some time that the Consumer Product Safety Commission has handicapped itself by not simplifying its procedures by adopting a single risk rather than product approach. The same difficulty is perceived with respect to the definition of "product characteristics," and this is particularly true considering the complex problems associated with the development of product characteristic test methods. If the FTC were to be required to proceed on a multiple-characteristic basis, it would not be at all surprising to see the Commission totally unable to cope with the complexities.

3. SECTION 4, TEST PROTOCOLS

This section contemplates commencing a proceeding for the development of a test protocol whenever the Commission determines that product testing would "assist" consumers in making informed purchasing decisions. There is a world of difference between a determination that product testing would "assist" and "would be necessary." In the absence of a showing that product testing is "necessary" in order to avoid unfairness or misleading, the Federal Government ought not to be placed in the position of regulating the marketplace.

The listing of relevant factors should be given close attention with a view towards requiring the Commission to make specific findings which could be made the subject of judicial review. A proceeding to establish a test protocol should not be permitted by the Act until such time as a requirement to arrive at the specific findings has been fully satisfied. To simply require that the Commission "consider" all relevant factors is not enough. As an example of the type of findings which should be required, the following are suggested:

- a. A finding that consumers are, in fact, being misled or deceived by a practice which is customary within an industry.
- b. A finding that the costs of subjecting a class of products to testing is not disproportionate to measurable benefits.
- c. A finding that the average consumer cannot, with due diligence, evaluate the quality or performance characteristics of competing prior to purchase.
- d. A finding that the costs of testing would not serve to limit the availability of a product to a class of consumers.
- e. A finding that a consumer product testing requirement would not have an anti-competitive effect.
- f. A finding that a requirement to test would not be disruptive of the marketplace.

With respect to the relevant factors mentioned in the bill, it is noted that the "importance of every consumer product to the average consumer" ought not to be relevant, for it would be an attempt by the government to tell the consumer how important a product should be to him. To make such a factor a basis for regulatory decision would be an invasion of the consumer's right to assess that importance for himself.

4. SECTION 5, DEVELOPMENT OF TEST PROTOCOLS

This section adapts the offeror process first incorporated in the Consumer Product Safety Act. The experience of the Consumer Product Safety Commission certainly has not led to the conclusion that such a procedure is a sound one. The offeror process should not be made a part of the procedures of another agency until such time as the offeror process has been finally evaluated on the basis of CPSC experience.

In section 5(a)(3), there is again the concept of "assistance" rather than "necessity." This section, to be consistent with the comments on section 4, should require a publication of the findings required in support of the establishing of a priority for the commencement of a proceeding.

With respect to the time constraints included in section 5, it is observed that they may well be unrealistic. In the Consumer Product Safety Act and in the Magnuson-Moss Warranty Act, we have recent examples of the Congress attempting to prod the regulatory agencies by specifying time constraints. The presumption, apparently, is that without such prodding the regulatory agencies will sit back and fail to accomplish the legislative purpose. Experience with the CPSC and under the Warranty Act indicates that in the final analysis unreasonable time constraints work to the disadvantage of those who are regulated, not those who regulate. It would be reasonable to eliminate all time constraints, and exhort the Congress to address their dissatisfaction with the performance of the regulatory agencies by more effectively discharging their oversight responsibilities.

Section 5(c)(3)(A). This section uses the word "standards." Nowhere else in the bill does it appear that the establishing of minimum performance standards is contemplated. It would appear that the word "standards" was inadvertently substituted for "test protocols." If this assumption is incorrect, the strongest objection is expressed with respect to this section.

With respect to section 5(d), interested parties should be afforded the right to participate in the development of a test protocol undertaken by the Commission rather than by an offeror. The concept of section 5(c)(3)(B) should be written into this section.

Section 5(f)(2) contemplates product test method development in a rulemaking conducted pursuant to section 553 of Title 5 United States Code. In enacting the Federal Trade Commission Improvements Act (Title 2 of Public Law 93-637), the Congress considered the due process protections which should be associated with FTC rulemakings. These included the conduct of a hearing, the right to present oral or written testimony, and a limited right of cross-examination.

These are important rights carefully developed by the Congress in a Law which was enacted as recently as January 4, 1975. The citation in this section should be to Title 2 of Public Law 93-637 rather than to section 553 of Title 5 United States Code.

5. SECTION 6, DUTIES OF COMMISSION

Section 6(a)(1) requires the FTC to engage in a rulemaking. Except for this requirement, this section adds nothing to the authority given the Commission under the Federal Trade Commission Act. In the Magnuson-Moss Warranty Act, there were similar mandatory rulemakings but the Congress failed to appreciate the situation in which industry would be placed if the mandatory rulemakings were not finalized prior to the effective date of the Act. The requirement to promulgate should be permissive. Alternatively, any such regulations should be made an integral part of the rulemaking establishing a test protocol.

Section 6(a)(2) would require the encouraging or establishing of "programs" designed to furnish consumers with information which will enable them to utilize information developed under the consumer product test protocols. This would appear to place the Federal Trade Commission in the business of encouraging, at least by inference or implication, the purchase of brand-name products. One of the concerns with respect to the concept behind the legislation is that the information generated would be available to private publications and be used by them to satisfy their own private objectives. The bill would, in this sense, institutionalize *Consumer Reports*, which would be a totally unwarranted federal invasion of the "free" marketplace.

Section 6(b). This section would require the Commission to detail the methods to be used in making test results available at the retail point of sale. How this is to be done is a most important matter and should be determined on a case-by-case basis, and then only by following a rulemaking procedure. The methodology might be substantially different for different categories of products.

6. SECTION 8, COMPLIANCE TESTING

Section 8(b) would require that the Commission be furnished a reasonable number of consumer products without cost. This requirement is expressed without regard for the nature of the product or its cost. If the Federal Government

considers that it needs certain products for the purpose of evaluating the necessity for taking a governmental action, the financial burdens associated therewith should be borne by the taxpayers as a whole and not be individual manufacturers. If the Commission has a need for a product, it should be required to pay for it.

7. *Sections 9 and 10* are poorly drafted. So poorly, in fact, that it is not considered worth attempting to criticize them with any particularity.

8. The bill does not contain provisions for preempting state and local activity in the same regulatory area nor is provision made for judicial review. These deficiencies should be addressed.

Senator DURKIN. Thank you. We appreciate your coming.

I might add just by way of passing, I think my presence there was no great mandate for the President's policies inasmuch as he spent a whole day campaigning against me.

I have a couple of general questions.

The litany of perceived evils, Mr. Falk. You state there is an absence of a demonstrated need, passage would result in irreparable damage to the free market economy, distortion of consumer choice, a significant increase in product cost, adverse effects upon competition, reduced innovation in product testing, design, and manufacturing.

That seems to be the standard litany, and we seem to have the universal speechwriter and statement writer who perceives these evils in almost every bill that is going to benefit the consumer.

One, you say there is no demonstrated need. On what do you base that, sir?

Mr. FALK. If I may before I answer, as chairman of our organization, we have not been part of that past litany. We have supported just about every measure of legislation this committee has dealt with.

This is the first time, to my knowledge, we have flatly come out in opposition to a bill, so I have to take issue with your litany statement as far as our organization was concerned.

Senator DURKIN. I wasn't here, but did you support the Consumer Protection Agency bill?

Mr. FALK. We are opposed to the consumer protection agency bill. I am sorry. I amend that comment. But we have not appeared before this committee on the consumer protection agency bill.

This is the first time, to my knowledge, we have appeared. I stand corrected.

I gather what you would like me to do is go through each of these comments and give you my view in further elaboration of the other statements which were rather simple. The statements were rather simple.

I take it you would like me to begin with demonstrated need.

Well, I think the answer there is, up to this point in time, at least judging by the comments of Senator Moss' introductory statement, we do not see any demonstrated need. We fully recognize we have an imperfect marketplace. I am not sure that this measure will lead to increased perfection.

Do you want me to continue?

Senator DURKIN. Irreparable damage, that is kind of strong language.

Mr. FALK. The record will show it is severe damage. When I made my oral statement, that "irreparable" damage was changed to "severe," I believe the record will show.

Senator DURKIN. Is that because we improved the language of the bill?

Mr. FALK. No; I thought "irreparable" was a rather strong term. I thought perhaps "severe" was a better choice.

Senator DURKIN. Inasmuch as it is only severe instead of irreparable, what is the basis for the severe damage?

Mr. FALK. Let me elaborate on the phrases that follow. I think we have had up to now a marketplace which essentially consisted of, for better or for worse, a supplier and purchaser, consumer and manufacturer and, if you will, various portions of the distributional chain, which will end up in the retail store and so forth.

We are now introducing into that marketplace the heavy hand of the Federal Government, which will distort—and some group of individuals, the commission or somebody, will empower a small group of individuals to make decisions as to information that is or is not necessary for the consumer.

Aside from the merits of that, that to me represents distortion of a free choice.

Senator DURKIN. Are you saying the manufacturer and the individual consumer are on a par?

Mr. FALK. No; I am not saying that at all. I am saying the manufacturer presumably offers his product in a competitive environment.

I would think, if there are laws that exist and laws that are not natural laws of economics, but presumably water will seek its level and consumers will be opposed to that product, that doesn't make the best choice for them.

I see a rigidity built in here which would refer to all consumer products, because the bill is not limited. We will have the Federal Government take a posture, if you will, as to what information the consumer needs.

I think in the marketplace—I think it is clearly evident when the Federal Government with this authority takes a posture as to what information is needed, that represents a distortion.

Senator DURKIN. Just on a representative list of products we are talking about, could you provide for the subcommittee an inventory of the number of companies and what percentage of the dishwasher market they control? How many companies control what percentage of the television market, the toothpaste market, tires, radios, washing machines, electric razors, dehumidifiers, power mowers, floor covering?

We hear so much about competition and free economy. Can any one of the three of you provide us with this information to indicate the concentration and percentage, number of companies and the percentage of the market that they control of the products I've listed?

Mr. FALK. Mr. Chairman, speaking for our association, we would be limited in the information we could give you on that. I believe, if I am not mistaken, the FTC is presently undertaking such a study.

I must confess, I would be in no position to know what the term "control" means. You say control. Do you mean representing certain portions of the marketplace? I don't understand that term "control."

Senator DURKIN. Well, sales.

Mr. FALK. I think that information presumably can be made available through census figures to some degree.

I believe Senator Moss alluded to that in his statement.

Senator DURKIN. I didn't make the statement there would be irreparable damage to the free market economy. That is your statement.

Mr. FALK. Severe.

Senator DURKIN. Now modified to severe.

Mr. FALK. If you are referring to the competitive aspects, it is our judgment enactment of this bill would result in damage to the smaller competitor.

Let me give you a few examples.

Senator DURKIN. Excuse me. We hear that all the time. I have heard that.

Mr. FALK. I would like to outline why this would occur.

Let's assume we have, in a Federal product area, a Federal test protocol, and company "A" presumably is one of these large companies, and company "B" is a very small company.

Let's assume that company A finds that it is in a favorable position testwise with regard to the smaller company, company B.

Now, Company A has the advantage of probably advertising nationally on television. He can really milk this for all it's worth.

If company B is in that position, company B has a problem as to marketability in terms of obtaining a greater share of the market, because he does not have the resources to advertise nationally.

Further, if you talk in such areas, company A, let's assume, makes 10,000 units, and company B makes 10 units.

They both have about the same expenses in setting up tests. On a unit cost basis, I would assume the smaller company is faced with the situation where on the unit cost basis, because of adherence to these protocols, he has a higher per cost unit as compared to the larger company.

Senator DURKIN. My concern is several areas where a handful of companies control a substantial part of the market.

Mr. FALK. Under Federal legislation, the FTC and Justice Department presumably have the power to deal with those areas. And presumably they seem to be quite active in those areas.

I don't know that the purpose of this bill should be to deal with industry concentration or lack thereof. I think if it is a bill that is helpful in fostering competition, it is a plus. I question that.

Senator DURKIN. When you have a really concentrated market, though, do you really have competition? We hear the litany, we have to preserve the free market, there are adverse effects on competition. Is there a free market among a handful of companies?

Mr. FALK. I don't know how you define it. I don't know whether 4 companies, or 14 companies, or 3,000 companies represents concentration.

Senator DURKIN. How will the bill damage it then?

Mr. FALK. The bill, in my judgment, would likely be damaging to the smaller competitor. He will have higher unit costs. He will not be able to take advantage when his information comes out favorably as compared to the larger nationwide market here, the national media advertiser, and so forth.

In just matters of turning in free samples to the Government, obviously if you are making 10 items and you have to turn one of those 10 in, your unit costs are substantially greater than somebody making many times that.

Senator DURKIN. You think the consumer has a free choice in an oligopoly market or concentrated market?

Mr. FALK. Let me put it this way. I am opposed to situations where the consumer is faced with a "choice," brought about by illegal situations.

Senator DURKIN. Mr. Chairman—

Senator Moss [presiding]. You are doing very well, and I apologize for not being here. I couldn't get back on the commuter any faster. I understand you have to leave now and I appreciate your chairing the hearing this morning.

Mr. DAY. Can I answer his question a little bit from the standpoint of our position?

Senator Moss. We can go on from here—yes, do continue.

Mr. DAY. I would think, Senator, this damages the industry, because it is a way of having the Government do your shopping for you. It is bound to end up with official U.S. Government statements that a given make or model of a product is the best there is of this type of product. That will almost inevitably not just damage but often eliminate manufacturers who may not have the so-called best product.

In the consumer electronics business about half of the total volume is from audio products, things we amateurs call hi-fi, stereos, components, speakers, all the things that go into varying degrees of sophistication in the audio field. That is about as unconcentrated an industry as you can conceive of. There are a tremendous number of manufacturing companies of all sizes and all degrees of financial stability. There are companies constantly falling by the wayside. There are some just going into the audio business. But it is competition going on in a big way and there are a great many choices available to the consumer. The consumer also has available a large number of privately published magazines that tell him far more than I would want to know about the detailed features of certain makes of audio products, so I think you have abundant information available. You have a tremendous amount of competition. You don't have concentration in the marketplace. And I think it works very well, without the danger of a Government agency saying: This one product is "best."

Senator DURKIN. Just one question because I do have to go. Where in the bill, Mr. Day, does it say that the Government will say this product is the best?

Mr. DAY. I think that is the way it would work out if you have the test protocol that takes this long list of possible characteristics and comes up with a conclusion that a certain model has those characteristics in a greater degree than others.

It seems to me by its very nature this law would eliminate some products as not being as good as others. It is an officially condoned and officially sponsored "Consumer Reports."

Senator DURKIN. But isn't that our beloved free market that we hear so much about? Acting on the basis of an informed determination, and informed choice?

Mr. DAY. I think if the Government sets out to see that people all spend their money wisely, it will have to close down an awful lot of economic operations in this country.

Senator DURKIN. Probably a few governmental programs, too.

Senator Moss. We now require the publication of the fuel efficiency of an automobile with the sales literature. Would you say that that should be withdrawn?

Mr. DAY. I think that came about, Senator, because of the energy crisis, rather than because of a desire to guide people into how they should best spend their money. As I was pointing out in the earlier remarks here, there are certain trade-offs in the characteristics of a product. Some people may be more interested in the upholstering and styling of their automobile and others may be more interested in its durability for operating on rough roads, and the particular feature of the mileage has become associated with the energy crisis, just like the feature that was mentioned of the tar and nicotine content of cigarettes which is connected with health.

But I don't think the things advocated here relate either to health or the energy crisis.

Senator Moss. Well, you pointed out that some of the companies were going out of business in this electronics field and some are coming in. Those that are going out, presumably, didn't have as good a product but what about the consumer who had to define the worst amount of business by refusing to buy the product?

Mr. DAY. I don't know whether the consumer forced him out or whether competitive pressures were such that he wasn't able to have an adequate pricing structure. I think people were still buying from Grant's when they went into bankruptcy. I don't think the consumers forced them out of business.

Senator Moss. Well, I am sure that none of you advocate that the consumer not be given access to the fullest amount of information about a product before he buys it. Your objection is simply whether you get it from a private investigative agent that wants to sell its magazines or whether the Federal Government makes the test. Isn't that right?

Mr. DAY. I think we want him to have full information, but on the free market method as has been done in the past. It seems to me, this bill is a stultification of the whole advertising technique. The FTC does act as a policeman on advertising but advertising still operates strongly in influencing consumers' choices; and I think that is a desirable way to have the economy operate.

If it is all going to be sterilized with an NBS test, the whole advertising function, promotional function, sales function and so on is going to be pretty well shot down.

Senator Moss. Yes. But what do they use as the advertising element? That is the point, I think, like we were talking about cigarette advertising on television. Things they were saying to sell their products were in no way related to the product. It was really about the social values—

Mr. DAY. Looking manly, and so on.

Senator Moss. Riding the big horse or walking with a girl on the beach or all of these things that didn't really have anything to do with the product.

Mr. DAY. I think you are probably familiar with the fact that in the advertising of audio equipment—which I mentioned because it's about half of this industry—you will see some of those advertisements,

which are paid for, have a tremendous amount of detail, as to the various features.

Senator Moss. That is good.

Mr. DAY. But it is put in there as advertising. It doesn't say the NBS tells you this. The reason I mention them, although we have been hearing a lot about the FTC, from the appropriations provisions toward the back of S. 643, I take it that the NBS will in fact be running this program.

Senator Moss. Advertising can be stimulating and innovating and informative but it deals with the products the individual is going to buy. That is the thing. It ought to be educational as well as stimulating. This, it seems to me, is the thrust of the bill we are talking about.

Mr. DAY. One thing that has happened with restrictions on advertising, not to object to restrictions on a blanket basis, but sometimes they have become so restrictive that the manufacturer and the advertiser becomes limited to just speaking in superlatives and not really saying anything, because all the things he might want to say may turn out to be illegal.

Now, we have had that in a big way in FTC regulations of the sound power output of audio equipment, whether you can say how many watts it uses, and whether you can say what the RMS figures are. The regulations have become so complicated that they really are collapsing of their own weight and lots of companies have given up trying to really tell you anything about the sound power rating and they just tell it has a full sound or an unbeatable sound or excellent fidelity and you don't really learn anything.

Senator Moss. What is the uniform measure of the output for the stereo? What can we refer to?

Mr. DAY. It is about 3 or 4 pages long, and I wouldn't be able to repeat it, but it is a type of RMS rating. It has all kinds of restrictions on what you say about resistance and what you say about distortion. If you say anything at all, in other words, you have got to really write a book for them. One thing that has just happened now, is one could comply with these very onerous restrictions, and there is their approach, the Commission has changed their rules for about the 20th time, so that what a company first thought it had to comply with it now doesn't have to do comply with at all and the company's out on a limb. I don't think it is desirable to have advertising in the posture where it can just state generalities and not really say anything informative.

One thing I want to comment on, Mr. Chairman, on a little different subject. I mentioned earlier, that this bill is quite similar in its structure to the Consumer Product Safety Act, and there are certain things about that act that I think it would be undesirable to pick up even if you were going to enact a bill in this area. For one thing, you will notice in S. 643 it says that the Commission may decide that it is necessary to have a test protocol for a given product. That is just the way it works under the Product Safety Act. The Commission there decides there should be a standard for a product. There is no hearing at that stage. There is no opportunity for input from those who know a great deal about the subject as to whether there should be a standard before the decision by the Commission.

Then you go through this long procedure of this 270-day period and 180-day period and all the various things and when you come out at the end with your proposed test protocol, it is at that point that you then get input from the public as to whether you should have had a test protocol in the first place. In fact, the provision in here isn't as good as it is in the Product Safety Act, because in the Product Safety Act, although you have to wait until the very end of the procedure to be heard as to whether any standard is necessary at all, at least, in that act, you are authorized to give oral testimony and have comment on a record of an actual hearing.

In this act all you do is have a rulemaking at the end. It seems to me, your rulemaking or your hearing as to whether there should be a protocol in the first place should come at the beginning rather than after it is all been done.

Senator Moss. Do you have objections to the offeror process in this bill, S. 643?

Mr. DAY. I have first the objection that, as has been confirmed, I think, for the Product Safety Act, the statutory time limits are very difficult to comply with on a realistic basis. The statutory time limits in the Product Safety Act have been unworkable for all the products that have come along in the CPSC standardmaking procedure. I also think it is going to be hard as time goes on, to get the required qualified consumer representatives to participate in the offeror and standard development process or in a test protocol process, because you can't pay them salaries. Because it turns out that they have very hard, time-consuming work. They sit there day after day listening to technical discussions and so on. What is the motivation for that? I can't see very many people making a career out of that. They might do it once to be helpful, but I think that will be a real problem, to get the qualified consumer participant people that can really contribute something.

Senator Moss. Thank you, gentlemen. Unfortunately, I didn't have a chance to hear carefully your original presentation, but I will read it very carefully. And I appreciate your coming, to give us your point of view on this legislation.

We will now hear from Dr. F. Karl Willenbrock, Director, Institute for Applied Technology, National Bureau of Standards, Department of Commerce.

We are pleased to have you before the subcommittee, Dr. Willenbrock. Would you identify your companion?

STATEMENT OF DR. KARL F. WILLENBROCK, DIRECTOR, INSTITUTE FOR APPLIED TECHNOLOGY, NATIONAL BUREAU OF STANDARDS, DEPARTMENT OF COMMERCE; ACCOMPANIED BY MARSHALL A. ISLER

Dr. WILLENBROCK. I am accompanied by Marshall A. Isler, head of our Center for Consumer Technology.

Mr. Chairman and members of the committee, I appreciate this opportunity to appear before you today and comment on the role that the NBS might play under S. 643, the Consumer Product Testing Act, a bill

"To regulate commerce by establishing uniform test protocols for consumer products, and for other purposes."

Although I am appearing before you only in a technical capacity, I would like to state for the record that the Department of Commerce strongly opposes the enactment of the mandatory requirements for manufacturers and retailers to provide certain consumer information.

A letter is being prepared by the Secretary of Commerce which will explain in detail the Department's objections to S. 643. It is requested that this letter be included in the record of these hearings.

The stated purpose of this bill is to establish reliable and uniform protocols, that is, test methods, that would reveal the quality and performance characteristics of consumer products subjected to such test methods and to disseminate the results obtained through such testing to consumers of those products. The bill would assign responsibility to the FTC to determine the need for test protocols, after first categorizing consumer products into several classes as a guide to the order in which it would promulgate the test protocols.

The FTC is directed to utilize the resources, facilities, and expertise of the National Bureau of Standards to develop consumer product test protocols.

The bill also provides that the Secretary of Commerce, through the NBS, shall develop the resources, facilities, and expertise necessary to assist the FTC in exercising its responsibilities under this act.

In this connection, the bill would amend section 2 of the NBS Organic Act to authorize, as an additional statutory function, the development of consumer product test protocols pursuant to the Consumer Product Testing Act.

The role of NBS under S. 643 as I read the bill, there are at least six activities which are appropriate for the NBS. These are:

1. To develop protocols for any product deemed necessary encompassing product characteristics of quality and performance;
2. To act as an offeror at the invitation of the FTC;
3. To participate in the offeror process by preparing requests for offeror proposals, evaluating proposals, monitoring development, and evaluating the product;
4. To evaluate existing protocols;
5. To develop mechanisms for furnishing information to consumers; and
6. To provide technical support for compliance testing.

Since the founding of the NBS in 1901, we have been engaged in activities associated with the development of test methods or protocols. Many of these protocols have been developed on a voluntary basis with private organizations and other Government agencies and have resulted in the establishment of standard practices incorporated in codes and specifications.

Thus, we have assisted in the development of many voluntary standards which were adopted by the private sector.

Two of our most recent efforts in the field of voluntary self-regulation by industry relating to energy conservation have been the very successful voluntary energy labeling program for household appliances and voluntary energy reduction program for household appliances, which is in an early stage of development. The labeling program,

although voluntary in nature, is similar to the role the Bureau would have under section 7 of the proposed bill.

The first of these programs is the voluntary labeling program for household appliances, and I would emphasize this is the energy labeling program. Under this program, in only 1½ years, the Department of Commerce has published in the Federal Register five final labeling specifications for:

- (a) Room air conditioners;
- (b) Refrigerators;
- (c) Freezers;
- (d) Refrigerator-freezers;
- (e) Water heaters.

I should add in parentheses, the water heaters are still in the process of being published. We have finished our work on it, and it is going through review in the Department.

These specifications include test protocol for measuring the energy efficiency, and the design of a label which is attached to the product for displaying product performance.

We have also done research on labeling specifications for clothes washers and dryers and kitchen ranges and ovens. The Department of Commerce plans to issue, by June 30, 1976, final labeling specifications on all of the appliances mentioned above and also on TV receivers and dishwashers. Under this program, DOC has established valuable working relationships with consumer groups, appliance manufacturers, and retailers.

Turning now to voluntary energy reduction program for household appliances, the Secretary of Commerce, through the NBS, has been actively involved in President Ford's directive set out in his state of the Union message, January 15, 1975, to establish a program whereby industry would voluntarily agree to the goal of a 20-percent average reduction in energy efficiency in all major household appliances offered in the marketplace by 1980.

We have received agreement from 100 percent of all major appliance manufacturers—and we define a major appliance manufacturer as having more than 5 percent of the market—and 94 percent of all manufacturers to participate in a voluntary program to achieve the overall 20-percent Presidential goal.

In only 6 months, the DOC has published in the Federal Register 13 proposed specifications on energy efficiency for the following household appliances: room air conditioners; refrigerators and refrigerator-freezers; freezers; water heaters, gas; water heaters, electric; gas ranges, electric ranges; clothes dryers, electric; clothes dryers, gas; clothes washers; dishwashers, monochrome television receivers; color television receivers.

The Department expects that final specifications for all of these appliances will be published by the end of this fiscal year.

I should now like to say a few words about NBS technical support to regulatory agencies.

In addition to its work in the voluntary area, NBS has provided technical support to both Federal as well as State and local governmental agencies in the development of mandatory protocols. Under the requirements of the Consumer Product Safety Act, the NBS is

also very active in supporting the Consumer Product Safety Commission (CPSC).

We act as the technical arm of the Commission in many aspects of consumer product safety. We analyze products that have failed for cause of failure, provide technical evaluations of safety standards, monitor standards development by offerors, develop test methods and test equipment, serve as technical advisors and consultants.

Speaking now of the technical capabilities of NBS, I would now like to elaborate on the engineering and scientific capabilities of the NBS relating to consumer products which would pertain to the NBS role under section 7 of S. 643.

Within our recently created Center for Consumer Product Technology, of which the director is here, are technical staff who develop test methods (protocols), evaluate test methods, test products, and perform research on products. They include many kinds of engineers (electrical, electronic, mechanical, chemical, and civil) and scientists such as physicists, chemists, and mathematicians. In those cases where expertise may be lacking, reinforcement may be obtained from the 3,000 staff personnel serving elsewhere within NBS.

The NBS also has other ongoing programs whose functions relate to the bill and whose expertise could be applied to carrying out its provisions. The Building Technology group, for example, has substantial expertise in products related to homes; such things as roofing, plumbing, windows, doors, insulation, and heating and cooling systems. Our fire safety research group has considerable expertise in the flammability of fabrics, household furnishings, and other products used by consumers. We also produce consensus engineering standards which relate to the public interest. Furthermore, we are in the process of developing a national voluntary laboratory accreditation program. This program will provide evaluation and accreditation of product testing laboratories on the basis of nationally acceptable criteria. The voluntary program will promote the intent of this bill by serving the needs of consumer, industry, and government, and others for assurance of reliable product testing.

Finally, a few words about the scope of S. 643. The bill covers those product characteristics dealing with quality and performance of literally thousands of individual consumer products. As such, the scope of the bill is enormous, and the implementation of it will be extremely complex. While the great variety of products involved and the diversity of product characteristics rely primarily on skill of physical scientists and engineers, these skills must be supported by expertise in the human aspects of product usage.

Thus, while the Bureau has the experience and know-how in the production of test methods and standards, we would require substantial additional staff and resources to carry out the role proposed in section 7 of S. 643.

This concludes my testimony, and I shall be pleased to answer any questions.

Senator Moss. Thank you very much, Dr. Willenbrock, for your testimony, and when the letter is completed that you referred to, it will be incorporated in the record.

Dr. WILLENBROCK. Thank you very much, Mr. Chairman.

Senator Moss. You indicated that the DOC opposes S. 643 as it is written. I am aware that this is a question applying somewhat to your technical capacity, but does the Department believe there is a need for comparison performance data to assist consumers in making purchasing decisions?

Dr. WILLENBROCK. I think it is fair to say that the policy of the Department is that there should be full information available to the consumer, and that it is desirous of having well-informed consumers, and that the consumer public be well informed to make the proper purchases.

In essence, full information is essential to fair and efficient functioning of a free market economy. However, the Department feels that objective can be reached by voluntary, rather than by mandatory, means.

I think that is in essence the position of the Department.

Senator Moss. How would the data from this voluntary program be communicated to consumers?

Dr. WILLENBROCK. I can cite as an example, Mr. Chairman, our present procedures in regard to the voluntary program we have on energy efficiency. This is a program which has developed very effectively and has had some interesting impact on the consumer market already.

The energy efficiency labeling that we have been able to accomplish so far, the one that is most advanced, has been the window air-conditioners. These are the 115-volt variety. And we note the period during which this program has been in effect, roughly June 1974 to June 1975, there has been an increase in the energy efficiency rating of available models on the market.

In other words, it is our conclusion that the labeling system which we have developed—and I have an example of the type of label we have used and specified in our program—has indeed influenced the consumer to buy the models with the higher efficiency rating.

Consumer response has, in turn, influenced the manufacturer to offer models with higher energy efficiency rating. So we cite that as an example of how the system has worked in this particular area.

Senator Moss. This bill would require the FTC to use the offeror procedures. Wouldn't that really encompass what we are talking about, then, in the so-called voluntary program?

Dr. WILLENBROCK. The use of the offeror procedure, which is similar to that specified in the Consumer Product Safety Act, is one of the interesting proposals of this act. It certainly would involve the private sector in the development of the appropriate specifications and test protocol. It will certainly give the private sector an opportunity to participate in the development process.

Senator Moss. The thing that strikes me is that we are talking about this energy usage that has been developed, but that really came out of a speech of the President's, where he said we are in trouble as a Nation because we are using too much energy; I therefore call on industry to cut this consumption by 20 percent.

Now, he asked that in a cooperative way, but in a sense, he was saying to them, you better get down to 20 percent or we will begin to look for some other way to cut consumption.

Now, by having the offeror procedure here, aren't we really calling on industry to come in with ways of measuring the efficiency and operational ability of products, so that the information can be made available to the purchaser?

Dr. WILLENBROCK. Yes, sir. The offeror process does involve the private sector in this development process, which, I think, is highly desirable because the overwhelming amount of expertise in these areas is in the private sector. So calling on the private sector to get involved, is highly desirable.

This offeror technique needs to be explored to see if it can, indeed, produce the results desired.

Senator Moss. You indicated, of course, there would have to be an increase in personnel, if the Bureau had to take on this additional work. What does that translate out to in money? Have you made any estimate of that, and how much do you believe would be required?

Dr. WILLENBROCK. We could not make a meaningful estimate now because it is something we would presumably have to develop with FTC as to what level of effort they were concerned about here. The authorization which is indicated in the act is one that is appropriate, in my perception, for the program of this type.

I might give you as one indication, for our present label and energy labeling program, we have resources in excess of \$2.5 million to run those two programs.

Senator Moss. What contribution has NBS made to the tire quality grading program.

Dr. WILLENBROCK. At one time the NBS operated an office for vehicle system research for the DOT. About 4 years ago that was transferred to the DOT, and with it went the expertise in the tire area. So we have had no direct relationship with that.

Senator Moss. You have dropped out of whatever participation you did have in that?

Dr. WILLENBROCK. We did issue a consumer brochure on tires, but that was the only action we had.

Senator Moss. Do you think—absent some kind of pressure such as that placed on the appliance manufacturers by the President's speech—that we could look for additional voluntary programs to spring up in the industry for other products characteristics?

Dr. WILLENBROCK. I think that is a difficult question to answer, Mr. Chairman. I really don't know, since we haven't tested the market in some of these other areas.

Test protocols do exist that have been developed by trade associations or other groups in specific areas. In other areas there are no test protocols available.

So the test protocol, in some ways, indicates a concern and interest on the part of the industrial group to worry about a test method for measuring performance.

In the energy-related areas, the reason we were able to get that program going so fast was because the test protocols did exist already for some products. All we had to do was select and adopt the protocols and develop a uniform scheme and uniform label program.

That is where our major effort went.

Senator Moss. Would it be accurate to say that the technical work to be done in this area doesn't present an insurmountable problem?

The only question is whether it is desirable to go this way, so far as controlling the market and influencing consumer choice?

Dr. WILLENBROCK. Yes, sir. I would say that on the basis of our experience, which includes our own work in this area, our experience with the CPSC, and before that with the Bureau of Product Safety, we have built up and are developing the expertise to be able to contribute effectively in the way that the bill has indicated.

Senator Moss. You have the ability to work cooperatively on protocols that are brought in by industry themselves and monitoring that and making judgments on it?

Dr. WILLENBROCK. Yes, sir. We are carrying out that function right now for the CPSC.

Senator Moss. Thank you very much.

I think that is the bell that is going to summon me out to vote, so we have finished right on time.

We do, indeed, appreciate everyone's testimony.

[Whereupon, the hearing was recessed.]

[The following information was subsequently received for the record:]

DEPARTMENT OF COMMERCE,
NOVEMBER 12, 1975.

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

DEAR MR. CHAIRMAN: This is in response to your request for the views of the Department of Commerce on S. 643. The Consumer Product Testing Act of 1975, a bill "To regulate commerce by establishing uniform test protocols for consumer products, and for other purposes."

The stated purpose of this bill is to establish reliable and uniform protocols (i.e., test methods) that would reveal the quality and performance characteristics of consumer products subjected to such test methods and to disseminate the results obtained through such testing to consumers of those products. The bill would assign responsibility to the Federal Trade Commission to develop test protocols, after first categorizing consumer products into several classes, and then setting priorities among such classes as a guide to the order in which it would promulgate the test protocols.

The Federal Trade Commission is directed to utilize the resources, facilities and expertise of the National Bureau of Standards to develop consumer product test protocols. The bill also provides that the Secretary of Commerce, through the National Bureau of Standards, shall develop the resources, facilities and expertise necessary to assist the FTC in exercising its responsibilities under this Act. In this connection, the bill would amend section 2 of the NBS Organic Act to authorize, as an additional statutory function, the development of consumer product test protocols pursuant to the Consumer Product Testing Act.

The structure of S. 643 provides for the issuance by the Federal Trade Commission of test protocols of selected consumer products. If these protocols are violated by the manufacturer or retailer, the bill provides for the imposition of criminal penalties, including imprisonment for up to two years, and also for substantial civil penalties.

The objectives of S. 643 to provide meaningful information to consumers with respect to the performance of consumers products are commendable. In fact the bill would provide the consumer with the same information contained in a bill submitted to the Congress in 1969 by Mrs. Virginia Knauer, Special Assistant to the President for Consumer Affairs. The bill, S. 3286, The Consumer Product Testing Act of 1969 aimed at assisting consumers in evaluating products by promoting the development of adequate and reliable methods for testing characteristics of consumer products. This bill was part of the Administration's consumer program which was outlined in President Nixon's Consumer Message of 1968.

In this message President Nixon stated:

"No matter how alert and resourceful a purchaser may be, he is relatively helpless unless he has adequate, trustworthy information about the product he is considering and knows what to make of that information. The fullest product

description is useless if a consumer lacks the understanding or the will to utilize it.

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

S. 3286 was designed to implement the policy that informed consumers are essential to the fair and efficient functioning of a free market economy and to develop on a voluntary basis another meaningful link in the chain of communication between the consumer and the producer. In fact, Secretary Morton in his address before the National Press Club on September 25, 1975, announced that next spring the Department of Commerce will be holding a series of public hearings in several cities to hear consumer opinion about present consumer product information and to explore what additional consumer product information may be needed.

Unlike S. 3286 which provides a voluntary framework for providing information on consumer products, the provisions of S. 643 provide a rigorous regulatory framework which makes it mandatory for manufacturers and retailers to provide such consumer information.

President Ford, in his speech before the U.S. Chamber of Commerce of the United States in Washington, on April 28, stated that while the intention of regulation which is concerned with social issues such as occupational safety, consumer product safety and the environment is to protect the consumer, it sometimes does just the opposite. The central issue is a need for the proper assessment and evaluation of cost and benefits.

President Ford stated:

"When I talk about cost, I am not just talking about cost figures in a book-keeping ledger. I am talking about what you pay in the marketplace, in the supermarket, in the clothing store, in the ladies' boutique."

We regard this bill, S. 643, as another example of unnecessary regulatory activity. The procedures spelled out in the bill are administratively awkward, cumbersome, and lengthy. Compared to a voluntary program, such procedures would be extremely costly to carry out.

In the United States standards making has been carried predominately through private standardization bodies on a voluntary basis. The Federal Government has only imposed mandatory standards in areas of health and safety of the public. It should be noted that consumer product information labeling as contemplated by S. 643 does not involve either health or safety.

Moreover, it is emphasized that in Europe, where there has been particular interest in informative labeling programs (the earliest program being established in Sweden in 1951), all such programs have been voluntary. Voluntary programs of this nature have been initiated in Denmark, Finland, France, Germany, the Netherlands, Norway, Switzerland, and the United Kingdom. These programs have four features in common: (1) Manufacturers participate in them on a voluntary basis; (2) the programs merely report what the performance level is; (3) the programs deal principally with performance characteristics that can be measured; and (4) the programs utilize fixed labeling formats that present information to consumers in simplified form.

Since the founding of the National Bureau of Standards in 1901, we have been engaged in cooperative activities on a voluntary basis with private organizations and other government agencies in the establishment of standard practices incorporated in codes and specifications. Thus, we have assisted in the development of many voluntary standards which were adopted by the private sector.

Two of our most recent efforts in the field of voluntary self-regulation by industry have been the Voluntary Labeling Program for Household Appliances to effect energy conservation and the Voluntary Energy Reduction Program for Household Appliances.

Under the Voluntary Labeling Program for Household Appliances to effect energy conservation in only a year and one-half the Department of Commerce has published in the Federal Register five final labeling specifications for: (a) Room air conditioners; (b) refrigerators; (c) freezers; (d) refrigerator-freezers; and (e) water heaters.

It has also done research on labeling specifications for clothes washers and dryers and kitchen ranges and ovens.

The Department of Commerce plans to issue by June 30, 1976, final labeling specifications on all of the appliances mentioned above and also on television receivers and dishwashers.

Under this program, the Department of Commerce has established valuable working relationships with consumer groups, appliance manufacturers and retailers.

VOLUNTARY ENERGY REDUCTION PROGRAM FOR HOUSEHOLD APPLIANCES

The Secretary of Commerce through the National Bureau of Standards has been actively involved in President Ford's directive set out in his State of the Union Message (January 15, 1975) to establish a program whereby industry would voluntarily agree to the goal of a 20% average reduction in energy use in all major household appliances by 1980.

We have received agreement from 100% of all major appliance manufacturers and 94% of all manufacturers to participate in a voluntary program to achieve the overall 20% Presidential goal.

In only six months the Department of Commerce has published in the Federal Register *thirteen* proposed specifications on energy efficiency for the following household appliances: (a) Room air conditioners; (b) refrigerators and refrigerator-freezers; (c) freezers; (d) water heaters, gas; (e) water heaters, electric; (f) ranges, gas; (g) ranges, electric; (h) clothes dryers, gas; (i) clothes dryers, electric; (j) clothes washers; (k) dishwashers; (l) television receivers, monochrome; and (m) television receivers, color.

The Department of Commerce expects that final specifications for all of these appliances will be published by the end of this fiscal year.

In conclusion, this Administration recognized as early as 1968 that it is usually difficult and sometimes impossible for consumers to evaluate product characteristics such as color, durability, and efficiency without actually buying the product and using it. For consumers, this trial-and-error process may be suitable in the purchase of inexpensive products but can lead to substantial financial loss, serious inconvenience, and consumer dissatisfaction in the purchase of more expensive products.

We agree that there should be a program which would provide the consumer with a trustworthy information about the product he is considering which would enable him to make informed market choices.

We oppose S. 643 because the mechanism it provides for accomplishing this purpose is **mandatory in nature, unduly costly, and administratively awkward and complex.**

We would support a bill which could be modeled on the Department of Commerce experience in our Voluntary Labeling Program for Household Appliances and our Voluntary Energy Reduction Program for Household Appliances. Based on our experience with these two voluntary programs, we believe competitive market forces would lead most manufacturers to participate in such a consumer product information program. For example, over 95% by sales volume of manufacturers of room air conditioners are participating in the Department of Commerce energy labeling program.

We are willing to cooperate with your committee in amending S. 643 to this end.

We have been advised by the Office of Management and Budget that there would be no objection to the submission of this report to your committee from the standpoint of the Administration's program.

Sincerely,

ROGERS MORTON, *Secretary.*

CONSUMER PRODUCT TESTING ACT

WEDNESDAY, NOVEMBER 12, 1975

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

The subcommittee was reconvened, pursuant to adjournment, at 9:50 a.m. in room 4200 of the Dirksen Senate Office Building, the Hon. Frank E. Moss (chairman of the subcommittee) presiding.

Senator Moss. The subcommittee will come to order.

The Subcommittee for Consumers will continue hearings that we have been holding on S. 643. I am going to ask the witnesses to come to the table in pairs, with the exception of Mr. Borum.

Mr. David Swankin of the National Consumers League and Mr. John Ferguson of Washington, D.C., would you gentlemen come forward and sit at the table?

I have your written testimony, I would appreciate it if you would summarize and highlight to the extent that you can. We are under extreme time pressure this morning.

The full statement will be in the record.

Thank you.

STATEMENTS OF DAVID SWANKIN, NATIONAL CONSUMERS LEAGUE; AND JOHN FERGUSON, WASHINGTON, D.C.

Mr. SWANKIN. Thank you, Senator.

I am pleased to be here this morning to support the principle of S. 643. We support the bill, because we think it is right on target that in its declaration of policy, as it states, "Informed consumers are essential to the fair and efficient functioning of a free market economy."

Moreover, the incorporation of an "offeror" process to set the test protocols is also a principle which we whole-heartedly endorse. The offeror process, if properly implemented, can be one of the best methods of assuring good standards.

We understand that there is some harsh criticism of the whole idea of a bill like S. 643. I would hope that the critics would take a hard look at what they are rejecting. Currently, many are struggling with the entire concept of regulatory reform. It seems to me that this legislation offers a genuine alternative to regulation as usual. It is naive to think of regulatory reform as the mere removal of regulations. If regulations are to be removed, we will need to be certain that other institutional forces are in effect to assure a fair marketplace.

We are all familiar with the "normal" way of regulating in this area. The FTC concludes that a particular product is being marketed unfairly or deceptively. Then a case is brought, or a trade rule proceeding is begun, to eliminate the deception or unfairness. The products involved range from electric shavers to light bulbs, from autos to room air-conditioners. There follows the various cease and desist orders, consent decrees, et cetera. This then is the regulatory scheme that has given rise to the increasing number of calls for reform.

NCL supports S. 643 because we see in it an alternative to the usual way of regulating the marketplace. As we understand the bill, the FTC triggers the action by declaring that a consumer product test protocol "would be of assistance to consumers in making informed purchasing decisions;" that in turn kicks off a test protocol development process similar to the CPSC's offeror process; and once the protocol is developed and becomes effective, FTC is given authority to assure that the protocols are used, and used correctly.

The scheme of the bill is designed to substitute for excessive regulation by providing more information. S. 643 thus deserves our most careful attention to see that it is as well written as possible, since it might well be the forerunner of a new way of dealing with business-consumer-government relations.

It is in this spirit that we offer the following suggestions. Just one more word of an introductory nature before I begin. NCL has had as much experience as any other organization in observing first hand the only other "offeror" process in existence—that of the Consumer Product Safety Commission (CPSC). Most of our comments on improving S. 643 are based upon our considered opinion as a result of our close participation in and observation of the CPSC offeror process.

INITIATION OF THE PROCESS

Section 5 of the bill allows the FTC to trigger the test protocol process by publishing a notice in the Federal Register, in which FTC reports that it has decided "that a consumer product test protocol would be of assistance to consumers in making informed purchasing decisions."

We respectfully urge that this section be amended so as to require FTC to publish, on a regular basis, a priority list of products it believes are prime candidates for developing test protocols. If not, then the danger exists that less significant problems will be addressed than should be. Nothing could be more devastating to the program than to have efforts expended on insignificant problems.

This is especially true considering that section 14 of the bill appropriates relatively small amounts of money for the first 3 years of the program. If we've learned anything from the CPSC experience, it is that standard setting is expensive—much more expensive than had been anticipated. Moreover, the broader the participation, which is a good thing, the more expensive the development costs.

What we are trying to say here is it would be better to start counting the time from the time the process begins. We have seen too much time that elapses from negotiations and whatever.

What we are trying to do is speed up the development process. It is fair to begin until the process begins. That is the gist of that recommendation.

DEVELOPMENT OF THE TEST PROTOCOLS—TIME FRAME

Section 5(a) provides that a test protocol shall be developed by an offeror in "180 days after the publication of the notice." Experience under CPSC suggests a change might be in order. The time should begin to run from the date an offer is accepted, not from the date of publication. We have seen a number of situations where there was considerable delay between the time a request for offers was published, and the final acceptance. If the trigger period is changed to the date of acceptance, then the 180-day period is more reasonable.

Under the title "Consumer participation," as you know, NCL has been waging a yearlong campaign aimed at upgrading consumer input in standards setting under the CPSC. We are very pleased to note that sections 5(c)(1) and 5(c)(3) of this bill already contain language that takes into account and rectifies some of the problems that have arisen under the CPSC. By providing that the offeror must provide for "participation by technically competent consumers," the bill takes an important step forward. To be certain that there is no misunderstanding, however, that only "technically competent" consumers are to be included in the offerors plan, we suggest that the section be amended to read: "is providing for adequate participation by consumers, including consumer organizations and technically competent consumers."

I have attached to this testimony a memorandum to the CPSC dated August 6, 1975, in which NCL made some specific suggestions concerning upgrading consumer representation. I call the committee's attention, in particular, to suggestions A and B on page 4 of that memo, dealing with the issue of adequate consumer representation. That will, hopefully, give you a better insight as to why the amendment to section 5(c)(1) suggested above is considered by us to be so important.

Section 5(c)(2) recognizes the need to "reimburse offerors for the cost of their professional services."

We most strongly support that provision. We believe that most observers are coming to recognize the need to make funds available for consumers. In summarizing an October 14 meeting between the CPSC and the industry representatives who have participated in the first four CPSC standard development processes, the "Product Safety Letter" reported: "There was general agreement that consumers be compensated for salaries and time lost from jobs."

We believe that section 5(c)(2) already takes care of the problem, insofar as any offer where a consumer group becomes the offeror. However, in order to assure compensation for services rendered when a consumer or consumer group participates in the offer of another—as NCL did with ASTM in the bookmatch offer—we suggest the following amendment to section 5(c)(2):

The Commission shall reimburse offerors for the cost of their professional services and the professional services of other participants rendered . . ."

S. 643 wisely recognizes that the FTC has no technical capacity of its own either to develop, monitor, or evaluate test protocols, and therefore assigns these roles to the NBS. That makes good sense to us.

But the bill does not adequately distinguish between the role of the offeror and the role of the FTC-NBS. For example, S. 643, in section t(d), provides that the Commission when it:

Has determined that the development of a protocol by the Commission itself would be of benefit to the public . . . may proceed to develop and publish in the Register a proposed consumer product test protocol, whether or not it has accepted offers to develop such a proposed test protocol.

As I am sure you know, one of the most disappointing aspects of the CPSC's offeror process, to date, as it has been implemented to date, has been the CPSC's failure to define the respective roles of the offeror and the staff of the CPSC.

That is important because the system, we have concluded, will never work by itself. We believe that you have a magnificent opportunity to make certain that such confusion does not take place in the test protocol program.

In the CPSC situation, the problem, as we see it, is that the staff of the CPSC has been in a sense "second-guessing" the offeror. Under that law, where standards are being set governing health and safety, the role of the CPSC is to monitor vigorously the proceedings as carried out by the accepted offeror, and thereafter to evaluate the offeror's proposed standard in terms of the requirements of the law.

The CPSC, under their operating law, must and should be free to accept, modify, and reject the standard developed by an offeror—but not for any arbitrary reasons. Never for the reason that the staff thinks it would be better to do it this way than that way, just because it is a better offer.

Only if the offeror's product has failed to reduce adequately the unreasonable risk, or has otherwise failed to meet the other criteria imposed by law, should the CPSC superimpose its own standard or part thereof.

Now the reasons for such a scheme under the CPSC is that we are dealing there with health and safety regulation. In such a situation, and rightly so, the offeror has an important, but not the ultimate voice in what the standard should be. The ultimate protection to the public interest belongs and is reserved to the regulatory agency.

In S. 643 we are dealing with economic regulation, not health and safety, because of that, it seems to us that the respective roles of the FTC-NBS combine on the one hand, and the offeror on the other hand, should be different than the respective roles under CPSC.

As drafted, S. 643 makes them different, but not in the best way. As drafted, S. 643 envisions two separate and simultaneous proceedings to develop test protocols—one by the offeror, and one by FTC-NBS.

We think there is a better way.

We endorse the offeror process because, as we have stated before, we see in it the potential for really meaningful citizen-consumer-public interest input into standards setting. The bill has language in it, already cited, that would remedy the two most glaring deficiencies in the current offeror process—namely, adequate consumer representation and financial assistance.

We know, without adequate consumer representation, we would be the first ones dead set against the offeror process. With it, we think it might be the best way to go about setting standards.

If, indeed, these are the two essential ingredients necessary to make the offeror process work in the public interest, then why shouldn't we take the next logical step and draft language that states the FTC will accept for publication the test protocol developed by an offeror unless it finds that the protocol does not meet the two criteria set forth in section 5(a)(3) and (3); namely, it does not provide for a uniform and reliable test, or it does not provide for a method of reporting the test results that would be of assistance to consumers in making informed purchasing decisions.

In such a case, the FTC-NBS complex would be within its rights, and doing its duty, to superimpose its judgment. But unless FTC-NBS made such a finding, the test protocol developed by the offeror would have to be accepted. Putting it most forthrightly, if we are to have an offeror process, then let's use their product, unless there is a strong reason not to.

I don't believe too many people have considered this legislation in the context of regulatory reform. I must confess that at first neither did our organization. Yet on reflection, that is exactly what it is.

If we want the benefits of what the Consumer Product Testing Act can deliver—and we want them in the traditional, usual way, why don't we abandon the offeror process altogether and simply direct the FTC and the NBS to establish the test protocols?

If we want to take to a new level this bold experiment in public participation that we call the offeror process, then wouldn't it be wiser to on the one hand do those things necessary to assure its proper functioning, and then, having written those assurances into law give it a chance to flourish?

One final suggestion. I think the bill should state more clearly that a test protocol is not complete until and unless a standard for reporting the test results is included in the protocol.

Then, section 6(b), which requires the "complete results" to be made available, would have more meaning. We should have learned by now, in observing the FTC's ad substantiation program, that test results by themselves will be meaningless to consumers.

In many cases, the translation of the test results into meaningful language in a useful form will be the most difficult part of the standard. But without such a specific provision, the bill could be rendered meaningless.

We will be glad to submit suggested language if you would like.
[The letter referred to follows:]

NATIONAL CONSUMERS LEAGUE,
Washington, D.C., August 6, 1975.

MEMORANDUM

To: Chairman Richard Simpson and Commissioners Franklin, Kushner, Newman, and Pittle.

From: David Swankin, Swankin & Turner, Counsel to the League.

I. INTRODUCTION AND BACKGROUND: THE NCL PARTICIPATION IN DEVELOPING THE BOOKMATCH STANDARD

A. It is indeed timely to take a hard look at the offeror process to determine what changes, if any, need to be made in the way in which the program is being implemented. I think we can all agree that adequate consumer representation in the offeror process (a) is absolutely essential in order to attain the objectives of the law, and (b) will not happen automatically.

B. Most consumer advocates would agree that in the past consumer representation in standards-setting has been inadequate.

During hearings held by the National Commission on Product Safety, the then technical director of *Consumers Union* (publisher of *Consumers Reports*), Mr. Morris Kaplan, testified as follows:

"The industry representatives dominate the meetings. The consensus principle means in practice that the industry people have veto power over any action taken by the committee * * * In effect, then the object of the exercise is to get industry agreement, often arranged before the meeting anyway, and to push the standard through the paperwork of [the standard group's] procedures so that it may be issued as a [national] standard. Our proposals [as consumer representatives], our negative votes, are given "due deliberation," which is the phrase used in examining negative votes, but are ultimately vetoed or overridden, as without merit. After a while it seems fruitless to spend the time and money to go to such meetings * * * Volunteerism and token consumer representation have been generally unsuccessful in protecting the consumer interest, and for the reasons given, can be expected to be no more effective in the future."

Many of us believe that there were three major reasons that consumers were inadequately represented in standards-setting activities: (1) Lack of financial resources; (2) lack of expertise; and (3) unresponsiveness of the voluntary system to correct the problem.

C. Most efforts during the past decade to correct the above-listed problems could probably be accurately labeled as *procedural* efforts by the voluntary standards system to make consumer representation more likely. Major voluntary standards organizations such as A.N.S.I., A.S.T.M. and U.L., for example, created consumer counsels, and took steps to assure such things as better communications, more open processes, and in at least one instance (A.S.T.M.), set aside money to pay the expenses of consumer representatives to attend and participate in standards-setting activities.

In addition, at least two organizations (A.N.S.I. and A.S.T.M.) experimented with the creation of "consumer sounding boards" to improve consumer participation.

Despite these efforts, virtually all consumer organizations would probably say today that the quotation of Morris Kaplan was still true today.

D. When the NCL was asked by A.S.T.M. to organize the consumer input into the development of the bookmatch standard, we tried to take this background into account, and made an effort to avoid the obvious pitfalls. We were particularly sensitive to the following potential problems:

Lack of communication among the consumer representatives on the various task groups.

Lack of a voice on the management committee—the group responsible for major decisions.

Being in a position of responding to industry proposals, rather than vice versa.

Lack of adequate technical back-up to support the developing consumer position.

E. A number of steps were taken to meet each of these problems.

N.C.L. was given a vote on the management committee;

All consumer representatives organized themselves into a *consumer caucus*. The Caucus was composed of all consumer representatives, including: (1) N.C.L. representative, (2) representatives of Maryland and Virginia statewide consumer organizations, (3) members of A.S.T.M.'s F-15 Committee, (4) members of A.S.T.M.'s Delaware Valley Consumer Sounding Board, (5) representative of the public interest economics center, and (6) individual consumers.

The Caucus met together each and every time the standards committee met. The purpose of the meetings, in the beginning, was to assure that each person was aware of the issues and problems in every task group.

In addition, some issues raised at the consumer caucus meetings were of such importance that they could be referred directly to the management committee. For example, when the consumer caucus members felt they lacked any reliable data to make a judgment on the issue of *heat release of matches*, they requested the management committee to contract with an engineering firm for a report. (It should be noted here that the management committee went along with this request. Had it failed to, the Caucus would have commissioned the

study with its own funds. This is an extremely important matter, underscoring the absolute necessity for consumer representatives to have access to technical expertise.)

Most important, the Caucus prepared a criteria document instructing the committee as a whole as to what the consumer representatives wanted to see in the standard. The paper was prepared *after* 6 weeks of discussion and study, and *before* any drafting was undertaken.

F. Much of what was recommended was finally adopted. More important, the consumer paper became the point of departure. For the first time, instead of consumers responding to producers, the reverse was true. Producers were in the position of trying to convince the standards committee why they could not do what the consumers were asking for, whereas the usual situation is for consumers to complain that producer proposals are too weak. The consumer caucus worked. It allowed consumers to have a meaningful, strong input into the drafting of a safety standard. It brought together non-technical consumers and professional persons representing consumers, and allowed both access to independent scientific experts.

II. SUGGESTIONS

A. The Commission should require offerors to demonstrate that they will include representatives of consumer organizations as well as individual consumers in the development of the standard.

1. There has been an unfortunate tendency on the part of some observers of the standards-setting process to confuse *representation* of the consumer interest with *participation* by individual consumers. In my opinion, it is a mistake to think of consumer input as one or the other.

No responsible consumer advocate that I know of pretends to speak for 215 million citizens. What the responsible consumer advocate can do, however, is gather and analyze a body of data, and construct from that a position that represents the economic and/or social interest of the consuming public.

By the same token, we often hear it said by critics of the consumer advocates that "we can all represent the consumer interest, because we're all consumers." Such a point of view fails to acknowledge that there exists a special consumer interest, just as there is a producer interest, a labor interest, and so forth. The consumer interest can no more be fully represented by "anyone" just because he or she consumes, anymore than the labor interest can be properly represented by "anyone" who works.

That is not to say that the consumer advocates can or should ignore the feelings, opinions, and needs of individual consumers in developing a consumer interest position. Quite to the contrary. The responsible consumer advocate is first to recognize the need to be able to communicate with consumers at large, in order to be certain that their thoughts and opinions are factored into the process of defining the consumer position with regard to setting any particular standard.

2. Sometimes the individual consumers serving on a standards-development committee will have different opinions than the organized consumer representatives. But the organized representative has ways and means to demonstrate that his or her position is something more than one person's opinion. For instance, in setting the matchbook standard, the representatives of the *Maryland Citizens Consumer Council* supported one of their positions by supplying a survey they had taken of all of the state fire marshals on one controversial issue.

3. The organized consumer has more access to economists, sociologists, lawyers and other professionals (not including engineers) who are usually not represented in standards-development activities. It gives the organized consumer groups an analytical capacity not usually available to individual consumers.

4. The representatives of organized consumer groups are often more experienced in dealing with competing interests, and are often more experienced at sorting out fact from opinion, a key ingredient in good standards-setting.

B. The Commission should require offerors to demonstrate that technical support is available to consumer representatives.

1. The consumer interest cannot be properly represented only by nontechnical persons. Either technical back-up is available, or consumer representatives can only play a limited role.

2. For example, in developing the bookmatch standard, the issue arose concerning the technological feasibility of treating certain paperboard with flame-retardant chemicals. Certain interests claimed, among other things, that certain chemicals would create a serious toxicity problem. I submit that without technical backup, the consumer interest could only stand by and listen to the allegations, instead of being able to independently confirm or challenge them.

3. To limit technical backup is to limit consumer input to a mere expression of value judgments. While these are essential, they are not enough.

C. The Commission should require offerors to demonstrate that the rules of procedure under which the standard is developed will assure that the consumer interest position will be dealt with forthrightly.

1. It is insufficient for consumers to be brought into the standards-development process only in the beginning (to assert what they would like to see in the standard) and at the end (to review it). They must have input throughout.

2. When consumer representatives raise valid technical and policy issues, it is imperative that the rules of procedure under which an offeror is operating require that these issues be dealt with. It is not sufficient to dismiss a question or a proposition with a simple "non-meritorious" label.

3. Perhaps the best way to assure this is to insist that the offeror specifically include in the rationale that accompanies the standard *all* substantive consumer positions, and reasons why all rejected positions were in fact rejected.

D. The Commission should take appropriate steps to assure that the CPSC staff deals with the selected offeror in a *cooperative* relationship, and not as an adversary.

1. The role of the CPSC staff vis-a-vis the offeror is of course broader than the issue of consumer representation, but it is related.

2. It is clear that Congress, in adopting Section 7, specifically rejected the notion of the staff of CPSC developing safety standards in the first instance.

3. On the other hand, I can find nothing in the legislative history of the act that directed CPSC to treat offerors as adversaries. Yet the role of CPSC staff, to date, has been what I would characterize as either *laissez-faire* or *adversary*—but certainly not *cooperative*.

4. Once an offeror is selected, it seems to me that it would be in everyone's best interest to view the offeror as a contracted party. There should be full, frank, and frequent exchanges between offeror and staff. Staff should suggest, question, raise issues, and offer criticism. This will lead to better standards, with better justifications, fewer policy disagreements, and more rapid promulgation. Recent pronouncements along these lines by CPSC are most welcomed, and hopefully this marks a new era of improved relations between offerors and CPSC staff.

Senator Moss. Thank you, Mr. Swankin.

Mr. Ferguson, you may proceed with your statement.

Mr. FERGUSON. In order to expedite, I would like to limit myself this morning to a few general observations, leaving the text of my remarks previously submitted and my prior two occasions on which I testified on the report of the task force at the FTC to stand in lieu of an extended statement here.

I think S. 643 targets what is probably the most important and glaring defect in the consumer marketplace; namely, the ignorance of the consumer and his inability thereby to make rational marketplace choices.

The net effect of this is to deny and to frustrate fundamental marketplace democracy.

It seems to me S. 643 is a modest program with the potential for enormous economic and social impact.

I think that we would mislead ourselves, however, if we were to believe that the consequences and the full impact of 643, if enacted, will be felt and experienced in the marketplace in the short period of time.

Not only is it going to take time to develop the proposed protocols on the most important products, but it is going to take a substantial

amount of time and considerable effort to orient the consumer from the years of purchasing on methods other than an informed, rational basis to the methods contemplated and urged in S. 643.

Nonetheless, I think we ought to strive and strive mightily to that end.

It is not—and I think this is most important—it is not a regulatory scheme. It is essentially a surgical device. It seeks to identify the problem, and like the surgeon endeavors to cut out the problem and let the patient go back and live in an essentially free environment. It does so, it seems to me, at a minimum of cost, both in terms of dollars and in terms of limitation upon the free marketplace structure.

The benefits, it seems to me—some of them are quickly identifiable. Others may not be quite so immediately perceived.

Obviously first and perhaps the most important benefit of the bill is to enable the consumer to make a more rational marketplace choice than he has heretofore been able to make.

It enables him to make a better use of his limited expendable cash, indeed, to buy—I would suspect—the goods and services of more manufacturers and producers than in the absence of such rational information he is able to do today.

It will, it seems to me, have enormous impact on the competitive marketplace by lowering barriers to entry, and thereby enabling new manufacturers with a better idea, the ability to get into the marketplace by being able to address themselves to the rational concerns of consumers rather than to the irrational prejudices which seem to play so important a part in the marketing of goods and services today.

Finally, as I have indicated—moreover, as I have indicated in my prepared statement here today, S. 643 may, if not constituting the entire basis, move this country along the road toward the establishment of an overall national policy which will thereby enable us to move beyond our own boundaries and into the international standards area.

I have testified previously in the House in opposition to the U.S. participation in international standards-making, basing my testimony there essentially on the absence of any meaningful national program which—without which it seems to me we cannot deal on an international basis.

I think this bill may now permit us, if enacted, to move to the consideration of U.S. participation in international standards-making.

Finally, I think in my own mind this is the ultimate benefit. We perceive, by S. 643—I think a program like S. 643 is essential to the preservation of our free enterprise system.

Any economic system is entitled to continue and survive only so long as it serves the legitimate social concerns of the society in which it operates.

If society is denied the bases and the opportunity to make rational choices by the economic system operating in a country, then that economic system has lost its right to continue to exist, and some other system will have to supplant it.

It seems to me that with this bill, or with a program such as that envisioned by S. 643, we begin to give a new sense of credibility, a new framework within which our free enterprise system can essentially operate.

I think we can then, in time, say of our system, as we have said of it before, that it is indeed the best system.

I think that S. 643 is important and will become an important bulwark in the preservation of our free enterprise system.

I think with that I would like to say what I have said before. That is to endorse the proposal and the scope that is outlined in S. 643 and ask that it be given the most serious consideration and hopeful passage.

[The statement follows:]

STATEMENT OF JOHN R. FERGUSON

My name is John R. Ferguson. I am appearing here today as a private citizen and not for or on behalf of any group or organization.

I am engaged in the private practice of law, primarily in the antitrust area. From June of 1970 until August of 1972, I served with the Federal Trade Commission. In June of 1971, I was appointed Assistant General Counsel and, while in that capacity, chaired the Commission's Task Force on Industry Self Regulation. The report of the Task Force deals directly with the issues addressed in S. 643. I understand that a copy of the Task Force Report is in the possession of the Committee staff.

Subsequent to leaving the Federal Trade Commission, I have testified twice before Committees of Congress: first in April of 1974 before Congressman Moss' Committee on Interstate and Foreign Commerce, and on March 11th of this year before Senator Hart's Antitrust and Monopoly Subcommittee. My statements before each of those committees bears directly upon the subject matter of this hearing. It is my understanding that this Committee has been furnished copies of those statements.

The Task Force Report and my earlier statements support both the objectives and the procedures advanced in S. 643 and are incorporated by reference in this statement. To them, I have little to add. Accordingly, I have limited my comments to four aspects of S. 643 which I believe require further consideration and modification and to one very real benefit not previously considered which S. 643 may achieve; the benefit first.

Since at least 1970, the Congress has had before it in one form or another, a bill dealing with United States Government participation in international standards making. I believe I am correct in saying that Congress to date has enacted no legislation authorizing such participation. An objection, and to my mind the chief objection, to such legislation has been that, in the absence of a basic national policy dealing with standards making, the United States could not properly participate in international standards making. S. 643, though limited to consumer goods, represents a major step toward the declaration of a national policy. It seems to me that, if S. 643 becomes law, it may then be appropriate to consider anew United States participation in international standards activity.

S. 643 seeks the development of methods for measuring and reporting the performance of consumer goods, thereby enabling consumers to make more national market place choices. S. 643 thrusts to the heart of competition. It does not seek to regulate competition but to promote it in meaningful terms. In short, S. 643 endeavors to place the consumer with respect to consumer goods in somewhat the same position as is the manufacturer with respect to the purchase of producer goods. Section 3, paragraph (5) (F) is not, it seems to me, wholly consistent with the theme of S. 643. "Environmental impact" is a dis-economy and is the province of a specific Federal agency which issues not performance test protocols but pass/fail standards. Such standards bear little or no relationship to the open grading system contemplated by S. 643. If environmental impact represents a "feature" to be dealt with pursuant to S. 643, then why not safety? The point is that environmental considerations are outside the scope of what is otherwise a precisely focused legislative pattern. Moreover, the inclusion of environmental impact is likely to prolong unduly the development of test protocols and lead to conflict between federal agencies, I urge that consideration be given to striking Section 3, paragraph (5) (F).

Section 5(a) (2) and (3) require of the Commission that it include in its notice an identification of the product characteristics which "can be reliably and uniformly tested" and a declaration that a test protocol would be of assistance to consumers. While the Commission's initial notice should go as far as practical in these directions, it may be extremely difficult to achieve these

objectives prior to the proceedings which follow the giving of notice. Moreover, the mandatory nature of section 5 opens the door to protracted litigation upon the question of whether the commands of paragraphs 2 and 3 have been satisfied. Accordingly, I urge that these paragraphs be modified so as to give the Commission somewhat greater latitude in the required notice.

My final recommendation deals with section 5(h) and, more specifically with the last sentence ending with the words "purchasing decisions." I recommend that the sentence be amended by adding the phrase "or is not in the public interest." While a protocol may be useful in assisting consumers to make rational product choices, it may, nonetheless, not be in the public interest to maintain the protocol. Thus, for example, it may occur that the cost of developing and providing test results exceeds the benefit conferred on consumers. In such cases, the protocol ought to be withdrawn.

In the version of the bill available to me, section 4(2) begins with the phrase "the case with which." The phrase should, I believe, be substituted for by the word "whether."

In closing, let me once again affirm my support of S. 643. If enacted and enforced, S. 643 will in time not only aid the consumer in the marketplace, but lower barriers to entry, reduce prices and confer on the economy and competition benefits of truly substantial proportions.

STATEMENT OF JOHN FERGUSON, ESQ., OF BAKER, HOSTETLER & PATTERSON, CLEVELAND, OHIO, BEFORE HOUSE INTERSTATE AND FOREIGN COMMERCE COMMITTEE, APRIL 8, 1974

Mr. FERGUSON. Good morning.

Mr. Chairman, members of the committee, my name is John R. Ferguson, I am presently engaged in the private practice of law. My practice consists primarily of work in the trial area with emphasis on antitrust and securities litigation. I am appearing here today as an interested citizen and not on behalf of any group or organization.

Prior to returning to private practice in 1972, I was a member of the staff at the Federal Trade Commission. From June of 1970 when I joined the Commission until June of 1971, I was the Assistant to the Director of the Commission's Bureau of Competition. From June of 1971 to August of 1972 when I returned to private practice, I was Assistant General Counsel of the Commission.

During that latter period, I also served as chairman of the Commission's Task Forces on Industry Self Regulation. The Task Force dealt broadly with the question of product standards. In the conduct of our work, we received comments and suggestions from over 100 groups, organizations and individuals. Included among the commentators were representatives of consumers and of industry. In addition, we received nearly 20 comments from Government sources. On July 28, 1972, we submitted our final report to the Commission. The report was entitled "Performance Information, Standards and Certification Programs—Achieving Sociably Desirable Objectives."

In addition to my standards-related responsibilities as chairman of the Task Force, I was from time to time involved in the Commission's work relating to proposed legislation dealing with standards.

I am not an engineer and have no technical background in standards making. I have, on the other hand, had limited involvement in international standards making and somewhat greater involvement in dealing with United States based standards making organizations in the producer goods segment of the economy.

Through my experience in Government and private practice, I have had substantial involvement in assessing the potential impact of standards making on competition and on consumers.

Turning to H.R. 7506, "a bill to foster fuller United States participation in international trade by the promotion and support of representation of United States interests in international voluntary standards activity", it is my belief that the bill ought not become law at the present time. In reaching that conclusion, my overriding belief with respect to H.R. 7506 is that, since there exists no national policy regarding standards, there exists no clear fashion in which to determine whether to insure that the bill will achieve desired national goals. In the absence of a clearly defined national policy, I am genuinely concerned that the program contemplated by H.R. 7506 could lead to a lessening of competition and to further frustration of consumer marketplace democracy. It seems

to me that H.R. 7506 will, if enacted, represent an instance in which the international tail of balance of trade and payments wags the dog of national interests at least as important as balance of trade and payments.

In arriving at that position, I recognize the importance of standards to international trade; and I recognize the need for some coordination by the Federal Government of international standardization activities affecting the foreign and domestic commerce of the United States. Yet, these imperatives are not sufficiently compelling to warrant congressional endorsement of a program committing the Federal Government and Federal resources to an area where the most fundamental policy questions remain unanswered. While standards can have both a beneficial and an adverse effect on competition and can benefit as well as injure consumers, it is nonetheless a fact that, viewed historically, standards have tended to deter rather than promote competition, to prevent rather than facilitate new entry, and to impair rather than advance consumers' interests.

Among the basic national policy questions for which there exist no answers in this bill or elsewhere are: (1) What is a standard, and what makes any given standard socially acceptable or unacceptable; (2) what role, if any, should the Federal Government play in standards making; (3) what is a voluntary standard and under what circumstances should any given standard be voluntary or mandatory; and (4) are existing safeguards adequate to insure the protection of competition and the advancement of legitimate consumer interests: H.R. 7506 will have an impact on each of these questions but will not answer them squarely.

The word standards has many different meanings depending upon the context in which it is used. It may mean simply the definition of a unit of measure, it may mean a device for determining the level of performance achieved by a particular product, or it may mean an effort addressed to achieving product uniformity. Standards may be used to regulate product characteristics dealing with safety, quality, performance, and configuration to mention but a few.

It is, of course, extremely important to identify the context in which a standard is sought to be developed before the appropriate type of standard can be selected.

To illustrate, in *Structural Laminates, Inc. v. Douglas Fir Plywood Association* [261 F. Supp. 154 (D. Ore. 1966) aff'd per curiam, 399 F.2d 155 (9th Cir. 1968), cert. denied, 393 U.S. 1024 (1969)], the defendant trade association had adopted a standard for plywood which excluded three-ply plywood from the marketplace. The evidence showed that the three-ply product performed as well as traditional five-ply. The effect of the exclusionary standard was to prevent the entry into the market of a new competitor and eventually to bankrupt him. Obviously, there was no need of a configuration standard regarding the number of layers of wood. What was needed but was not present was a performance range standard against which to measure the relative performance of any given product.

The *Structural Laminates* case is not an isolated situation. There are hundreds of instances in which industries have developed standards which have had the effect of excluding competitors and the further consequence that consumers are denied new products of equal or superior performance and at lower prices than those already on the market. That Government is to be involved provides no assurance that the result will be more socially acceptable. Consider, as an example, the building codes in effect throughout the country.

Section 2, paragraph 3 of H.R. 7506, authorizes the Federal Government to involve itself and to expend its resources in standards making of every kind and on an international level. The bill provides no guidance and articulates no policy as to what type of standard is acceptable in any given context. In the absence of such guidance, it is likely that standards makers, even under the bill, will continue to pursue past practices. Thus, in the consumer goods sector of the economy, we can anticipate that the consumer's choice will be narrowed and that the consumer will continue to be denied product performance information upon which to make rational marketplace purchasing decisions.

Insofar as I am aware, there have been but two limited efforts in the United States to develop product informational standards for consumer goods, and those efforts met with great resistance. In my opinion, the program contemplated by H.R. 7506 will deter rather than promote the development of the informational standards so badly needed in the marketplace.

If the Congress were first to mandate the development of informational standards, and H.R. 7506 were to require adherence to that mandata in international

standards making, the bill would present far fewer opportunities for injury to competition and the consumer than it presently does.

I mentioned a moment ago that the intervention of Government has not historically provided any assurance that socially acceptable standards will be developed. Does H.R. 7506 hold out any prospect for change in this regard? I think not. The bill commits the Federal Government to a major direct and indirect role in the development of international standards. This commitment, when coupled with the dramatic increase in international standards making, will undoubtedly tend to diminish domestic standards efforts and lead to the displacement of existing standards by international standards. Yet, the bill does not allocate any specific substantive standards making responsibility to the Government as such.

Sections 4 and 6 of H.R. 7506, when taken together, empower the Secretary of Commerce to delegate to private organizations the responsibility for U.S. representation in international standards making and to fund such organizations. Given the absence in Government of adequate technical know-how with respect to most products and processes, there is every likelihood that the Secretary will turn over to private organizations the primary responsibility for all standards making activities. Thus, the role of Government is likely to be limited.

With regard to the Secretary's authority to designate a private organization to represent the United States, H.R. 7506 establishes a dubious procedure. Section 6(e) of the bill requires the Secretary to consult with the committees established by section 12 prior to approving any private testing organization under section 6(d). On the other hand, the Secretary may appoint under section 6(a) a private organization to represent the United States without consulting the section 12 committees. Surely the selection of a national representative is as important as the selection of a private testing organization and that selection should be subject to at least equal review.

Frankly, I do not believe that the Government should be directly involved in substantive standards making, except in the limited areas of health, safety and the environment. That task should be performed by, and I believe required of, private industry under carefully articulated procedures. The results of such private efforts should be further subject to intensive review to determine whether the standards developed are likely to prove both pro-competitive and of benefit to consumers. In my opinion, private standards making subject to Government review can be done at minimum cost and with enormous consumer benefit. Such private and Government effort would, I am confident, yield savings to consumers in the form of lower prices aggregating in the billions of dollars annually.

H.R. 7506 employs the phrase "voluntary standards". The word "voluntary" has historically been associated with standards making activities. The word "voluntary" as there used has been intended to convey a sense of competitive innocence. In fact many standards labeled voluntary by their drafters have become obligatory upon all who would compete in the relevant industry.

Indeed there are many standards dealing with health, safety and the environment which are never intended to require less than the strictest compliance. As I understand from the testimony of prior witnesses before this committee, standards dealing with health, safety and the environment are within the contemplation of H.R. 7506. Thus, to that extent at least, the bill anticipates international activity with respect to standards which will, it seems inescapable, mandate compliance. Moreover, the bill by its express terms establishes machinery for translating so-called voluntary standards into binding obligations.

Section 4, paragraph (3) states that the Secretary of Commerce shall encourage the use of international voluntary standards within the United States. Section 10(a) extends this requirement to all departments and agencies of the Federal Government. Anyone familiar with the standards movement is fully aware that the buying practices and requirements of large volume buyers such as the Federal Government or large industrial users soon limit the purchasing alternative open to smaller volume purchasers.

Moreover, and of greater ultimate importance are the provisions of section 3, paragraph (4). That paragraph deals with international standards assurance systems. Under authority of that paragraph, the Secretary is empowered to enter into agreements the effect of which is to require recognition of programs assuring that a product complies with an identified international standard. There is simply nothing voluntary about that scheme.

In short, the word voluntary as used in H.R. 7506 has little, if any, meaning and should not be employed in the bill.

Earlier in my remarks I referred to the *Structural Laminates* case as an illustration of the exclusionary effect which standards may have. That case and others unfortunately illustrate much more. They demonstrate the inadequacy of existing legal machinery to protect meaningful competition or to foster legitimate consumer interests.

H.R. 7506 does not in my opinion provide adequate protection of either competition or the consumer.

Section 7, paragraph (b) states that no international standardization activity shall be inconsistent with the antitrust laws. Section 3, paragraph (6) defines antitrust laws in a fashion which fails to include any reference to the FTC Act. By that omission, the legislation fails to include not only the liberal antitrust yardstick of the FTC Act but the developing consumer protection standard of that act.

Section 13 authorizes the FTC to seek a delisting of any listed international standard. Such proceedings are to be before a Department of Commerce hearing examiner. That procedure is, it seems to me, highly questionable. At the very least, the FTC should be entitled to commence proceedings within the FTC before administrative trial judges experienced in dealing with competing economic considerations.

In examining and reexamining H.R. 7506, I continue to remain concerned regarding the extent to which private international standards making activities will be immunized from attack under antitrust laws.

Section 14 of the bill notwithstanding, the provisions of the bill as a whole and of sections 6 and 10(6) in particular provide for governmental involvement of such a nature and to such an extent that I am genuinely concerned that private activities will be garbed in a cloak of antitrust immunity.

To recapitulate briefly. I am not against standards, indeed I am strongly in favor of them. I believe that standards properly developed can be an effective device, perhaps the most effective device, for lowering barriers to entry, for fostering competition and for bringing rational judgment to the marketplace. I genuinely wish that the Federal Government would initiate a truly meaningful standards making program.

At the same time, I am concerned that the Government not embark upon programs without having first answered fundamental policy questions. Those questions have not been answered with regard to standards and accordingly H.R. 7506 is fraught with dangerous possibilities.

I want to thank the committee for the opportunity to appear and to state my willingness to endeavor to answer any questions which you may have.

Mr. Moss, Mr. Ferguson, I want to thank you for appearing.

Mr. Broyhill.

Mr. BROYHILL. Thank you very much, Mr. Chairman.

I appreciate your coming before the committee, Mr. Ferguson.

Now I understand your problems with the standards making, but in the international field the standards making and setting of standards continues on and if our Government is not involved we are just going to be left behind and our products in this country are not going to comply with standards that are being set by other groups and other nations. Then are we going to be frozen out of the world markets? I don't see anything in your statement that addresses itself to this point.

Mr. FERGUSON. Congressman Broyhill, the very question that you have asked is one that troubled me throughout the preparation of my remarks and indeed has troubled me for some years because of my association with standards making legislation.

I agree with you that there is an imperative need, as I indicated in my prepared remarks, arising out of the need to involve the U.S. interest in a fully adequate way to insure our participation in foreign commerce. I think that that effort has got to get under way, and probably ought to get under way very promptly in a very meaningful way.

My point, sir, is this: That in the absence of a clearly articulated national policy there is no standard by which to guide our international representatives in the conduct of their work, and absent such clearly defined guidance we are very likely, it seems to me, to develop international standards which will be more difficult to change than not, standards which will have serious and adverse effects on domestic competition and the preservation of that competition and

advancement of legitimate consumer interests. Thus, my feeling is, let's get national policy defined and get about the business promptly and then proceed immediately defining how we may best be represented on the international front, which I agree with you is important.

Mr. BROYHILL. You mentioned in your testimony more than once the need for a basic national policy on the setting of standards. To me it comes across somewhat vague as to what you mean. Are you saying that the Congress needs to pass legislation in this field or that Government must in some way under present authority set a national standard or national policy, or that the present industry group should get together and set the policy?

Mr. FERGUSON. At the outset of my remarks I referred to a report that was submitted by a committee in the FTC of which I was chairman back in 1972. I think that that report sets forth fully my own views, and I think the views of my committee, which was composed of economists, consumer specialists, and antitrust specialists as to how we ought to go about stating a national policy. Briefly, I feel that Government ought not to get into the business of making standards. That would require a technologically redundant system and be an incredible expense to the taxpayers of the United States.

As an alternative to that I think we can require of industry that it develop broad range product performance standards under procedure articulated either by Congress or by an appropriate agency such as the Federal Trade Commission. Following the development of standards under such articulated procedure the FTC would, it seems to me, have the authority to review those standards in cooperation perhaps with the Bureau of Standards and their technical experts to determine whether the standard developed is, first, responsive to a legitimate consumer concern—I use consumer in the broad sense—and whether or not the standard that is developed achieves a socially desirable result. That in the briefest possible terms, Congressman, represents my view as to the kind of machinery which the Federal Government ought to establish, and once established then I think we can go forward with legislation such as H.R. 7506.

Mr. BROYHILL. I am still somewhat confused as to how we get this started. I mean do we just say to industry, "You go ahead," or should some legislation pass that initiates some policymaking procedure, some policymaking body or some policymaking apparatus?

Mr. FERGUSON. I think, sir, that Congress could do it. On the other hand it is my own conviction that the failure of manufacturers to provide consumers with meaningful product performance standards constitutes an unfair method of competition and thus is in violation of section 5 of the Federal Trade Commission Act. Thus I think it is within the existing authority of the Federal Trade Commission to mandate that certain industries get about the business of developing meaningful product performance standards. If that industry is incapable because of the expense involved, or for some other reason of getting about that business or fails to do so, I think a coordinated program involving the Federal Trade Commission and other departments and agencies and most certainly the National Bureau of Standards could itself undertake the development of such socially desirable standards.

Mr. BROYHILL. Do you have any examples of what you are talking about?

Mr. FERGUSON. Yes, sir. I have mentioned in my remarks my awareness of two instances in which the kinds of standards I am describing have been attempted. One was in the vacuum cleaner industry. In that industry I think approximately 8 or 10 product characteristics with which consumers were most concerned were identified. The private trade association in cooperation with the Bureau of Standards, as I understand it, set about the business of developing the scientific and technical yardsticks by which to measure the range of performance achieved by a given product as to each one of those identified characteristics. That is the kind of program that I think is most meaningful to consumers and has the most procompetitive consequences.

I am not sure, because I have been out of touch recently, where that effort stands. I know that there was some substantial resistance to it, but I think it is the very kind of program which I think could be most meaningful in the marketplace and would enable us to go forward with great confidence on the international front.

Mr. BROYHILL. Thank you, Mr. Chairman.

Mr. MOSS. Mr. Breckenridge.

Mr. BRECKINRIDGE. Thank you, Mr. Chairman.

Mr. Ferguson, I found your statement very informative. I am not familiar with the field, so you have done a great job of educating me this morning.

Going to page—I don't have a number on it—you make reference to billions of dollars being available on an annual savings. The establishment of minimum standards from the private as distinguished from governmental basis with governmental review, I assume. Then this all relates to the establishment, I take it, of the national policy which you consider the norm of getting into this type of legislation. I wish you would enlarge on that just for my edification if you would, sir.

Mr. FERGUSON. Yes, sir.

Briefly stated, I think that we can achieve the greatest economy and the most desirable social result if we mandate either through an agency of Government such as the Federal Trade Commission or through congressional legislation that industry get about the business of developing product performance range standards, that is, identify characteristics of the product with which purchasers of that product are concerned, identify the technical device by which we can measure the performance of a particular product as to each of those identified characteristics, and then distribute to the consumers of those products the level of performance achieved by the particular product as to each of those identified characteristics.

The availability of that kind of information would, it seems to me, enable the purchaser, the consumer, to make rational marketplace decisions, to compare products with respect to characteristics as to which he has the greatest concern. In that way the consumer would maximize his return on investment in economic terms by obtaining that product which best suits his needs at the lowest possible price.

I think that kind of rational buying activity on the part of consumers would produce, as I have said here, billions of dollars annually in savings. It would also provide and facilitate ease of entry into the marketplace by new entrants as against the system which presently tends to differentiate through advertising and other differentiating devices. The consumer would be looking at hard fact information. There would be little, if any, economic burden for the new entrant to produce that kind of new information.

Thus we would have a lowering of prices within the industry because the industry it seems to me would be required to meet the challenge of new entry and to realize that there is an easy access to the marketplace because of these product performance standards, and that you cannot differentiate through advertising or other socially expensive devices and thus the total effect would be to lower the price paid by consumers on numerous products.

To give you an illustration, both of the kind of things I am talking about and as to the effectiveness of that, the Federal Drug Administration attempted several years ago to identify certain nutritional characteristics regarding food. The belief was by many that the distribution, dissemination of that kind of information would not affect consumer buying patterns. It was tested in several market areas, and the result was most surprising. Consumer buying preferences shifted and they shifted on the basis of the nutritional performance information disclosed on the packages. They shifted to a sufficient extent that the practices of marketers of food in the affected industries were concerned and realized that if the program were to be continued they were going to have to respond to a new marketplace demand which was not typical of the kinds of demands which they had historically been required to respond to, and I think that is the kind of program I am talking about.

Mr. BRECKINRIDGE. Do you think a program of that sort will attract the interest and support of industry generally, and how will one identify what industry groups are brought into such a program, on what sort of a priority basis?

Mr. FERGUSON. The answer to the first question, whether industry will support it, I think the answer is yes. In the conduct of our task force work at the Commission I think nearly 50 percent of the comments which we received were from industry representatives, both the manufacturers and retailers, and some of the very largest retailers in the United States. I was both surprised and enormously pleased from my point of view that they endorsed strongly the commencement of a program such as the one I am describing.

Now obviously there is going to be some resistance to it from some manufacturers.

The second question, where do we begin, I think the answer to that is somewhat more difficult. In my view we begin with those products which are purchased

least frequently and are sold at the highest cost. For example, let's contrast soaps and detergents and automobiles. Most consumers buy soaps and detergents with sufficient regularity that at least for the immediate short-range future a purchaser of soaps and detergents can determine which product he or she finds most suitable to their needs. On the other hand, consumers infrequently purchase automobiles, and when purchased they are an enormously expensive item. Thus the consumer of an automobile does not have the opportunity to purchase in sufficient volume to make rational evaluations about the performance capabilities of any given automobile with respect to his particular needs, nor is he able to make rational marketplace comparisons because the information with regard to one manufacturer's cars is not wholly comparable to the disclosures made by another manufacturer.

Thus in my view we should set our order of priorities in terms of dollars involved and in terms of frequency of expenditure. I think that by using a grading system or rating system based on that technique we could address ourselves to the industries where we are likely to achieve the greater dollar volume and the greater consumer benefit.

Mr. BRECKINRIDGE. Did I get the erroneous impression that you would perhaps prefer that the Federal Trade Commission or some similar consumer oriented agency rather than Commerce have the administrator responsibility in this area?

Mr. FERGUSON. Yes, sir. This is something new, and I am not attempting to in any way prejudice or suggest that the Department of Commerce would be less than fair in its administration of this bill. It seems to me though that what we are concerned with here is a broad range of concerns and that evaluation, estimation and the balancing that needs to be done ought to be done in an agency where there is a historic relationship to balancing economic considerations.

In my own opinion, sir, because of its expertise in holding hearings of the kind contemplated by this bill, because of its historic association with the broad range of economic concerns and policy in the economic area in an adjudicative way, I think that the Federal Trade Commission would be better suited to make the value judgments required under this bill in the final analysis than would the Department of Commerce.

Mr. BRECKINRIDGE. I just have one more question, Mr. Chairman.

Going back to Mr. Broyhill's earlier observation to the effect that one of the primarily motivating factors here is the international community's movement, which if I might be a little cynical is I assume directed at foreclosure of markets, and that would be rather than free competition, have you seen the development of the kind of a program you have outlined which is competitively oriented, consumer oriented rather than cartel oriented in its objectives messing in with that structure that is growing abroad?

Mr. FERGUSON. Congressman, if I correctly read 7506, this bill says that it shall take into account the interest and concerns of all affected parties, including consumers and suppliers, et cetera. My concern is not that this bill does not say the kind of things and state the kinds of objectives that we ought to be focusing on in determining our international policy, it is just simply words like "consumers" and "antitrust" and so forth have never been sufficiently defined to permit us to go forward under this legislation with any degree of confidence, and in my view if we can define those overriding matters of national concern then I think we can proceed with legislation like this with far less concern than I presently have for the future practices under the bill as it presently exists.

Thus I would not see what I am arguing for as changing the mandate of this bill as that mandate is applied to our international representative. I am only saying that we need to do the basic groundwork before we can move to this international step.

Mr. BRECKINRIDGE. Thank you very much, Mr. Ferguson.

Mr. Moss. I too find your statement a very interesting one. Do you have any specific legislative recommendations that you would like to make?

Mr. FERGUSON. I would think, Mr. Chairman, that I continue to entertain as I have for a number of years a concern for the absence of a meaningful national program dealing with standards. As I have indicated in the answers to my questions here I am not sure whether that requires an act of Congress or whether it can be done under existing legislation. I can only report that that program has not gotten under way.

Mr. Moss. If this legislation 7506 becomes law do you envision some conflict between standards domestically agreed and standards agreed to under a voluntary program internationally? Am I correct in that?

Mr. FERGUSON. Yes, sir.

Mr. Moss. Now we are embarking upon the promulgation of an increasing number of standards affecting domestic consumers. The Commission on Consumer Product Safety is specifically charged with the promulgation of standards affecting safety in a wide field of products. It has become the successor agency to the Poison Prevention Packaging Act, of the Child Safety Act, of the Flammable Fabrics Act, to a number of other acts of Congress. Then over under the Department of Transportation the Bureau of Automotive Safety is promulgating standards, some of them to meet specific legislative objectives, but particularly the bumper standards. Do you envision the same kind of conflict there between the domestic standard and the international standard?

Mr. FERGUSON. No, sir, I don't. As I read H.R. 7506 it requires that any international standard not be in conflict with or deemed to be superior to any national or State standard. I have described, Congressman, areas which in economic terms are referred to the externalities. They are outside the normal forces of the marketplace. I am in my remarks primarily concerned with the central core of standardization, those that are concerned with competitive conflicts.

Mr. Moss. Let's move to that and perhaps do it through this Government procurement directive that has given this legislative saying that Commerce shall encourage—paraphrasing—Government agencies to procure products meeting the international standard.

That is highly effective, of course, I recall when this committee first embarked on the setting of standards in auto safety, we did it by requiring that vehicles procured for the Federal Government have certain safety features incorporated in them and because of the volume buying of the Federal Government it was easier to change the production line at least to accommodate the additional feature than to just treat the vehicles especially assembled for the Government. So it can have a significant impact.

Now in this area, do you see any conflict between domestic and international standards?

Mr. FERGUSON. Yes, sir, I do. This is the area with which I am most significantly concerned. It is my opinion, in coming back to your earlier question, our need is for legislation. It is my opinion that it is in this central area where there is a significant absence of Federal policy, and I think that we need to articulate that Federal policy very clearly. We need to state what kinds of standards are socially acceptable, and it is only after we have declared the nature and character of standards which are socially and nationally acceptable that we can get about the business on the international front.

There is no question in my mind but that in the absence of such national declaration of national policy that this bill will lead to a measurable and serious intrusion on the domestic commerce of the United States and will impair competition here and will further frustrate the consumer's marketplace democracy. It is going to be narrowed, not extended. He is not going to be given the kind of hard core information that is absolutely essential if we are going to achieve any kind of marketplace rationale, especially with respect to consumer goods. I think this bill is going to have an impact.

Mr. Moss. If you have any specific thoughts in that area we have just discussed, I would be interested in receiving them. I assure you the committee will give them careful consideration.

Mr. FERGUSON. I would be happy to make them, sir.

Mr. Moss. I would ask that the record be held at this point to receive them. Is there objection?

Hearing none, the record will be so held.

We do thank you for taking the time to appear and give the Committee the benefit of your views.

Mr. FERGUSON. Thank you, Mr. Chairman.

Thank you, Mr. Broyhill.

Senator Moss. Thank you very much, Mr. Ferguson.

I appreciate your testimony and that of Mr. Swankin.

I have just a couple of questions.

Mr. Swankin, you urged that S. 643 be modified to require the FTC to publish on a regular basis a priority listing of products that it

believes are prime candidates for test protocols. Should the public have an opportunity to comment on this priority list?

Mr. SWANKIN. I think that—I feel the same way as in the safety area. The problem I am trying to address is that there is no question of limited funds. If a protocol is developed in an area where it is less needed than in an area where it is more needed, I think it does a discrediting to the whole program, whether or not it is a good test protocol or not.

I will give you an example.

The FTC—even though this is limited to deceptive practices, clearly that would be one of the major reasons to trigger the processes.

I know as a representative of a consumer organization, plenty of times we get a question, how can you tell the difference between which soap detergent cleans best.

You might very well set the processes in motion to make a determination whether X cleans better than Y.

At the same time, just look what we have gone through with regard to gas mileage over the last little bit of time.

If we had to choose between getting a test protocol on gas mileage or how does a car handle or which electric shaver shaves best or anything where there is a major significant outlay of money, and the consumer really is out there unable to make a wise decision, I think it is important that those protocols begin to be developed in the areas where they are needed the most.

Rather than let it come about, I think one of the ways to control that is to have the list published.

Yes, it should be publicly published.

Consumer groups and individuals ought to be asked, “What do you think?”

There ought to be a rational, national way to develop that list of priorities.

Senator Moss. You stress that the offerers’ costs are expensive and you say you believe there should be reimbursement. Do you believe the authorization levels spelled out in S. 643 are adequate?

Mr. SWANKIN. Well, I think they are inadequate to do very many test protocols; but, again, I think that there is no question in my mind that you have to do the first one and then the second one.

I was tempted to say, listen, we need an awful lot more money to do this right. I think if this program works. I think it would be deceptive to think that it would work for very long at these levels.

I think that especially because of the problems that we had with the only other offerer processes, it may not be so bad to start at a modest level to be sure it is going on in the right way.

I think that might be an effective thing to do.

I think that standard-setting is expensive. I think that the actual costs are clearly \$200,000 to \$500,000, not counting any development and testing work.

That is the experience in the product safety field. I think it would be the same here.

If we are talking about \$5 million to the NBS by the time some administrative costs are subtracted off, that might mean seven or eight protocols a year.

I think, as I say, that that is an adequate beginning.

Senator Moss. Mr. Ferguson, what was the mission of the FTC Task Force on Industry Self-Regulation?

Mr. FERGUSON. I think the mission, Senator, was an evolved mission. We set out in the beginning simply to make an assessment of what the problems were. That was accomplished in the first stage.

Then we were asked to address ourselves to the alleviation of those problems. It was as a result of that second endeavor that we went to the marketplace, as it were, and invited the comments of consumer groups, manufacturers, trade associations, government agencies, and so forth, and collected, I think, something in excess of 500 responses during that procedure.

Based on the information that we were—we received there, we developed what we thought was a list of the primary areas of concern.

Ignorance was at the top of them.

The consequences to competition was another one.

We then set about proposing a scheme which we thought the FTC could pursue to—looking toward the alleviation of those problems.

Frankly, as I am sure members of the committee are aware, the scheme proposed in the task force report is very closely parallel to the scheme which is outlined in S. 643.

At the point in time we submitted our task force report, we raised the question as to whether the FTC could pursue that scheme under its existing legislative authority or whether further legislation was required.

We took the position on the task force that we believed it could be done without additional legislation.

Since that time I have had reason to doubt that conclusion, and 2 years ago before Congressman Moss' committee proposed a specific legislative approach which closely paralleled S. 643 in principle, and which paralleled the work of the task force.

Senator Moss. Your findings then were not in accord with those who argued that advertising, word of mouth, information at point of sale, and private information sources such as consumer reports are adequate now in the marketplace?

Mr. FERGUSON. Absolutely so, sir; they were not adequate in our view.

Senator Moss. You suggest in your statement that the program of S. 643 would lower barriers to entry of new firms. Could you please explain the relationship between the legislation and the lowering of barriers of entry?

Mr. FERGUSON. For most consumer goods today, the manufacturer, or the would-be entrant, must contemplate not only the expense involved in development, testing, and perfection of a product likely to receive consumer—favorable consumer—response, he must contemplate an enormous advertising program to support and promulgate the performance and achievements of his product.

The barriers, or the burdens beyond the simple development of a product are so enormous as to deter even substantial corporations from endeavoring to engage in the manufacture of consumer products in which they are not presently engaged.

If, it seems to me, there is a system which provides critical information at point of sale, where the consumer can, at the time he makes the

purchase of his goods, make a rational determination, have the opportunity to make a rational determination, the manufacturer, with an improvement with respect to a particular characteristic, need not be required to incur the expense of a national advertising program, but may at least at the threshold limit himself to responding to the program outlined in S. 643 with a very real hope that when his product comes to the marketplace, the consumer standing at the counter with the range of alternatives before him, and reliable hard core information, can make a rational choice.

If the would-be entrant has a worthy product, a number of consumers are going to choose his product.

Thus, the barrier to entry, the burden that the would-be manufacturer, that the existing manufacturer with a better product, would have to carry is greatly reduced; and so, too, I think, ultimately would be the cost of the good or the service that is actually involved, because he need not carry that cost in pricing his product.

Senator Moss, Your point is that it helps him overcome the bias that may be ingrained in a purchaser from having seen a certain brand name over a long period of time.

The brand name doesn't necessarily represent excellence, but it has just been out there so long that many purchasers have made associations with the name which precludes their seeking further information about other products.

I can see why labeling is valuable; because if the information is there, another competitor may come in and have a reasonable chance at persuading the consumer to take his product?

Mr. FERGUSON. Precisely so, Senator.

Senator Moss. Well, thank you, gentlemen. You have both been very helpful witnesses. I appreciate it.

Charles J. Borum, corporate counsel and assistant secretary of KitchenAid Division of Hobart Corp.

**STATEMENT OF CHARLES J. BORUM, VICE PRESIDENT, SECRETARY
AND GENERAL COUNSEL, KITCHENAID DIVISION, HOBART CORP.;
ACCOMPANIED BY HARRINGTON SHIELDS, COUNSEL**

Mr. BORUM. I have asked Harrington Shields, the counsel, to join me at the table. I would make one other point. Unfortunately, my position with Hobart Corp. is not accurate as reflected in our statement. My title is vice president, secretary, and general counsel.

Senator Moss. Thank you, I am glad you corrected that.

Mr. BORUM. I appreciate the opportunity to appear before this committee today to comment on S. 643.

I will direct my comments today to certain key aspects of our position and not read the statement in its entirety.

At the outset, we must say that we are unalterably opposed to the enactment of this bill. We have three basic types of objections to it, and I will identify those objections.

In the first instance, we believe the bill is inoperative as it is set up at the present time. We believe that the bill, second, will seriously and dangerously impact the marketplace; and third, that the bill is lacking in clarity and is ambiguous, certain aspects.

Taking first the inoperative aspects of the bill, the test protocols which are referred to in the bill are required to cover the broad range knowledge of product characteristics as specified in section 3 of the test protocol, which is required to be related to quality, performance, and performance testing under normal use; that the tests under the protocols or the characteristics be reliably or uniformly tested, measured, and reported as required in section 5 and that the consideration of the test protocols relate to the average consumer as required under section 4.

These various aspects are so broad and sweeping that we are unaware of any means to realistically develop test standards or test protocols to meet all of these requirements. Test standards are normally set up and relate to testing of very narrow characteristics based on well-defined parameters and generally avoid introducing extensive subjective aspects to the test standard as would be required under this bill.

In other words, to follow the requirements of the bill, the test protocols would necessarily require introduction of many arbitrary features and would therefore not be objective tests.

One interesting note with respect to the product characteristics defined in section 3 or identified in section 3 is the frequency and nature of repair. The information regarding this characteristic would be virtually impossible to obtain at the time of introduction of a new model or a new product, since a manufacturer would not have any historical record regarding the product.

Furthermore, most manufacturers do not, in that appliance industry, have records regarding repairs outside the warranty period. In many cases, they do not even have such information regarding repairs during the warranty period.

Turning for a moment to the bill, section 3(5), the characteristics of—six characteristics specifically referred to in the bill: effectuation of purpose, durability, average annual cost of operation, maintenance requirements, frequency and nature of repair, and environmental impact at the disposal of such products.

These characteristics, as we understand the bill, would be required characteristics that would be covered in the test protocol. It is our feeling that it would be very, very difficult, if not impossible, and we believe it to be impossible in all cases, to objectively identify the effectuation purpose. Once you go beyond simply saying—stating the broad general objective or purpose of the product, such as a home laundry unit or a dryer or dishwasher, you become—it becomes very difficult to define the purpose.

Likewise, with respect to durability. We feel that it would be unrealistic to believe that we can define the durability of a complicated product in such a way as to meet the other criteria of this bill, such as the definition of the test protocol. It requires that the test be an objective test.

Taking a simple example, in a home laundry machine, when would the product cease to have—when would it cease to be durable? The first time it has a failure? When it becomes—a situation where it is not economically feasible to repair it? This problem of durability is a very complicated problem and is a very subjective thing.

The manufacturers generally, I believe, try to test to certain minimums; but to identify the—and identify the ultimate durability of a product is, in our opinion, not possible.

With respect to the maintenance requirements referred to in section 5, we assume that these would be such things as lubrication, normal maintenance aspects of the thing. I suppose that if that's all that is encompassed by that provision, that it would not be too difficult to define that.

But the frequency and nature of repairs that the consumer might anticipate encountering is certainly not something that the manufacturers have information on today. We don't know of any way to generate information that will provide a test to determine what type of repairs and the frequency of the repairs that a consumer might encounter.

The last characteristic required under section 3(5), regarding the environmental impact of the manufacturers' use and disposal of such products. The first reaction is that it is so broad and all-encompassing that we really don't know how any meaningful test could be set up under that—to meet that criteria.

Turning now to the aspect of the impact on the marketplace, it is our position that the design—that the—that standards, if they were set up, it would stagnate design development and would force manufacturers from an economic standpoint, would force manufacturers to design to meet certain criteria. Those criteria laid down by the FTC under this bill. It would stifle, in our opinion, attempts to develop new products, new designs, to introduce new characteristics into the products. It would reduce the innovative efforts of the manufacturers because they would certainly not—if the bill was effective as is intended or apparently intended, set down standards that would be those that are meaningful to the consumer.

The only thing that the manufacturers could do from an economic standpoint would be to follow the standards and adopt those in his design criteria. He would not be free to choose, as he is today, what criteria he's going to follow, what design aspects he wants to emphasize in the development of his product.

Likewise, the consumer would not be given a free choice of what characteristics he sought in a product, but instead would be faced with all the products being designed to one standard, which would be rigid because of the long processes of changing standards; and, therefore, designs would not change over a period of time.

One other aspect of it is, if there was a protocol change with respect to a given characteristic, it would require then immediately extensive changes in product design to meet that criteria or that aspect, characteristic of the test protocol. The larger manufacturers may very well have an advantage over the smaller manufacturers because of the infinite capital outlay that is encountered in any product change, design change in the appliance industry.

With respect to the third point regarding clarity of the bill, it is our position that this bill is not clear whether it requires or contemplates a voluntary means—a voluntary means of compliance under test protocols that would be developed. In other words, it would seem to be that it was worded in such a fashion as to make it voluntary; and yet, it is

our feeling that because of the nature of the dissemination of the information, it would be contemplated under the bill that it would require any manufacturer to test under the bill.

Furthermore, with respect to the clarity, it seems that it may not be clear as to whether it requires testing or not.

In conclusion, one other point: we have not seen any clear evidence that shows that this program, as contemplated under S. 643 would truly benefit the consumer. We have very strong concern that it may very well be detrimental to the consumer and to the total marketplace. We believe that the bill is inoperative in its present form; that the standards cannot be developed to meet the criteria, the various criteria of the bill; that the bill would seriously impact the marketplace; and, of course, the last point, the fact of clarity.

Senator Moss. Well, thank you for your statement. As I indicated, the full text will be printed in the record.

Wouldn't you agree that in order for a free marketplace to be the regulator of quality and price of products that consumers must have ready access to information about the performance of competing products?

Mr. BORUM. I believe that if that is information that the consumer is seeking and wants, the pressures in the marketplace will require the manufacturer to supply that information. As we heard—I believe yesterday—I was here to attend the hearings—the reference was made to the very detailed information that is supplied with respect to stereo and hi-fi equipment. There, the consumer in that marketplace is a very sophisticated consumer, generally interested in the sophisticated technical aspects of it. There, the pressures in the marketplace have brought the manufacturers to a position of disseminating very detailed, technical information with regard to the products.

In the consumer areas, there are different pressures. The main problem, as we see it, is that we are not dealing strictly with finite technical information as defined—as the characteristics included in the protocols in section 3(5) of the bill, but instead have subjective matters.

That is as far as the question of operative necessities of the bill is concerned, we don't think it is operative.

Senator Moss. I want to call your attention to one example: Consumer Reports made a report on refrigerator capacities that I think appeared in the September issue.

Now, each of the manufacturers was claiming essentially the same capacity for their refrigerator; but there was great variation. When Consumer Reports tested it there was as much as 20 to 25 percent difference in capacity. Now a consumer buying a refrigerator and using the stamp on the outside for guidance might well be misled. He might think he was buying a certain capacity when he really wasn't. That's probably because there's no common testing protocol among refrigerator manufacturers. It may not be purposely deceptive, but may simply be because they have a different standard for measuring. What's your answer to that?

Mr. BORUM. Well, there are several points I would like to make in response to your question.

First of all, AHAM does have a test standard by which it measures the capacity of refrigerators. Second, there will be variations in test standards where there are subjective or judgmental factors involved; and that's the problem in the refrigerator capacity testing. We take the European standard, the European concept of testing the capacity of a refrigerator. It is my understanding it is simply to take and measure the total volume of the cavity of the refrigerator, so that if you turn it over and fill it up with water, you can tell how many cubic feet of water are in it. That's the method of measuring it. That would be a very definite, finite capacity of a refrigerator; but it is not usable capacity.

Now, we come to the judgmental aspects of it. Under the AHAM system, we developed a means of what we consider to be the usable capacity; certain considerations, judgmental factors, arbitrary in many cases, but at least, there is a basis for comparison. There will be a differential between the AHAM standard and the Consumers Union, because they use a different test standard.

Senator Moss. Yes, that's precisely the point. If you use a standard measurement and take out the judgmental factor—than you will come out with measurements which can be used to make true comparisons.

Mr. BORUM. What standard?

Senator Moss. The standard used by Consumers Union.

Mr. BORUM. It is my understanding Consumers Union uses a standard they have developed and they test according to that standard.

Senator Moss. So, if you use a common test protocol, then you get a different answer from what each of these manufacturers want to claim for himself. That's the point.

Mr. BORUM. It is my understanding, Mr. Chairman, that the standards by which the refrigerators rated by the manufacturers are tested under the AHAM standard, which is a uniform standard that they test under. The differentiation between AHAM standard and the Consumers Union standard and the European type testing, again it is judgmental factor. What is important, what dimension products are you going to put into the refrigerator? How much are you going to reduce the effective uses or the effective space within a refrigerator by taking into consideration the corners. How much of it are you going to eliminate?

Senator Moss. Won't that always be the case then as long as we remain with voluntary protocol standards?

Mr. BORUM. I don't think it would be any different under the concept contemplated by the bill either.

Senator Moss. At least they will all be talking about the same kind of protocol in testing; isn't that right?

Mr. BORUM. Well, I don't know. It depends upon whether or not Consumers Union decided to adopt the same test program or test protocol as the FTC were to lay down, or if AHAM chose to adopt the same test procedures as the FTC adopted.

Senator Moss. You do acknowledge, though, that there is considerable variation in the market today, is that right?

Mr. BORUM. Variation in what aspect?

Senator Moss. In using test procedures to determine, for measuring characteristics of products. Unless all use the same procedure, aren't we bound to get noncomparable measurement?

Mr. BORUM. No. I don't agree with that. If you are asking if a manufacturer tests under the AHAM protocol, follows the test procedures set down in that test standard, that it should come out the same.

Senator Moss. Well, this is somewhat akin to what we encountered in automobiles until the FTC stepped in on the fuel efficiency test procedure. Manufacturers were making attractive claims for their vehicles based on test procedures hand tailored to the particular vehicles design. Then, the FTC promulgated a test procedure to be followed by all manufacturers. I think that is essentially what we are trying to drive at in this bill.

Mr. BORUM. Mr. Chairman, I think the problem we have with this bill is that it is so broad, sweeping, all-encompassing, we are not dealing mainly with measuring the fuel consumption on an automobile under a very fixed, tightly controlled standard. Here we are talking about very broad, general guidelines laid down in this bill, which go well beyond the concept, on several orders of magnitude, of simply testing the gasoline mileage in an automobile.

Senator Moss. Well, thank you, Mr. Borum. We appreciate your testimony and we will consider it very carefully as we compile our record and finally consider what we ought to do with this bill. I do appreciate your appearance.

Mr. BORUM. Thank you.

[The statement follows:]

STATEMENT ON BEHALF OF THE ASSOCIATION OF HOME APPLIANCE MANUFACTURERS

This statement on S. 643, the proposed Consumer Product Testing Act, is filed on behalf of the members of the Association of Home Appliance Manufacturers (AHAM). The association's members manufacture such major appliances as room air conditioners, refrigerators and freezers, dehumidifiers, ranges, and home laundry equipment; and such portable appliances as toasters, coffeemakers, irons, electric skillets, broilers, and blenders.

At the outset, we must say that we are unalterably opposed to the bill's enactment. We are not aware of concrete evidence to demonstrate a need for a bill such as S. 643, which could have far-reaching results. The concept behind the bill is diametrically opposed to the concept of a free enterprise, competitive economy. The bill itself contains inconsistencies and requirements that are impossible of achievement in any but a government regulated economy, if even there. The bill would lead to the expansion of governmental bureaucracy in very detrimental ways. Ultimately, the government would make competitive judgments now made by purchasers, and by industry in responding to the purchasers' demands.

We say that the concept behind the bill is diametrically opposed to the concept of a free enterprise, competitive economy because the federal government through the Federal Trade Commission, would decide what performance characteristics of what products are important to consumers, and the Commission would prescribe test methods or test protocols for judging those characteristics. While the bill does not explicitly require that every manufacturer test its products under an existing protocol, that would be the inevitable result.

When the federal government steps in to superimpose its judgment upon the consumer and to say, "These characteristics of a given product (an automatic washer, a toaster, a coffeemaker, a refrigerator) are important to you, the consumer; and we, the government, have developed a method for testing the characteristics so that products can be ranked according to the test results," attention will inevitably be directed to those characteristics. Manufacturers will be forced to emphasize such government-dictated characteristics in the design of their

products. Other characteristics will receive less attention, regardless of their actual importance to the individual consumer. The incentive to develop new characteristics or new products will be lessened. Uniformity of product can result. Progress will be circumscribed and kept within the tested characteristics. The market for a product could easily become dominated by one or two manufacturers.

A key stimulant of the American free enterprise system has been the freedom of each consumer to choose, without governmental programming, interference or guidance, products best suited to his individual needs or wants. There has been, and must be if free enterprise is to continue, a concomitant freedom of manufacturers to produce goods thought to be needed and accepted by the buying public. There must be a freedom to improve those products and to bring forth new ones, acceptable in the market, as expanding technology permits. The words "[t]o regulate commerce" in the preamble of S. 643 speak out in opposition to the concept of the free enterprise system.

Instead of advancing "the fair and efficient functioning of a free economy," as suggested by § 2, S. 643 would stifle that "efficient functioning" by substituting governmental dictation for the free market choice consumers now have. Furthermore, well-intentioned as the lawmakers and governmental employees may be, they do not possess the experience or knowledge, and indeed no one can have the experience or knowledge, to determine what products and what characteristics are critical in the selection of products by millions of consumers in the countless purchases they make each day.

In the same manner, we are not aware of any lawmakers or governmental employees who possess the technical and engineering skills required to develop test protocols for the *myriads of products* on the market, or even to judge the soundness of test methods or protocols developed by others.

We have said that S. 643 contains inconsistencies and requirements that are virtually impossible of achievement. These are discussed below in our comments on the bill's specific provisions.

DESIGNATION OF PRODUCT CHARACTERISTICS

Sec. 3(5) defines the product characteristics for which test protocols would be developed. These characteristics would include effectuation of purpose, durability, average annual cost of operation, maintenance requirements, frequency and nature of repair, and environmental impact in the manufacture, use and disposal of a product. The characteristics could also include any other characteristic relating to "quality of performance under normal use." The protocols would be designed to measure these performance characteristics "under conditions of normal use, including reasonably foreseeable abuse," for the purpose for which a product "is designed or adapted."

There are no simple means for determining what is "normal use" or "foreseeable misuse" that would have any significance for the vast number of persons throughout the country who use a given product every day. The concept of a "family of four" has no relevance to the "normal use" by a family of eight or a family of one. "Normal use" of a product in Florida, a room air conditioner, for instance, would far exceed the "normal use" of the product in Minnesota.

"Effectuation of purpose," which we assume means the accomplishment of the function a product is to perform, may vary within a household. The function of a clothes washer, for instance, is to get clothes clean by putting them through a wash cycle, with water and a cleansing agent. The manner in which a given washer will "effectuate" this purpose depends on conditions that may vary from day to day in the same household. Such conditions as the nature of the clothes to be washed (blue jeans or lingerie), the temperature of the water (and its hardness as between localities), the length of the wash cycle, and the kind of detergent will affect the cleanliness of clothes as they come from a washer.

"Durability," which we assume means the length of time a product can be used, also depends upon many factors, which cannot be neatly estimated for all households. Conceivably, an appliance could last indefinitely, depending on the care with which it is used and on the willingness of its owner to invest in repairs. Durability depends not only upon the extent to which a product is used, the care with which a product is used, but also to a great extent on environmental conditions, such as salt air in coastal areas.

The durability of different parts of a product will vary. An outer coating may last a limited time, particularly in a harsh atmosphere, but operating parts may

last for a much longer period. The failure of which part is to be the measure of durability? Variations in use, location of products and durability of parts also make it virtually impossible to establish test methods or protocols to determine the other performance characteristics listed in § 3(5).

Manufacturers of appliances and of other products have recognized the variations in conditions such as use and location by specializing in products suited for a particular application, by building different models in their product lines, and by other means. To begin now to compare these products by general standardized governmental tests will result in reduction of manufacturer incentive to meet different market demands.

In this connection, S. 643 seems to rest on the assumption that a test protocol, a test method, or a standard as it is usually called in industry, is a simple means of pushing a button, so to speak, and receiving a neat, readily understood answer. This simply is not the case. A test method or standard is a carefully devised means of measuring a very limited product characteristic. Tests must be repeatable.

They must be performed under standard and uniform conditions, which frequently require the establishment of rooms or divisions in laboratories where those conditions may be maintained. Performed in different ways and under different conditions, a test method or standard will give results that are not at all comparable. Furthermore, tests for some product characteristics, particularly those dealing with stress, are performed at accelerated speeds. One operation, the opening of the door of a refrigerator, for instance, will be performed several thousand times within a 24-hour period. In actual use, it might take many years for a door to be opened the same number of times. The test does not provide the "down time," the periods when the operation is not being performed, which allows for some "recovery" from the stress. For these and other reasons, tests distort reality and make conclusions drawn from them as to actual use very deceptive and misleading.

In addition, standards or test methods are a means of measuring present performance. They are not, and cannot be, designed to assure future performance. Manufacturers may and do use historical data as a means of forecasting, for planning purposes, the performance of their products in the future. They certainly do not want to be forced into using the results to assure a purchaser that a product will perform in a given way under all conditions in the future.

Furthermore, under § 101(6) of the Magnuson-Moss Warranty Act, Pub. L. 93-637, "any written affirmation of fact or written promise" made in connection with the sale of a consumer product becomes a warranty. Certainly "written affirmation of fact" would include representations made as a result of testing a product (such as an operating cost or durability), to be breached when a product does not conform to the "normal use" on which a protocol would be based.

TEST PROTOCOLS

Sec. 4(1) and (2) are based on the fallacious belief that there is "an average consumer." Subsec. (1) would require the Federal Trade Commission, in determining priorities for the establishment of test protocols, to weigh the importance of a product to the "average consumer." Subsec. (2) would require an assessment of "the ease with which the average consumer can ascertain" knowledge about the quality and performance of a product prior to purchase. A subsection (3) would require a determination of the economic impact the promulgation of a protocol might have on manufacturers, retailers and consumers.

Aside from the fact that there is no "average consumer" and aside from the fact that American industry has provided goods and services for a wide variety of consumers, not just the average, § 4 is strangely deficient in failing to say how the determinations are to be made. Are they to be made in-house, a priori, by the Commission's staff? Or are they to be made after all parties who may be affected have had an opportunity to speak?

The determinations regarding economic impact, product differentiation, rate of technological change, not to mention the ease of a consumer's being able to ascertain information, should themselves be based on a record, to which all segments of the economy have been able to contribute. Otherwise, products for which test methods are to be promulgated and the manufacturers to be subject to the statute will be selected by fiat. This means of selection is inconsistent with democratic processes.

Specific comment on one of the product characteristics, "frequency and nature of repair," required by § 3(5) to be included in test protocols, may demonstrate critical problems that would be encountered under S. 643. Information on "frequency and nature of repair" would be virtually impossible to attain at the time of introduction of a new model or new product since a manufacturer would not have any historical records regarding a product. Further, most manufacturers do not have records regarding repairs outside of the warranty period and in many cases not even during that period that would provide sufficient or adequate data to generate a meaningful test of the "frequency and nature of repairs" a consumer might expect to encounter.

DEVELOPMENT OF TEST PROTOCOLS

Because appliance manufacturers who belong to AHAM are opposed to the concept of S. 643, we will not comment at length on § 5, which would establish procedures for the development and promulgation of test protocols. We should, however, point out deficiencies that go to the heart of our opposition to the bill. Sec. 5(a)(2), for instance, requires that the notice that a proceeding is to be started, to be published in the *Federal Register*, must identify the product characteristics that "can be reliably and uniformly tested, measured, and reported." Often in the experience of appliance manufacturers a determination of whether a test method may be developed to measure a product characteristic "reliably and uniformly" can be made only *after* a great deal of work has gone into attempting to develop the test method. Under § 5(a)(2), however, the Commission would make this determination *unilaterally*, as it would make the findings required under § 4 discussed above.

Similar comment is applicable to the Commission's determination, under § 5(a)(3), "that a consumer product test protocol would be of assistance to consumers in making informed purchasing decisions . . ."

Other parts of § 5, which deal with the promulgation of a test protocol, are closely patterned on the provisions of § 7 of the Consumer Product Safety Act, Pub. L. 92-573. Some parts of § 7, notably the time constraints put upon the development of product safety standards, have reportedly not worked as anticipated by the Congress. Careful scrutiny must be given to the manner in which § 7 has developed before it is written into another statute.

Under § 5(f)(2) of S. 643, the procedures to govern the promulgation of a test protocol would be subject to § 553 of the Administrative Procedure Act, 5 U.S.C. § 553, which does *not* require a hearing for the oral presentation of testimony. This is a radical departure from several recently enacted statutes granting the Commission authority to prescribe rules.

The Consumer Product Safety Act § 9(a)(2), requires that interested persons be given "an opportunity to make written submissions" when rules are to be promulgated under that act.

Sec. 109 of the Magnuson-Moss Warranty-FTC Improvement Act, Pub. L. 93-637, contains a similar requirement when rules regarding written warranties are to be promulgated; as does § 202 of that act, which grants general rulemaking power to the Commission. There absolutely is no reason to dispense with hearings for the presentation of oral testimony in any rulemaking proceeding conducted by the Commission.

Sec. 5(c)(3)(C) of S. 643 would require "the maintenance of records, which shall be available to the public," concerning the development of a test protocol recommended for promulgation. A requirement of this kind could and no doubt would discourage industry groups from participating in the development of test protocols, since it would require the public disclosure of confidential information. Without industry participation, the development of practical test protocols would be virtually impossible.

We note that a provision identical to this one appears in § 7(d)(3)(C) of the Consumer Product Safety Act. While there may be some justification for such a provision when dealing with safety, there is no such justification for protocols that would have a direct and significant impact on marketing.

MANDATORY TESTING

Sec. 6, which specifies certain duties of the Commission, contains an ambiguity that could be read as requiring mandatory testing. The bill itself does not explicitly require that a manufacturer utilize a test protocol promulgated for a product made by the manufacturer. The intent of the bill is, therefore, to make

the utilization of a protocol permissive. Sec. 6(a) conforms to this understanding, when it provides that suppliers or retailers "*may advertise that their products have been tested in accordance with the requirements of the Commission under this Act and the results therefrom.*"

Sec. 6(b), however, states that, when a "protocol has become effective, the Commission *shall require . . . each supplier or retailer doing business in interstate commerce . . . to make a copy of the complete results, or a summary thereof, available without charge to each retailer who sells or distributes the product or products of such supplier subject to such protocol.*" (Emphasis in both quotations supplied.)

Copies of test results obviously could not be made available to anyone unless the tests had been performed. Sec. 6(b) could therefore be read as allowing the Federal Trade Commission to require testing by a manufacturer of products for which test protocols might have been developed.

Sec. 6(b) also contains two requirements that indicate a complete lack of understanding of the manufacturing and distribution processes. One is the requirement that test results be made available "without cost." There is no such phenomenon in any economy as "without cost." Every cost of manufacturing and distributing a product must be reflected in the price the consumer ultimately pays for a product. Otherwise the manufacturer and its distributors and retailers could eventually go out of business, and could no longer be of service to the consumer, or to the government as taxpayers.

The second is the requirement that a manufacturer make a copy of the test results available "to each retailer" who handles the manufacturer's goods. Very few, if any, manufacturers know the identity of all retailers who handle their products. Intermediate distributors often do not want the identity of their customers, the retailers, known to the manufacturers. Distributors are not always able, nor are they necessarily interested in passing on to retailers separate pieces of paper with information from manufacturers. For all manufacturers, large and small, to assure that the test results would be made available to *all* retailers, would be a costly, administrative nightmare.

ENFORCEMENT

Sec. 10 of S. 643 specifies that false and misleading representations regarding the testing of a product in accordance with a test protocol would violate the statute. Sec. 11(a) provides that the commission of an act prohibited by § 10 would be a violation of § 5(a) (1) of the FTC Act. These sections are thus merely a restatement of § 5(a) (1), which now prohibits the making of any false and misleading statements in commerce. Secs. 9(a), a part of § 11(a), and § 11(b) contain enforcement provisions that could present serious problems.

Sec. 9(a) provides for a "citizen's" suit to restrain an actual or contemplated "violation of any provision of this Act." Sec. 11(a) provides, in lines 12 and 13, page 16 of the act, that the violation of "any regulation issued pursuant to this Act" would violate § 5(a) (1) of the FTC Act. In view of the provision of § 6(b) of S. 643, as discussed above, these enforcement sections could make it mandatory for a manufacturer to test products under protocols promulgated by the Commission—a result we do not believe is intended.

Sec. 11(b) would impose criminal penalties of not more than \$10,000 for each day of a "willful" violation of the act, or imprisonment of not more than two years of both. These penalties could also make testing mandatory, should the Commission require that "a copy of complete results" be made available to retailers. In addition, the penalties are entirely too severe for the gravity of any offense that might be committed under the act.

ECONOMIC IMPACT

The economic impact S. 643 might have, if enacted, is almost incalculable. A determination of the impact on suppliers, retailers, and consumers of promulgating a test protocol under § 4(3) would itself be an imponderable. How could the Commission determine the necessity of redesigning test procedures and the cost to suppliers of this step alone?

The bill contains other sections that could have a sharp impact on governmental expenditures, and hence on taxpayers. The enlargement of the Federal Trade Commission's staff to handle the new assignment would require new funds. The Bureau of Standards, directed by § 7(a) to develop "resources, facilities, and expertise necessary to assist and advise the Commission," would

require new funds. Compliance testing under § 8(a) and contracting under § 8(d) would require new funds. Any open-ended permission to test or to construct facilities—buildings or laboratories—could end in immense new governmental spending.

The appropriations authorized in § 14 would be but a very small part of the eventual cost of S. 643 to the economy.

CONCLUSION

As noted, no concrete evidence has been shown of the need for a program such as S. 643 would establish; and AHAM's members are unalterably opposed to the enactment of any statute that would result in the mandatory testing of products according to standards promulgated by the government. We acknowledge that similar testing is done by private organizations. While a manufacturer may not agree with the tests used by such organizations, or with the results, the testing and publication of results is an endeavor undertaken in a free, competitive society. To inject the federal government into this area will result in the regimentation of production, a diminution of consumer choice in the market, and the imposition of unnecessary and intolerable burdens on manufacturers, especially smaller manufacturers. An error in the development of a protocol or in the disclosure of information could put a company out of business and injure an entire industry.

The long-range result of S. 643, if test protocols were to be used even to a slight degree, could be anti-competitive in ways other than those mentioned above. The bill could assist in entrenching a dominant firm in a product market. Such a firm would have resources to use a test protocol deficient as it might be, and to create a public demand for products tested under a protocol. Smaller companies, which might not have those resources, might not be able to meet the competitive forces. Potential entrants into a market could be driven away. The protocols could also become a non-tariff barrier to imported goods.

We urge that consideration of S. 643 and like legislation be terminated.

Senator Moss. Mr. William Cavanaugh, managing director of the American Society for Testing and Materials, and Mr. Frank E. Hodgdon, vice president and director, American Gas Association Laboratories.

Mr. Cavanaugh, we would be glad to have you proceed. You have a full statement that will be placed in the record in full, as will that of Mr. Hodgdon. We will ask you to highlight and summarize it as best you can, sir.

STATEMENTS OF WILLIAM CAVANAUGH, MANAGING DIRECTOR, AMERICAN SOCIETY FOR TESTING AND MATERIALS; ACCOMPANIED BY B. J. CORRIGAN; AND JOAN McFADDEN; AND FRANK E. HODGDON, VICE PRESIDENT AND DIRECTOR, AMERICAN GAS ASSOCIATION LABORATORIES; ACCOMPANIED BY BOSLEY CROWTHER III

Mr. CAVANAUGH. I will do the best I can, Senator, although I must say, based on my prior experience in such situations, these always come out of the typewriter pretty lean. I will take out whatever fat I can find.

I am William W. Cavanaugh, managing director of the American Society for Testing and Materials (ASTM), a nonprofit corporation organized according to the laws of the Commonwealth of Pennsylvania for the "development of standards on characteristics and performance of materials, products, systems, and services; and the promotion of related knowledge."

I have with me today Mr. B. J. Corrigan who is ASTM's staff director for product safety standards, and Mrs. Joan McFadden. We have 170 employees on the staff of ASTM, and I have to pledge to you they don't all have names like Corrigan, Cavanaugh and McFadden.

Let me say at the outset that ASTM has no official position for or against the purposes of S. 643; that is, on whether it should be the policy of Congress to have established reliable and uniform protocols for quality and performance testing of consumer products.

This again is the result of ASTM's basic policy which is related in turn to its chartered purpose. With the exception of standards development methodologies as these may be included in legislation such as this, ASTM takes no position on matters of public policy. We simply do not have a mechanism of any kind within the society to develop these kinds of positions. Further, the society has long felt that to enter contention on either side of public policy questions would impair the prestige and credibility ASTM has developed in almost an 80-year period in the field to which it confines its activities—voluntary consensus standards.

Just to indicate the consistency of this policy, let me provide for you, briefly, an example or two of recent date.

ASTM has no position on whether or not there needs to be a CPSC. Since the inception of the Commission several years ago, however, ASTM's management system for standards development has been used by various interested parties, including the Consumer Product Safety Commission itself, to produce product safety standards in numbers greater than all other organizations in the United States put together.

ASTM has no position on whether or not there ought to be a medical devices bill, as is now under consideration in the Congress. We were, however, pleased at the request of the Honorable Paul G. Rogers, chairman of the House Subcommittee on Health and the Environment, to appear recently before his subcommittee jointly with the American National Standards Institute to comment on the standards aspects of H.R. 5545, Medical Devices Amendments of 1975. We felt that our experience in dealing with a similar situation under the Consumer Product Safety Act provided us with knowledge that would be useful to the committee. Apparently it was because, as I heard yesterday, most of the recommendations we have made have been included in the rewrite.

Given that background, we are pleased to be here today in response to the subcommittee chairman's request to comment on the standards provisions of S. 643.

Given the purpose of S. 643 as it is stated in the proposed legislation, we do have an opinion, from a standards development point of view, on whether S. 643 can effectively accomplish its stated purpose. We believe it cannot, as presently written.

I believe I speak from a unique position. First, ASTM has been developing standard test protocols for almost 80 years. At the moment we have approximately 3,500 standard test protocols—we call them standard test methods—in our official standards publications. Many of these protocols are related directly or indirectly to consumer product testing. A list of such would be intolerably long to recite but I have here, for the record, some random selections, and I also have with me a copy of the ASTM official index to its Book of Standards which overall contains now about 5,300 documents.

Let me, however, read a sample of some of the things impacted by these standard protocols that might be of special interest to the committee.

Tests for Thickness and Density of Blanket- or Batt-Type Thermal Insulating Materials;

Test for Impact Resistance of Ceramic Tableware;

Standard Specification for Automotive Gasoline;

Consumer Safety Specification for Lighters.

The second aspect of our unique position, I think, derives from the fact that the standards development provisions of this bill are very similar to those of the Consumer Product Safety Act. ASTM is the only organization, thus far, which has developed a consumer product safety standard within the allotted period prescribed in section 7 of that act—a safety standard for bookmatches.

We learned a lot from that exercise and so, I believe, did the CPSC. In fact, we are still learning. Many of my comments with regard to the provisions of S. 643 will be based on our experience with similar provisions of the Consumer Product Safety Act.

First, we believe that tightly imposed, inflexible time requirements are unworkable. This is what we told Congressman Rogers' committee also. Further, the time of 180 days for developing a test protocol, as provided for in section 5(a) is unrealistic. Even for such a seemingly simple product as a bookmatch, the time of 150 days was an enormous burden to the volunteer participants in the work and to the professional staff at ASTM. Administrative and technical errors are all but inevitable in the rush to fulfill what would appear to be an arbitrary time requirement.

In developing the bookmatch standard, we found it necessary to hold 3-day meetings every other week. This is bad group dynamics, because it allows little opportunity for tempers to cool and for the participants in an adversary situation to recharge their batteries. Finally, it is very expensive. The shorter the time, the higher the cost.

Another reason for the higher cost is that you run into the need for validation of a test protocol. A protocol is useless unless it has been proved to be reliable and reproducible so that the same atmosphere of results comes out no matter what the circumstances are that you use. That is a very time-consuming and expensive exercise.

We estimate the cost to ASTM as the offeror and to the participants in development of the bookmatch standard to be \$213,000. These are only the identifiable costs. For example, I know that the production line in one paper mill was taken out of production for 2 days to run tests to see whether the machines could handle specially treated paperboard in manufacturing matches. That cost, whatever it was, is not included in our estimate. Also this figure does not include the costs in the CPSC subsequent to our submission of the standard on February 3 of this year. Although I know little of the specifics of this, I think it safe to say that these have probably amounted to another \$250,000.

As an alternative to the language of S. 643, we suggest that section 5(a) at the bottom of page 5 be redrafted to read:

An invitation under paragraph (4) shall specify a period of time after acceptance of the offer within which the protocol is to be developed or revised. The initial period for the development or revision may be subsequently extended by the Commission if it finds for good cause that a different period is appropriate.

That is the way the CPSC has had to operate with the exception of the bookmatch standard.

My second comment goes to the language of section 5(c) (1), which states that—

The Commission may accept one, or more than one, offer to develop a proposed consumer product test protocol * * * if it determines that the offeror is technically competent * * * .

Here, I infer that the intent is that the offeror shall be competent as to the technical aspects of the product in question. I submit that the competence the Commission needs and should seek is competence in the development of test protocols. When ASTM submitted its offer to develop the bookmatch standard, for example, we had no competence whatever in the area of bookmatch technology. We had enormous, may I say unmatched, competence in the area of managing standards development projects. That competence included the ability and the resources to seek out and attract the participation, not only of persons with the necessary competence in the area of bookmatch technology, but other parties at interest as required not only by the Consumer Product Safety Act but our own procedures.

This is typical of an ASTM operation. We are a management system for the development of standards, and we know our business. When a new project enters our system, it is by no means usual that the system already includes the necessary competence in the appropriate technology. But we know how to get it, and what to do with it. In other words, it is far easier for the standards manager to enlist the needed technologists than it is for the technologists to acquire the needed skills in standards management. This may seem like a quibble, but we believe—we know—it is vital.

I suggest that the language of section 5(c) (1) be redrafted to read:

If it determines that the offeror is competent technically and in the management of test protocol development * * * .

My third comment is sweeping but must be made. The proposed legislation, in effect, sets up the FTC as a manager of projects for developing test protocols. Section 5(c) (3) requires the Commission to “prescribe regulations governing the development of proposed consumer product test protocols”

The question is whether those regulations, when they are finally developed, will be adequate to insure due process and at the same time will avoid the constraints of governmental or nongovernmental bureaucratic strangulation. By due process I mean to include such things as adequate public notice to all interested parties who may wish to participate in the development of the protocols; provisions for a fair numerical balance of representation in the developing group among producers, consumers, users, and the public interest; strict provisions covering voting and balloting; rules for the conduct of business; requirements as to the maintenance of minutes of meetings and other records and access thereto; strict procedures for handling negative votes; provision for appeal; and requirements for keeping protocols up to date in the light of fast-changing technology.

I have in mind as a model document for this purpose, as you might suspect, the “Regulations Governing ASTM Technical Committees”, a 17-page document that embodies ASTM’s concept of consensus in

standards development, and the appropriate documents of the American National Standards Institute.

I would suggest here that were the FTC to build a system to accomplish these purposes that are inferred, implied, or stated in your bill, they have to reinvent this document. There is no other way to go in achieving the purposes of your bill.

My point is this: A protocol of the kind this bill envisions will be only as good as the consensus procedures under which it is written.

I am going to stop for a second.

In this environment, the word "consensus" to folks here means the impact of the majority. This is not the meaning of the term in a consensus standard situation. Let me express it this way; we refer to the tyranny of the negative ballot. Under our procedures, one technically sound negative ballot can stop the whole procedure even in the face of a thousand positive ballots. That's the way this system works. It doesn't mean by any means a majority impact, and the consequent less-than-common-denominator concept that is often mentioned around down here.

If the regulations fail to provide for consensus, then any protocol developed under such regulations would fail of significant acceptance. In approving that protocol, the Commission then will find it necessary to examine its every bone and muscle, to tear it down and rebuild it from the ground up. This will be horrendously wasteful in terms of time and money. How can the Commission possibly satisfy itself as to the technical adequacy of a protocol developed through any but the tightest available procedures? The answer is that it cannot, except by repeating the work from scratch, or at least reviewing the technical adequacy of the protocol every step of the way.

This, we submit, would be a staggering task; one that would overwhelm even the enormous resources of the National Bureau of Standards. It is my impression that the Consumer Product Safety Commission may at this moment be in the process of realizing it is in this very situation and of taking steps to avoid it in the future.

On the other hand, if the regulations prepared by the Commission do adequately insure due process, leading to consensus, then the presumption by the viewing authority can be more confident that any protocol developed under those regulations is technically adequate, within the limitations imposed by time and other available resources. The only review then required is a review to insure that the consensus does in fact exist. If the intent of Congress in this bill is to be realized, we most strongly urge that this path be chosen.

In this connection, permit me to paraphrase these thoughts as follows: "In a properly constituted consensus standards activity, what needs to happen will happen." The key words of course, are "properly constituted."

My apologies, but I must once again refer to ASTM, since that is the consensus standards management system that I know best. In ASTM there is no technical review of any standard at any level higher than that of the committee that develops the standard. In the first place, it would be impossible to assemble any review body smart enough technically to review, for technical adequacy, every standard produced by our 126 committees.

In the second place, we are confident—and the record over a long period of time sustains this—that our regulations do insure due process and consequent consensus leading to acceptance, so the only job for the reviewing body is to insure that those regulations were followed to the letter. I cannot recommend too strongly to this subcommittee that some way be found to guide the Commission down a similar path.

In this context I should like to mention one specific. In view of our experience with the development of consumer product safety standards, it seems to us that the Federal presence in the standards-developing committee (that is to say, the representation of the public interest) should be as an active, voting participant, not as simply a monitor to follow progress with an eye to eventual objection somewhere down the road. Technical and procedural challenges are best made on the spot. When they are made after the fact, a great deal of wheel spinning and reinventing results.

Here, I cannot resist the opportunity to say that, in our opinion, the lack of a uniform Federal attitude toward the voluntary standards system, one element of which is the lack of a Federal policy with regard to the representation of Federal folk on the standards committees in that system, is one of the most serious problems that we in the system now face. Right now, for example, ANSI and its federated bodies, including ASTM, enjoy day-to-day working relations with some 30 Federal departments and agencies. The attitude of each of those is unique—varying from chilly detachment to warm cooperation. One agency permits its employees to serve as committee chairmen; another forbids its employees to serve even as voting members of the committee, preferring that they play the role of uninvolved watchdogs.

Of course, every department and agency has its own statute, its own style, its own mission, its own view of the world. But it would be of enormous benefit to the Government and to the voluntary standards system, itself sprawling and diverse, if the Federal Government could adopt a reasonably uniform posture toward that system. I am confident that it would also be of enormous benefit to our Nation's economy. At the broad interface between the Federal Government and the voluntary standards system, there is a compelling need for organization, direction, focus, central purpose, policy, and mutual understanding. As just one example, it is clear to me that the intent of the Congress, as expressed in a dozen statutes now on the books, would be far better served if there existed a governmentwide attitude concerning the use of the voluntary standards system in developing the measurement base (test protocol base) for various regulatory and procurement programs. Right now, some agencies fully participate in the voluntary system for this purpose, and some participate only symbolically or partially. Does this lack of structure tell us that it is a fundamental legislative error to combine enforcement and measurement responsibilities in the same agency? When laws are written to establish new regulatory powers, seldom does the subject of the difference between measurement methods and regulatory activities based on those methods even get discussed.

Questions such as these need very badly to be aired. It is my fervent wish that the Congress will one day address itself to the question of

how the able staffs of the various Federal departments and agencies should participate in the activities of the voluntary standards system—as many of them now do—so that those departments and agencies can accomplish their various missions in the most effective way and confident that they are acting from a sound policy base.

I wish to close my remarks by commenting briefly on the four questions raised by Senator Magnuson in his letter inviting me to testify here. If we can agree on what the problems are, then it is possible to develop test protocols as envisioned in S. 643. I should add, it is a very expensive process. In the standards business, most of the real costs are hidden costs. Until recently we in ASTM haven't paid too much attention to that. About 5 or 6 years ago we began looking at this rather seriously. We came up with numbers like this; the total input into ASTM in any given year is about \$100 million a year, just in ASTM. It is a very expensive process.

As I mentioned before, ASTM has been developing test protocols for industrial products for more than 75 years, and for consumer products for at least the past decade.

The resource commitments necessary to effectuate the purpose of this legislation are very large. As I said earlier, it cost ASTM and our committee participants an estimated \$213,000 to develop the safety standard for bookmatches, a relatively simple product. A more complex product, the vacuum cleaner, has been the subject of standards work in ASTM committee F-11 on vacuum cleaners since 1972. So far the committee has completed 6 standards, and it has about 20 others in process. We estimate that more than \$1 million has been invested in the work of this committee by the voluntary participants.

We believe the offeror procedure is workable, but with the suggestions for change that we have enumerated.

We appreciate your invitation to be here and want to be of help during your further deliberations.

[The attachments referred to follow:]

ASTM STANDARDS RELATING TO END-USE PRODUCTS, ASTM 1975 Book
OF STANDARDS *

- * A 90-69 (1973), Weight of Coating on Zinc-Coated (Galvanized) Iron or Steel Articles, Test for, (3)
- * A 370-75a, Mechanical Testing of Steel Products, Methods and Definitions for, (1), (2), (3), (4), (5), (10)
- * C 167-64 (1970), Thickness and Density of Blanket- or Batt-Type Thermal Insulating Materials, Tests for, (18)
- C 209-72, Insulating Board (Cellulosic Fiber), Structural and Decorative, Testing, (18)
- C 217-58 (1970), Weather Resistance of Natural Slate, Test for, (19)
- C 225-73, Resistance of Glass Containers to Chemical Attack, Test for, (17)
- * C 282-67 (1972), Acid Resistance of Porcelain Enamels (Citric Acid Spot Test), Test for, (17)
- * C 283-54 (1972), Resistance of Porcelain Enameled Utensils to Boiling Acid, Test for, (17)
- * C 313-59 (1972), Adherence of Porcelain Enamel and Ceramic Coatings to Sheet Metal, Test for, (17)
- C 368-56 (1970), Impact Resistance of Ceramic Tableware, Test for, (17)
- * C 448-64 (1972), Abrasion Resistance of Porcelain Enamels, Tests for, (17)
- C 473-74, Gypsum Board Products, Gypsum Lath, and Gypsum Partition Tile or Block, and Precast Reinforced Gypsum Slabs, Physical Testing of (13)

*Partial listing of standards, randomly selected.

- C 474-67 (1973), Joint Treatment Materials for Gypsum Wallboard Construction, Testing, (13)
- C 501-66 (1971), Relative Resistance to Wear of Unglazed Ceramic Tile by the Taber Abraser, Test for, (17)
- C 518-70, Thermal Conductivity of Materials by Means of the Heat Flow Meter, Test for, (18), (44)
- * C 538-67 (1972), Color Retention of Red, Orange, and Yellow Porcelain Enamels, Test for, (17)
- * C 540-67 (1972), Image Gloss of Porcelain Enamel Surfaces, Test for, (17)
- * C 551-72, Asbestos-Cement Fiberboard Insulating Panels, Spec. for, (16)
- * C 627-70, Ceramic Floor Tile Installation Systems, Evaluating, (17)
- * C 648-71, Breaking Strength of Ceramic Tile, Test for, (17)
- * C 650-71, Resistance of Ceramic Tile to Chemical Substances, Test for, (17)
- C 676-74, Detergent Resistance of Ceramic Decorations on Glass Tableware, Test for, (17)
- C 724-72T, Acid Resistance of Ceramic Decorations on Architectural Type Glass Test for, (17)
- C 732-72, Aging Effects of Artificial Weathering on Latex Sealing Compounds, Test for, (18)
- C 733-72, Volume Shrinkage of Latex Sealing Compounds, Test for, (18)
- C 734-72, Low-Temperature Flexibility of Latex Sealing Compounds After Artificial weathering, test for, (18)
- C 735-72T, Acid Resistance of Ceramic Decorations on Returnable Beer and Beverage Glass Containers, Test for, (17)
- * C 743-73, Continuity of Porcelain Enamel Coatings, Test for, (17)
- D 154-73, Varnishes, Testing, (27)
- * D 204-75, Sewing Threads, Testing, (32)
- * D 231-62 (1975), Knit Goods, Testing and Tolerances for, (32)
- * D 233-65 (1975), Turpentine, Sampling and Testing, (29)
- D 268-74, Volatile Solvents for Use in Paint, Varnish, Lacquer, and Related Products Sampling and Testing, (29)
- D 333-73, Clear and Pigmented Lacquers, Testing, 27
- D 344-39 (1970), Relative Dry Hiding Power of Paints, Test for, (27)
- * D 387-60 (1972), Mass Color and Tinting Strength of Color Pigments, Test for, (28)
- * D 412-68, Tension Testing of Vulcanized Rubber (35), (37)
- * D 413-39 (1970), Adhesion of Vulcanized Rubber (Friction Test), Tests for, (37)
- * D 418-68, Woven and Tufted Pile Floor Covering, Testing, (32)
- * D 430-73, Ply Separation and Cracking of Rubber Products, Dynamic Testing for, (37)
- * D 434-75, Resistance to Slippage of Yarns in Woven Fabrics Using a Standard Seam, Test for, (32)
- D 460-60 (1972), Soap and Soap Products, Sampling and Chemical Analysis of, (30)
- * D 461-72, Felt, Testing, (32)
- * D 462-64 (1975), Certain Wool and Part Wool Fabrics, Testing and Tolerances for, (32)
- * D 501-67 (1972), Alkaline Detergents, Sampling and Chemical Analysis of, (30)
- D 502-39 (1972), Particle Size of Soaps and Other Detergents, Test for, (30)
- D 530-68 (1974), Hard Rubber Products, Testing, (37)
- * D 543-67 (1972), Resistance of Plastics to Chemical Reagents, Test for, (35)
- * D 610-68 (1974), Rusting on Painted Steel Surfaces, Evaluating Degree of, (27)
- * D 622-73, Automotive Air Brake and Vacuum Brake Hose, Testing, (38)
- * D 639-72, Battery Containers Made from Hard Rubber or Equivalent Materials, Testing, (37)
- D 658-44 (1970), Abrasion Resistance of Coatings of Paint, Varnish, Lacquer, and Related Products with the Air Blast Abrasion Tester, Test for, (27)
- D 714-56 (1974), Blistering of Paints, Evaluating Degree of, (27)
- D 772-47 (1975), Resistance to Flaking (Scaling) of Exterior Paints, Evaluating Degree of, (27)
- D 773-47 (1970), Adhesiveness of Gummed Tape, Test for, (20), (22)
- D 774-67 (1971), Bursting Strength of Paper, Test for, (20), (21)
- D 802-57 (1975), Pine Oil, Sampling and Testing, (29)

- D 805-72, Veneer, Plywood, and Other Glued Veneer Constructions, Testing, (22)
- D 816-55 (1970), Rubber Cements, Testing, (22), (37)
- D 856-49 (1975), Pine Tars and Pine-Tar Oils, Sampling and Testing (29)
- *D 885-75, Tire Cords, Tire Cord Fabrics and Industrial Filament Yarns Made from Man-Made Organic-Base Fibers, Testing, (32)
- D 896-66 (1972), Resistance of Adhesive Bonds to Chemical Reagents, Test for, (22)
- D 897-72, Tensile Properties of Adhesive Bonds, Test for (22)
- D 959-50 (1973), Drop Test for Bags (20)
- D 968-51 (1972), Abrasion Resistance of Coatings of Paint, Varnish, Lacquer, and Related Products by the Falling Sand Method, Test for, (27)
- *D 1116-69, Resistance of Pile Floor Coverings to Attack by Black Carpet Beetle, Larvae, Test for, (32)
- *D 1117-74, Nonwoven Fabrics, Testing, for (32)
- *D 1120-72, Boiling Point of Engine Antifreezes, Test for, (30)
- *D 1175-71, Abrasion Resistance of Textile Fabrics, Tests for, (32)
- *D 1233-73, Twine Made from Bast and Leaf Fibers, Testing, (33)
- D 1279-57 (1971), Buffering Action of Metal Cleaners, Test for, (30)
- *D 1284-73, Relaxation Dimensional Change of Stabilized Knit Wool Fabrics, Test for, (32)
- *D 1295-67 (1972), Wrinkle Recovery of Woven Textile Fabrics Using the Vertical Strip Apparatus, Test for, (32)
- D 1308-57 (1973), Effect of Household Chemicals on Clear and Pigmented Organic Finishes, Test for, (27)
- *D 1335-67 (1972), Tuft Bind of Pile Floor Coverings, Test for, (32)
- *D 1336-72, Distortion of Yarn in Woven Fabrics, Test for, (32)
- D 1338-56 (1972), Working Life of Liquid or Paste Adhesives by Consistency and Bond Strength, Test for, (22)
- D 1360-70, Fire Retardancy of Paints (Cabinet Method), Test for, (27)
- D 1361-58 (1970), Fire Retardancy of Paints (Stick and Wick Method), Test for, (27)
- *D 1375-72, Pilling Resistance and Other Related Surface Changes of Textile Fabrics, Test for, (32)
- *D 1376-64 (1975), Warp Knit Fabrics, Testing, (32)
- D 1382-64 (1970), Susceptibility of Dry Adhesive Films to Attack by Roaches, Test for, (22)
- *D 1388-64 (1975), Stiffness of Fabrics, Tests for, (32)
- D 1395-58 (1974), Abrasion Resistance of Clear Floor Coatings, Test for, (27)
- *D 1447-72, Length and Length Uniformity of Cotton Fibers by Fibrograph Measurement, Test for, (33)
- D 1475-60 (1974), Density of Paint, Varnish, Lacquer, and Related Products, Test for, (27)
- D 1543-63 (1974), Color Permanence of White Architectural Enamels, Test for, (27)
- D 1567-62 (1974), Detergent Cleaners for Evaluation of Corrosive Effects on Certain Porcelain Enamels, Testing, (30)
- *D 1748-70 (1975), Rust Protection by Metal Preservatives in the Humidity Cabinet, Test for, (24)
- D 1761-74, Metal Fasteners in Wood, Testing, (22)
- *D 1792-66, Potential Long-Term Removability Properties of Conventional Type Water-Emulsion Floor Polishes, Test for, (30)
- *D 1793-74, Water Spotting of Emulsion Floor Polishes, Test for, (30)
- D 1815-70, Water Absorption (Static) of Leather, Test for, (21)
- D 2020-65 (1971), Mildew (Fungus) Resistance of Paper and Paperboard, Tests for, (20)
- D 2047-75, Static Coefficient of Friction of Polish-Coated Floor Surfaces as Measured by the James Machine, Test for, (30)
- D 2051-63 (1972), Durability of Finish of Zippers to Laundering, Test for, (33)
- D 2052-75, Colorfastness of Zippers to Drycleaning, Test for, (33)
- D 2053-63 (1972), Colorfastness of Zippers to Light, Test for, (33)
- D 2054-63 (1972), Colorfastness of Zipper Tapes to Crocking, Test for, (33)
- D 2055-63 (1972), Colorfastness of Zipper Tapes to Perspiration, Test for, (33)
- D 2057-75, Colorfastness of Zippers to Laundering, Test for, (33)
- D 2058-63 (1972), Durability of Finish of Zippers to Drycleaning, Test for, (33)
- D 2061-71, Strength Tests of Zippers (33)

- D 2062-74, Operability of Zippers, Test for, (33)
 *D 2097-69 (1974), Flex Testing of Finish on Upholstery Leather (21)
 *D 2098-70, Dynamic Water Resistance of Shoe Upper Leather by the Dow Corning Leather Tester, Test for, (21)
 *D 2099-70, Dynamic Water Resistance of Shoe Upper Leather by the Maeser Water Penetration Tester, Test for, (21)
 *D 2209-64 (1970), Tensile Strength of Leather, Test for, (21)
 *D 2210-64 (1970), Grain Crack and Extension of Leather by the Mullen Test, Test for, (21)
 *D 2211-64 (1970), Elongation of Leather, Test for, (21)
 *D 2212-64 (1970), Slit Tear Resistance of Leather, Test for, (21)
 D 2243-68 (1974), Freeze-Thaw Resistance of Latex and Emulsion Paints, Test for, (27)
 *D 2299-68, Relative Stain Resistance of Plastics, Rec. Practice for Determining, (35)
 D 2348-73, Arsenic in Paint, Test for, (27)
 D 2369-73, Volatile Content of Paints, Test for, (27)
 D 2394-69, Simulated Service Testing of Wood and Wood-Base Finish Flooring (22)
 D 2401-67 (1972), Service Change of Appearance of Pile Floor Coverings, Test for, (32)
 *D 2433-70, Rubber Thread, Testing, (38)
 *D 2599-72, Lead in Gasoline by X-Ray Spectrometry, Test for, (24)
 D 2677-71, Lightability of Barbecue Briquets, Test for, (26)
 D 2805-70, Hiding Power of Paints, Test for, (27)
 D 2847-72, Engine Coolants in Vehicle Service, Rec. Practice for Testing, (30)
 D 2898-72, Durability of Fire—Retardant Treatment of Wood, Test for, (22)
 D 2931-75, Latex Flat Wall Paints, Rec. Practices for Testing, (27)
 D 2932-75, Exterior Solvent-Thinned House and Trim Paints, Rec. Practices for Testing, (27)
 D 2960-75T, Controlled Naturally Soiled Home Laundering Test (30)
 D 2966-71, Cavitation Erosion-Corrosion Characteristics of Aluminum in Engine Coolants Using Ultrasonic Energy, Test for, (30)
 D 2969-74a, Tire Cords, Tire Cord Fabrics, Filaments, and Strands Made from Steel, Testing, (32)
 D 2970-75, Tire Cords, Tire Cord Fabrics and Industrial Yarns Made from Glass Filaments, Testing, (32)
 D 2978-71, Volume of Peat Materials, Test for, (19)
 D 3009-72, Composition of Turpentine by Gas Chromatography, Test for, (29)
 D 3043-72, Plywood in Flexure, Testing, (22)
 D 3056-72, Gel Time of Solventless Varnishes, Test for, (39)
 D 3057-72, Moisture in Aerosol Products, Test for, (20), (46)
 D 3059-72, Percent Product Retention in Pressurized Foods, Test for, (20), (46)
 D 3062-72, Solids Content of Aerosol Coatings, Test for, (20), (46)
 D 3063-72, Pressure in Glass Aerosol Bottles, Test for, (20), (46)
 D 3065-72, Flammability of Aerosol Products, Tests for, (20), (46)
 D 3069-72, Delivery Rate of Aerosol Products, Test for, (20), (46)
 D 3071-72, Drop Testing of Glass Aerosol Bottles (20), (46)
 D 3072-72, Volatile Content of Aerosol Products, Test for, (20), (46)
 D 3074-72, Pressure in Metal Aerosol Containers, Test for, (20), (46)
 D 3075-72, Overrun of Food Aerosols, Test for, (20), (46)
 D 3076-72, Effective Crimping on Outside Crimped Valves of Aerosol Containers, Test for, (20), (46)
 D 3078-72, Leaks in Heat-Sealed Flexible Packages, Test for, (20), (21), (46)
 D 3088-72, Effectiveness of Aerosol and Pressurized Space Spray Insecticides Against Flying Insects, Test for, (20), (46)
 D 3093-72, Pickup Efficiency of Residual Aerosol Insecticides, Test for, (20), (46)
 D 3094-72, Seepage Rate of Aerosol Products, Test for, (20), (46)
 D 3095-72, Effectiveness of Aerosol Products, Test for, (20), (46)
 D 3096-72, Liquid Densities of Pressurized Products, Test for, (20), (46)
 D 3097-72, Aerosol Products for Delivered Mass, Testing, (20), (46)
 D 3116-72, Lead in Gasoline, Test for Trace Amounts of, (25)
 D 3147-72, Anti-Leak Antifreezes and Stop-Leak Additives for Engine Coolants, Testing, (30)

- D 3153-72, Recoatability of Water Emulsion Floor Polishes, Test for, (30)
 D 3161-72T, Wind-Resistance of Asphalt Shingles, Test for, (15)
 D 3170-74, Chip Resistance of Coatings, Test for, (27)
 D 3206-73, Soil Resistance of Floor Finishes, Test for, (30)
 D 3207-73, Detergent Resistance of Floor Polish Films, Test for, (30)
 D 3209-73, Freeze-Thaw Resistance of Liquid Water Emulsion Floor Polishes, Test for, (30)
 D 3217-73T, Breaking Tenacity of Man-Made Textile Fibers in Loop or Knot Configurations, Test for, (33)
 D 3234-73, Abrasion Resistance of Wax Coatings, Test for, (25)
 D 3258-73, Porosity of Paint Films, Test for, (27)
 D 3323-74, Interior Solvent-Thinned Flat Wall Paints, Rec. Practice for Testing, (27)
 D 3332-74T, Mechanical Shock Fragility of Products, Using Shock Machines, Test for, (20)
 D 3335-74, Low Concentrations of Lead in Paint by Atomic Absorption Spectroscopy, Test for, (27)
 D 3358-74, Water-Thinned Floor Paints, Rec. Practice for Testing, (27)
 D 3411-75T, Flammability of Textile Materials, Test for, (32)
 E 1-75a, ASTM Thermometers, Spec. for, (25), (44)
 E 8-69, Tension Testing of Metallic Materials, (6), (7), (10)
 E 9-10, Compression Testing of Metallic Materials at Room Temperature, (10)
 E 10-73, Brinell Hardness of Metallic Materials, Test for, (10)
 E 18-74, Rockwell Hardness and Rockwell Superficial Hardness of Metallic Materials, Tests for, (10)
 E 23-72, Notched Bar Impact Testing of Metallic Materials, (10)
 E 50-73, Apparatus, Reagents, and Safety Precautions for Chemical Analysis of Metals, Recommended Practices for, (12)
 E 92-72, Vickers Hardness of Metallic Materials, Test for, (10)
 E 105-58, Probability Sampling of Materials, Recommended Practice for, (15), (32), (41)
 E 100-72, ASTM Hydrometers, Spec. for, (25), (41), (44)
 E 110-61, Indentation Hardness of Metallic Materials by Portable Hardness Testers, Test for, (10)
 E 122-72, Choice of Sample Size to Estimate the Average Quality of a Lot or Process, Recommended Practice for, (15) (41)
 E 134-68, Pensky-Martens Closed Flash Tester Spec. for, (25) (41)
 E 135-75, Emission Spectroscopy, Def. of Terms and Symbols Relating to, (42)
 E 140-72, Hardness Conversion Tables for Metals (Relationship Between Brinell Hardness, Vickers Hardness, Rockwell Hardness, Rockwell Superficial Hardness, and Knoop Hardness), (10)
 E 141-69, Acceptance of Evidence Based on the Results of Probability Sampling, Recommended Practice for, (41)
 E 144-64, Safe Use of Oxygen Combustion Bombs, Rec. Practice for (41)
 *E 147-61, Apparatus for Microdetermination of Nitrogen by Kjeldahl Method, Spec. for, (41)
 E 152-73, Fire Test of Door Assemblies, (18)
 E 173-68, Interlaboratory Studies of Methods for Chemical Analysis of Metals, Rec. Practices for Conduction, (12)
 E 177-71, Precision and Accuracy as Applied to Measurement of a Property of a Material, Rec. Practice for Use of the Terms, (13), (14), (15), (35), (41)
 *NOTE.—E 145-68 (1974), Gravity-Convection and Forced-Ventilation Ovens, Spec. for, (41)
 E 178-75, Outlying Observations, Rec. Practice for Dealing with, (41)
 E 196-74, Load Tests of Floors and Flat Roofs, (18)
 E 200-75, Preparation, Standardization, and Storage of Standard Solutions for Chemical Analysis, (30), (31)
 E 203-75, Water Using Karl Fischer Reagent, Test for, (30)
 E 210-63, Microscope Objective Thread, (42)
 E 211-70, Cover Glasses and Glass Slides for Use in Microscopy, Spec. for, (42)
 E 229-70, Shear Strength and Shear Modulus of Structural Adhesives, Test for, (10), (22), (41)
 E 238-68, Pin-Type Bearing Test of Metallic Materials (10)
 E 258-67, Total Nitrogen in Organic Materials by Modified Kjeldahl Method, Test for, (30)

- E 274-70, Skid Resistance of Paved Surfaces Using a Full-Scale Tire, Test for, (15)
- E 276-68, Particle Size or Screen Analysis at No. 4 (4.75 mm) Sieve and Finer for Metal Bearing Ores and Related Materials, Test for (12)
- E 283-73, Rate of Air Leakage Through Exterior Windows, Curtain Walls, and Doors, Test for, (18)
- E 284-71, Appearance of Materials, Def. of Terms Relating to, (46)
- E 287-67, Burets, Spec. for (41)
- E 288-67, Volumetric Flasks, Spec. for (41)
- E 298-68, Organic Peroxides, Assay of, (30)
- E 299-68 (1973), Peroxides in Organic Solvents, Test for Trace Amounts of, (30)
- E 311-67, Spectrochemical Analysis, Rec. Practice for Sampling and Sample Preparation Techniques in, (42)
- E 320-70, Radiochemical Determination of Cesium-137 in Nuclear Fuel Solutions, (45)
- E 329-72, Inspection and Testing Agencies for Concrete, Steel, and Bituminous Materials as Used in Construction, Rec. Practice for, (10), (14), (15)
- E 330-70, Structural Performance of Exterior Windows, Curtain Walls, and Doors Under the Influence of Wind Loads, Test for, (18)
- E 331-70, Water Penetration of Exterior Windows, Curtain Walls, and Doors by Uniform Static Air Pressure Difference, Test for, (18)
- E 337-62, Relative Humidity by Wet- and Dry-Bulb Psychrometer, Test for (20), (32), (41)
- E 338-68, Sharp-Notch Tension Testing of High-Strength Sheet Materials, (10)
- E 339-67, Discrimination of Differences in the Production of Alcoholic Beverages, Test for, (46)
- E 345-69, Tension Testing of Metallic Foil, (10)
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REGULATIONS GOVERNING ASTM TECHNICAL COMMITTEES

Adopted 1910; Revised 1950, 1963, May 1966, May 1969, August 1970, January 1971, September 1971, September 1973

FOREWORD

The responsibility for the Regulations Governing ASTM Technical Committees is vested in the Board of Directors. Change in the Regulations may be recommended by the Board of Directors, by the Committee on Technical Committee Operations (COTCO), or by a technical committee or its Executive Subcommittee. COTCO, a standing committee of the Board, has the following responsibilities as stated in its scope: "... develops and maintains the Regulations Governing ASTM Technical Committees and serves a judicial function for the Society in ... the interpretation and enforcement of these regulations ..." In all cases, recommended changes shall be referred to COTCO, which, at a regular meeting, shall rule on the merits of the recommendation. The recommendation shall then be submitted to the chairman of all technical committees for comment. Comments so received shall be ruled on by COTCO at its next meeting. The final recommendation shall then be sent to the Board. Changes in the Regulations adopted by the Board of Directors shall be announced to the members and shall become effective on the date determined by the Board of Directors.

1. Definitions of Terms

1.1 *Society Member*.—There are four classes of membership in ASTM, defined in Article I of the ASTM Bylaws as follows:

1.1.1 *Member*.—"A Member shall be: (1) an individual subscribing to the purposes of the Society and holding participating membership on one or more technical committees or subcommittees of the Society; (2) an individual subscribing to the purposes of the Society but not participating as a member of a technical committee or subcommittee; (3) an educational institution; public library; or a scientific, engineering, consumer, labor, or technical non-profit society subscribing to the purposes of the Society." (Note)

1.1.2 *Sustaining Member*.—"A Sustaining Member shall be an individual, a business, governmental, research, or professional organization, or trade association or separate facility thereof subscribing to the purposes of the Society." (Note, 1.1.1)

1.1.3 *Senior Member*.—"A Senior Member shall be an individual who is fully retired from his regular employment, who has been a member of the Society or a participant or both in an activity of the Society for a total of ten years or more, not necessarily continuously, and who elects to continue his association

NOTE.—Act I, Sec. 1, of the ASTM Bylaws provides as follows: "The rights of membership of organizations holding membership shall be exercised only by the individual who is designated as the official representative of that membership."

with the Society through the payment of reduced dues. He shall have the same rights and privileges as a member except as may be limited by the Board of Directors for this classification."

1.1.4 Honorary Member.—"An Honorary Member shall be an individual of widely recognized eminence in some part of the field which the Society aims to cover as defined in Sec. 2 of the Charter, or one who has rendered especially meritorious service to the Society. An Honorary Member shall have the same rights and privileges as a Member."

1.2 Affiliate.—The following definition is given in Art. I, Sec. 4 of the ASTM bylaws: "An Affiliate shall be an individual who is invited by a committee or subcommittee or both, subject to approval by the Board of Directors, to participate on a committee or subcommittee of the Society because of his special knowledge either as a professionally or technically qualified individual or both, or as an ultimate consumer." Art. I, Sec. 7, provides further: "Nomination of individuals to become Affiliates will be made to the Board of Directors by appropriate committees."

1.3 Voting Interest.—A footnote to Art. VII, Sec. 3(b), of the ASTM Bylaws defines a voting interest as follows: "A voting interest shall be any of the following: (1) a company or corporation; (2) a plant, branch, or other primary division of a company or corporation having a separate interest so far as the Standard in question is concerned; a university, school or department thereof; an association, institute, or society; a federal, state or other governmental department, agency, laboratory or other primary division having separate interest so far as the Standard in question is concerned, and including all individual members of the Society affiliated with any of the foregoing; (3) an unaffiliated individual member."

1.4 Producer.—A producer is a voting interest on a technical committee whose relation is with the production or sale or both of the materials, products, systems, and services with which the committee is concerned (see 3.7).

1.5 User.*—A user is a voting interest on a technical committee whose relation is with the use of the materials, products, systems, and services with which the committee is concerned (see 3.7).

1.6 General Interest.—A general interest voter is a voting interest on a technical committee whose relation is not with the production, sale, or use of the materials, products, systems, and services with which the committee is concerned (see 3.7).

1.7 Standard.—Art. VII, Sec. 1, of the ASTM Bylaws states: "The term 'Standards' shall be applied collectively to specifications, methods, definitions, classifications, and recommended practices that have been approved by the sponsoring committee and adopted by the Society in accordance with the procedure established therefor." (See Sections 5 to 7.) The term "standard," when not capitalized in these Regulations, is used in the general sense and includes Tentatives.

1.8 Tentative.—Art. VII, Sec. 2, of the ASTM Bylaws states: "The term 'Tentatives' shall be applied to those specifications, methods, definitions, classifications, and recommended practices, that have been approved by the sponsoring committee and accepted by the Society in accordance with the procedure established therefor, for publication and use preliminary to adoption as Standard, thus providing opportunity for suggestion and criticism." (See Sections 7 to 10.)

1.9 Emergency Standard.—An Emergency Standard is issued by the Society to meet a demand for more rapid issuance of a Standard where such action is deemed necessary by the Executive Subcommittee of a technical committee and concurred in by the Committee on Standards. Emergency Standards are not consensus documents because they have not been submitted to approval by the Society (see 9.7.)

1.10 Proposal.—The term "Proposal" is applied to specifications, test methods, classifications, definitions, and recommended practices that have been approved by the sponsoring committee for publication as information only. There is no Society letter ballot and no designation is assigned.

1.11 Specification.—A specification is a precise statement of a set of requirements to be satisfied by a material, product, system, or service, indicating, whenever appropriate, the procedure by means of which it may be determined whether the requirements given are satisfied. As far as practicable, it is desirable that the

*Formerly designated "consumer."

requirements be exposed numerically in terms of appropriate units together with their limits.

1.12 Test Method.—A test method covers sampling and describes the subsequent testing procedures used in determining the properties, composition, or performance that may be specified. A test method shall not include numerical limits for the properties, composition, or performance.

1.13 Classification.—A classification, as applied to materials, products, systems, or services, defines systematic arrangement or division into groups based on similar characteristics such as origin, composition, properties, or use (This definition should not be confused with classification of Voting Interest as used in 3.7.)

1.14 Definition.—A definition comprises a term with explanation of its meaning as applied to materials, products, systems, services, and methods within the scopes of technical committees.

1.15 Recommended Practice.—A recommended practice is a procedure, guide, or service that may or may not be auxiliary to a test method or a specification. Examples of such include selection, preparation, application, inspection, necessary precautions for use or disposal, installation, maintenance, and operation of testing apparatus.

1.16 Review.—Review is the study of a draft of a revised or proposed standard, preferably in the early stages of development, for the purpose of submitting to the sponsoring committee constructive comments and criticism. Review also constitutes assessment by the sponsoring committee of comments submitted from members on letter ballot returns. Such comments shall be assessed in terms of their significance in relation to the technical content of the subject document. Review shall be accomplished within a reasonable time and shall not delay the progress of standardization. It does not constitute the power of veto or vote. The term review also covers periodic review action by a technical committee of its standards (see 7.4).

1.17 Editorial Revision.—Editorial revision is a change in a standard or draft standard that introduces no change in the technical intent but either corrects an unintentional error or reduces ambiguity. Editorial revisions in published standards involving corrections of errors in substance (essential information that might be misused) require a change in year designation. Editorial revisions do not require letter ballots.

2. Organization of Technical Committees

2.1 Establishment.—Technical committees are established by the Board of Directors on recommendation by the Committee on Standards, by the Committee on Technical Committee Operations, or by a conference convened to consider such action. Committees dealing with materials, products, systems, or services that are offered for sale shall be balanced. When the Board of Directors authorizes the establishment of a technical committee it will state whether or not the committee shall be balanced (see Section 4). Technical committees and the subcommittees that develop specifications for materials, products, systems, or services that are offered for sale, or that are authorized to do so, shall be classified (see 3.7) and balanced. Balance may also be required in other subcommittees dealing with materials, products, systems, or services that are offered for sale (see 4.2).

2.2 Initial Membership and Preliminary Organization.—The initial members shall be approved by the Board of Directors. The President of the Society shall appoint a chairman pro tem, who, with the assistance of ASTM Staff or a steering committee, or both, shall fix the time and place of the first meeting. If the committee is required to be balanced, balance shall have been achieved prior to voting on recommendations pertaining to standards.

2.3 Permanent Organization.—A chairman and such other officers as the committee may desire shall be elected at the first meeting or as soon thereafter as practical. An Executive Subcommittee and other subcommittees as needed shall be established. The committee shall adopt a statement of scope to become effective upon approval by the Board of Directors.

2.4 Bylaws.—Each technical committee shall adopt bylaws by letter ballot of the main committee governing its operation and consistent with these Regulations. Bylaws shall be subject to approval by the Board of Directors. (Sample bylaws, approved by COTCO, are available from Society Headquarters.) Technical committee bylaws shall cover the following subjects and such others as a committee may desire:

2.4.1 Statement of scope and area of interest of the technical committee.

2.4.2 Qualifications for membership, procedures for acceptance of members, requirements for continuation of membership, procedures for termination of membership, and, on classified technical committees, guidance for establishing classifications of voting interests (see 3.7).

2.4.3 On classified technical committees, a statement as to whether there will be a single or multiple classification of voting interests, and, if the latter, the categories selected (see Section 4).

2.4.4 Procedure for nomination and election by letter ballot of officers and members-at-large of the Executive Subcommittee.

2.4.5 Duties and responsibilities of officers.

2.4.6 Rules for conduct of business and meetings, rules pertaining to proxies (see 5.5), and the requirements for a quorum.

2.4.7 Duties and responsibilities of the Executive Subcommittee.

2.4.8 Provisions relating to subcommittees, as follows:

2.4.8.1 Procedures for their formation, for establishing scopes, for appointing officers and members, and tenure of officers and members.

2.4.8.2 Criteria for activity and for termination of membership.

2.4.8.3 Procedures for accepting or approving proposed standards and revisions thereof.

2.4.8.4 Rules for submitting reports.

2.4.9 Procedures and requirements for ballots.

2.4.10 Procedures for amending the committee bylaws.

3. *Membership of Technical Committees*

3.1 *Provisions.*—Membership shall be subject to the following provisions, and shall be in accordance with committee bylaws.

3.2 *Numerical Limitation.*—There shall be no numerical limitation on the number of members of a technical committee.

3.3 *Individual Members Only.*—Only individuals may be accepted for membership on a technical committee; technical committees shall not have organizational members. As is noted in Art. I, Sec. 1, of the ASTM Bylaws (see 1.1), the rights of membership of organizations holding membership in ASTM may be exercised only by the individual who is designated as the official representative of that membership.

3.4 *Categories.*—A technical committee may accept for membership on it, on its subcommittees, and on any permanent subdivisions thereof, subject to its bylaws, individuals from the following categories:

3.4.1 Persons who are members of the Society as defined in 1.1.1.

3.4.2 Persons who hold sustaining memberships in the Society or who are the officially designated representatives of sustaining members of the Society (see 1.1.2).

3.4.3 Persons, representing other ASTM technical committees, serving as liaison members thereof. Such persons may already be members of the committee having been accepted previously from the categories described in 3.4.1 and 3.4.2 above. In such cases, if the person is specifically instructed by the other technical committee that he represents as to how the vote shall be cast, he may command two votes.

3.4.4 Affiliates as defined in 1.2. Appointments of affiliates shall be reviewed annually by the Executive Subcommittee for reapproval or withdrawal.

3.5 *Application Form.*—All individuals indicated in 3.4 applying for membership on a technical committee shall furnish a completed application form containing information on their qualifications to serve. The application form shall, in the case of classified technical committees, provide for supplying sufficient information to permit the committee to classify the voting interest represented by the applicant. The application forms may be stocked and distributed by the technical committee, Society Headquarters, or both, as the committee may desire.

3.6 *Action on Applications for Membership.*—Action by a technical committee on applications for membership shall be by vote of the committee, its elected officers, or its Executive Subcommittee, as provided for in the committee bylaws. Any applicant for membership on a technical committee, qualified in accordance with the provisions of 3.4, whose application for membership is rejected, shall have the right of appeal to the Board of Directors. The application of an individual who is a Society Member (see 1.1) to be a voting member of a technical committee shall be accepted unless: (1) acceptance will create an imbalance of voting interests on the technical committee, or (2) if he is not qualified or knowledgeable, in the area of the committee's scope.

3.7 Classification.—On classified technical committees each voting interest shall be classified by the committee on the basis of that voting interest's relation to the activities of the committee as either producer, user, or general interest as defined in 1.4 to 1.6. The classification shall be made at the time an applicant is accepted. Any member dissatisfied with his classification has the right to appeal to the Board of Directors.

3.7.1 Specific criteria for classification applicable in all situations cannot be prepared. The intent of the definitions in 1.4, 1.5, and 1.6 is to provide a basis for a committee to develop more specific rules for its use. Such rules should be included in its bylaws (see 2.4) and should form the basis for the information required on the application (see 3.5). The following criteria shall be followed:

3.7.1.1 A member whose affiliation is with the production of materials, products, systems, or services that are offered for sale with which the committee is concerned shall be classified as a producer.

3.7.1.2 A member whose affiliation is with the sale of materials, products, systems, or services with which the committee is concerned shall be classified as a producer.

3.7.1.3 A member whose affiliation is with a distributor who acts as a sole agent for a producer (see 3.7.1.1) shall be classified as a producer.

3.7.1.4 A member who is a private consultant, such as a consulting chemist or engineer, and who provides services to a producer, or vendor (see 3.7.1.) shall be classified as a producer.

3.7.1.5 A member whose affiliation is with a consulting firm that provides services to a producer or vendor (see 3.7.1.1 and 3.7.1.2) shall be classified as a producer.

3.7.1.6 A member whose affiliation is with an association, the members of which are primarily producers or vendors (see 3.7.1 and 3.7.2) shall be classified as a producer.

3.7.1.7 A member whose affiliation is with the purchase or use of the materials, products, systems, or services with which the committee is concerned shall be classified as a user provided that he cannot be classified as a producer (see 3.7.1.1 and 3.7.1.2).

3.7.1.8 A member whose affiliation is with an organization that buys or uses the materials, products, systems, or services with which the committee is concerned shall be classified as a user, provided that he cannot be classified as a producer (see 3.7.1.1).

3.7.1.9 A member whose affiliation is with a retailer or distributor that buys or sells the materials, products, systems or services with which the committee is concerned shall be classified as a user provided that the retailer or distributor has the capability of purchasing from any source, and provided that he cannot be classified as a producer (see 3.7.1.1), unless the technical committee shall provide for a category of Retailer/Distributor (those predominantly interested in the distribution or retailing of the materials, products, systems, or services with which the committee is concerned) in its bylaws and in which case he shall be classified as a Retailer/Distributor. When such a category is established the bylaws shall also provide whether he shall be grouped for voting purposes with producers, users, or general interests.

3.7.1.10 A member who is a private consultant and provides services to a user (see 3.7.1.7) shall be classified as a user, provided that he cannot be classified as a producer (see 3.7.1.1).

3.7.1.11 A member whose affiliation is with a consulting firm that provides services for users (see 3.7.1.7) but not for producers, as defined above, shall be classified as a user.

3.7.1.12 A member whose affiliation is with an association the members of which are primarily users (see 3.7.1.7) shall be classified as a user.

3.7.1.13 A member whose affiliation is with the production or sale, or both, of raw materials used in the production of materials, products, systems, or services with which the committee is concerned but whose affiliation is sufficiently remote from the production or sale, or both of the materials, products, systems, or services with which the committee is concerned may be classified as a user or general interest, as appropriate. Before this rule may be employed, the basis for its use by the committee shall be approved by COTCO.

3.7.1.14 A member who has no affiliation as described above shall be classified as general interest.

3.7.2 A consultant (such as a consulting chemist or engineer or an employee of a consulting firm) retained under an indefinitely continuing arrangement for

an organization, which arrangement includes representing it in an ASTM technical committee, shall be classified in accordance with the classification of the organization by which he is retained. Consultants representing themselves or their employer and not concerned with the production, sale, or both, of the materials, products, systems or services with which the committee is concerned shall be classified as users or general interests, as appropriate.

3.7.3 Each classified technical committee shall provide for periodic review of the classification of its voting interests so that appropriate changes may be made to take account of changes in the nature of the committee's activities or changes in the interests of its members.

3.8 *Termination of Membership.*—Membership on a technical committee shall be terminated by change of employment or for other reason, such as inactivity. Each technical committee shall provide in its bylaws appropriate criteria for termination of membership for reasons other than change of employment. A person who changes employment shall remain on the roster of the technical committee without vote until the next opportunity, under the technical committee's bylaws, for consideration of his reacceptance to membership.

4. Balance

4.1 *Balance on Committees.*—On classified technical committees (see 2.1) a balance shall be maintained between producer and non-producer voting interests. Each classified technical committee shall state in its bylaws the method it will use to achieve the required balance and rules for its implementation. A choice shall be made between the following methods:

4.1.1 *Single Classification.*—On technical committees, the members of which do not include many voting interests that are classified differently with respect to the several aspects of the committee's work, a single classification of voting interests is appropriate. In such committees the number of producer voting interests shall not exceed the combined total of user and general voting interests. This same balance shall be required in subcommittees dealing with materials, products, systems, and services that are offered for sale.

4.1.2 *Multiple Classification.*—On technical committees, the members of which include many voting interests that are classified differently with respect to the several aspects of the committee's work, the committee may designate in its bylaws categories of its activity and may classify the voting interests making up the committee voting membership with respect to these categories. When this procedure is employed, there shall not be more than 50 percent of the voting interests classified as producer in any one category. A member of the Executive Subcommittee shall be considered a producer on that subcommittee if he is a producer in any category of the committee's activities. He shall not be eligible for election to the office of chairman of the committee.

4.1.3 Technical committees selecting the multiple classification method may or may not relate the categories selected for classification purposes to the subcommittee or other infrastructure of the committee that is employed for operational purposes. The intent of the multiple classification method is to provide a means by which a technical committee may be subdivided for purposes of classification and balance without physically splitting the committee into two or more separate technical committees.

4.2 *Balance on Subcommittees.*—Subcommittees developing specifications for materials, products, systems, and services shall consist of not less than six voting interests. At least one half the voting interests shall be composed of users and general interests as related to the standards developed by a particular subcommittee.

5. Rules for Conduct of Business

5.1 *Open Meetings.*—The meetings of technical committees and subcommittees thereof shall be open to visitors when technical matters relating to the development of standards are to be discussed. Visitors should make their presence known to the chairman of the meeting before the meeting is called to order.

5.2 *Closed Meetings.*—It is permissible to hold closed meetings of Executive Subcommittees where technical matters relating to the development of standards are not discussed.

5.3 *Notification.*—All members of technical committees (see Section 3) shall receive calls to meetings, minutes, and related committee material.

5.4 *Minutes.*—Minutes of all meetings, including reports of subcommittees, shall be kept and copies shall be sent regularly to the ASTM Headquarters.

5.5 *Proxies*.—As stipulated in its bylaws, a technical committee shall authorize its members to delegate in writing qualified individuals as proxies; but no individual shall hold or exercise proxies for more than one member in any technical committee.

5.6 *Election of Officers*:

5.6.1 Each technical committee shall elect a chairman, vice-chairman or vice-chairmen, and secretary or secretaries, by letter ballot before the Annual Meeting of the Society in the even-numbered years. The result of such election shall be included in the report of the committee for that year. The term of office shall be two years expiring at the close of the Annual Meeting, and the chairman, vice-chairman or vice-chairmen, and secretary or secretaries, are eligible for election for not more than three consecutive terms in one office, unless otherwise approved by the Board of Directors.

5.6.2 On those technical committees in which voting interests are classified, only members classified thereon as users or general interests shall be eligible to hold the office of chairman of the committee or its Executive Subcommittee.

6. *Voting*

6.1 *Voting Interest*.—A voting interest is defined in 1.3.

6.2 *Return of Letter Ballots*.—Each member of a technical committee entitled to a vote on committee actions shall be required to return every letter ballot regardless of whether he commands a full vote or a fraction of a vote. The explanation accompanying a ballot marked negatively shall be given consideration without regard to whether or to what fraction of a full voice is commanded by the ballot.

6.3 *Tally by Voting Interests*.—A tally by voting interests is required when the decision might be changed by such a tally, in which case each voting interest represented on a committee shall command a single vote.

6.3.1 A technical committee may stipulate in its bylaws that all its letter ballots shall be tallied by voting interests.

6.3.2 When a tally by voting interests is required, all ballots returned by members making up a single voting interest will be counted as fractions making up one whole vote unless the voting interest has designated a voting member to cast the ballot for it. When there are among the members of a technical committee two or more persons making up a single voting interest, that interest may designate in writing one of these persons as its voting member.

6.4 *Classification on Letter Ballots*.—Each member of a classified technical committee (see 4.1) shall indicate his classification on each separate item in a letter ballot in accordance with the definitions for producers, users, and general interests. Classification of a technical committee member in regard to items on a letter ballot may differ from his general classification on the committee, but any classification of a letter ballot that differs from the general classification on the committee shall be subject to approval of the Executive Subcommittee. Members abstaining from voting on letter ballots are not required to indicate their classification on these ballot items (see 9.5).

7. *Committee Recommendations on Standards*

7.1 *Actions Requiring Society Letter Ballot*.—The following actions require both technical committee and Society letter ballot (see Section 10):

7.1.1 Adoption of Standard

7.1.2 Revision of Standard

7.1.3 Reapproval of Standard

7.1.4 Adoption of Tentative as Standard without revision

7.1.5 Adoption of Tentative as Standard with revision

7.1.6 Adoption as Standard of tentative revision of Standard

7.1.7 Withdrawal of Standard

7.2 *Actions Not Requiring Society Letter Ballot*.—The following actions require technical committee letter ballot but not Society letter ballot:

7.2.1 Revision of Standard, reversion to Tentative

7.2.2 Acceptance of Tentative

7.2.3 Revision of Tentative

7.2.4 Acceptance of Tentative revision of Standard

7.2.5 Withdrawal of Tentative

7.2.6 Submittal of Standard for approval as American National Standards Institute (ANSI) Standard

7.3 *Special Actions* (See Sections 9.6, 9.7, 10.2) :

7.3.1 Acceptance of Proposal

7.3.2 Acceptance of Emergency Standard

7.4 *Review of Standards* :

7.4.1 *General*.—In the development of standards the technical committees shall maintain liaison representation and cooperation with other technical committees where mutual interests exist. The technical committee shall also request reviews of its standards from other related or interested committees or from committees offering particular expertise on sections of standards (see 1.16).

7.4.2 *Standards*.—A Standard that has been published for five years without revision, other than editorial, shall be reviewed by the technical committee having jurisdiction and shall be recommended for reapproval, with or without or for withdrawal. When the committee cannot agree upon a recommendation, the matter shall be referred to the Committee on Standards.

7.4.3 *Tentatives*.—Each Tentative and tentative revision of a Standard shall be reviewed each year, after publication in the *Annual Book of ASTM Standards*, for recommendation for adoption as Standard with or without revision. After publication in the *Annual Book of ASTM Standards* for three years, a Tentative or tentative revision of a Standard shall be adopted as Standard or withdrawn. Where the committee cannot agree upon a recommendation, the matter shall be referred to the Committee on Standards.

7.4.4 *Proposals and Emergency Standards*.—Proposals and Emergency Standards shall be published in the Related Materials section of the *Annual Book of ASTM Standards* for a maximum of two years.

8. *Subcommittee Procedures on Recommendations on Standards*

8.1 *Subcommittee Action*.—Recommendations for all actions on standards (Section 7) shall be approved by an affirmative letter ballot vote of at least two thirds of those voting (counting affirmative and negative) in a subcommittee with not less than 60% of the members or voting interests returning ballots. Negative votes shall be considered in accordance with 8.2.2. Dissenting members shall have the right to submit minority reports, individually or jointly, for consideration at the time the balloted item is acted upon by the committee.

8.2 *Letter Ballot*.—A subcommittee chairman is authorized to poll his subcommittee by letter ballot when he deems it desirable. When a letter ballot has been ordered by a motion passed at a subcommittee meeting, the subcommittee chairman shall proceed promptly with such letter ballot. The letter ballot shall indicate a canvassing date which shall be not less than 30 days after the date of mailing.

8.2.1 When a recommendation by a subcommittee has been agreed upon by voice vote at a subcommittee meeting held no more than one month before a meeting of the main committee, the subcommittee may present the recommendation to the main committee at the meeting for approval by voice vote. The voice vote in the subcommittee and in the main committee shall be confirmed by letter ballot. These ballots may proceed concurrently (see 9.2).

8.2.2 *Negative Votes*.—On subcommittee letter ballots, negative ballots shall be considered. Such consideration need not be completed before main committee action is begun (see 9.2). A negative vote, not accompanied by an explanation or accompanied by an explanation which in the judgment of the subcommittee is unrelated to the action being voted on, may be recorded as "abstaining" and no further consideration is required. All explanations accompanying negative votes shall be considered by the subcommittee, and the subcommittee shall report the results of its consideration to the main committee. In the report by the subcommittee its reasons for its action must be fully explained. The report shall include a recommendation based on two-thirds approval either by voice vote in a meeting or in a letter ballot of the subcommittee. This same procedure shall be followed by the subcommittee in its consideration of negative votes on recommendations initiated by it that are received in main committee and in Society letter ballots.

8.3 *Report of Subcommittee Recommendations*.—The subcommittee chairman shall submit to the main committee recommendations for committee letter ballots based on results of subcommittee balloting. Such recommendations shall include the tally of the subcommittee letter ballot vote and, when applicable, a list of unresolved negative votes, the reasons therefor, consideration given by the subcommittee to such votes, and the subcommittee's recommendations regarding such votes.

9. Main Committee Procedures on Recommendations on Standards and Proposals

9.1 *Letter Ballot*.—Upon completion of a successful subcommittee letter ballot or as otherwise provided in Section 8, the technical committee shall submit such recommendations for letter ballot subject to the provisions in 9.2. The letter ballot shall indicate a canvassing date, which shall not be less than 30 days after the date of mailing.

9.2 *Authorization of Letter Ballot*.—Prior to conducting a letter ballot on recommendation of a subcommittee (see 8.3) the technical committee at a meeting shall approve the issuance of the letter ballot by at least a two-thirds affirmative voice vote of the voting interests present and voting. Such approval may be waived if, in the judgment of the chairman of the technical committee, action will be expedited by referring the recommendation directly to letter ballot vote of the technical committee. In all cases the recommendation for action shall be accompanied by the supporting statement from the subcommittee chairman, together with the tally of the letter ballot vote in the subcommittee and a list of unresolved negative votes and the reasons therefor. In the event that subcommittee consideration of negative ballots has not been completed prior to submittal of the action for main committee ballot, the reasons given by the negative voters shall be circulated with the main committee ballot.

9.3 Voting Requirements:

9.3.1 *New Standards and Revisions of Standards*.—The ballot shall indicate an affirmative vote of at least, nine tenths of the number of affirmative plus negative votes.

9.3.2 *Reapprovals, New Tentatives, Revisions of Tentatives, Reversion of Standards to Tentatives, Adoption of Tentatives as Standard with or Without Revision, Tentative Revisions of Standards, Adoption of Tentative Revisions of Standards, Withdrawal of Tentatives and Standards, and Submission of Standards for ANSI Approval*.—The ballot shall indicate an affirmative vote of at least two thirds of the number of affirmative plus negative votes.

9.3.3 *Ballot Return Requirements*.—The total ballots returned shall not be less than 60% of the voting members or voting interests of the committee as listed in the official membership roster at the date of issue of the committee letter ballot.

9.3.3.1 *Negative Votes*.—All negative votes to be valid shall be accompanied by a written explanation based on either technical or procedurally improper considerations. The negative explanation must be related to the balloted item to be valid. When a subcommittee has determined that an explanation is unrelated and the vote is to be recorded as "abstaining," the negative voter shall be so advised; he may appeal this determination to the Executive Subcommittee. Negative votes shall be acknowledged within 30 days of their receipt, and the acknowledgment shall state where and when the vote will be considered by the subcommittee and by the committee.

9.3.3.2 All valid negative ballots shall be considered by the originating subcommittee (see 8.2.2). The subcommittee chairman shall report to the main committee the results of the subcommittee action using the ASTM Headquarters official form for reporting action on negative votes (see 8.3). When in, the judgment of the chairman of the technical committee, holding the subcommittee recommendation until it can be acted upon at a meeting of the technical committee will cause substantial delay, and when the explanations of the negative ballots in technical committee letter ballot introduce no significantly different reasons from those previously considered in the subcommittee letter ballot, the chairman of the technical committee may accept the subcommittee recommendation and forward the item for Society action. This paragraph presumes that the requirements for 9.3.1 to 9.3.3 have been met. For the required Society action see Section 10.

9.3.3.3 *Option 1*.—Action regarding a negative vote and taken by a subcommittee in session shall be approved by two-thirds affirmative vote of the voting members or voting interests present of those voting. This action shall be subject to approval of the main committee by an affirmative vote of at least two-thirds of the voting members or the voting interests present of those voting.

9.3.3.4 *Option 2*.—If the subcommittee chairman desires to expedite the action on the negative vote prior to the next meeting of the subcommittee, he may request the committee chairman to authorize a concurrent letter ballot, with appropriate documentation, of subcommittee and main committee members. The ballot shall ask the question whether members prefer to override the negative

votes. Sixty percent ballot return shall be required. If Option 2 is used, the negative(s) shall be reviewed at the next meeting of the subcommittee for possible action.

9.4 *Minority Reports*.—Dissenting members of the main committee agreeing with the negative voter(s) shall have the right to submit a minority report to the committee chairman for consideration at the main committee meeting when the negative vote is acted upon.

9.5 *Report of Results*.—The number of affirmative, negative, and abstaining votes or voting interests shall be reported to the Society. All affirmative and negative votes shall be classified as producer, user, or general interest when the committee is classified. All negative votes shall be accompanied by reasons based on either technical or procedurally improper considerations.

9.6 *Proposals*.—Proposals (see 1.10) shall require approval by: (1) a letter ballot amounting to at least two-thirds of those voting in the subcommittee that developed the proposal and (2) at least two-thirds approval by either voice vote at a scheduled meeting of the committee, or by letter ballot for action between meetings.

9.7 *Emergency Standards*:

9.7.1 An Emergency Standard (see 1.9) shall first be approved by letter ballot of the appropriate subcommittee and be endowed by the Executive Subcommittee. The Emergency Standard shall then be submitted to the Committee on Standards together with a covering report including reasons for any negative votes and other pertinent comments.

9.7.2 If accepted by the Committee on Standards, the Emergency Standard shall be published in the next issue of *ASTM Standardization News*, and the technical committee shall immediately initiate the processing of the Emergency Standard through normal procedures in order that a full Standard may be established as soon as possible. All Emergency Standards accepted during any year shall be recorded in the next annual report of the technical committee. All Emergency Standards are subject to annual review and shall be reapproved by letter ballot of the sponsoring subcommittee if they are to be continued for a second year. Emergency Standards will be withdrawn automatically after two years' publication in the *Annual Book of ASTM Standards*.

10. *Society Procedures on Recommendations on Standards*

10.1 *Bylaws Provisions*.—Following committee action, recommendations shall be submitted to the Society for acceptance. The procedures, as given in Art. VII of the ASTM Bylaws are:

SEC. 3. Adoption of Standards, including new Standards, revision of Standards, adoption of Tentatives as Standards, reapproval of Standards, and withdrawal of Standards shall be by letter ballot of the Society. The procedure for this letter ballot shall be as set forth in Paragraphs (a), (b), (c), (d), (e), and (f) following:

(a) Recommendation from technical committees covering adoption of Standards may be referred to letter ballot of the Society at any time during the year by direct submittal to Society Headquarters. All recommendations will be presented to the members of the Corporation for letter ballot by means of a regular insert in *ASTM Standardization News* (issued monthly). The interval between insertions shall not exceed three months.

(b) Each member of the Corporation shall be entitled to one vote on all recommendations covering adoption of Standards, except when a tally by voting interest¹ is required. A tally by voting interest is required when the decision might be changed by such a tally. In such case, each interest, represented in the Society, regardless of the number of memberships held, shall command only a single vote.

(c) A return of fifty (50) or more ballots shall be required.

(d) An affirmative vote amounting to nine tenths of the combined affirmative and negative votes cast shall be required on recommendations submitted to the Society involving immediate adoption as Standard either of a proposed new Standard or of a revision of an existing Standard.

(e) An affirmative vote amounting to two-thirds of the combined affirmative and negative votes cast shall be required on recommendations submitted to the Society, involving adoption of Tentatives as Standard, withdrawal of an existing Standard, or reapproval of a Standard.

¹ The definition of "voting interest" is given in Section 1.

(f) The results of the ballot, the report of the review of negative votes by the technical committee, and the original ballot of the technical committee, shall be submitted to the Committee on Standards for review on behalf of the Society. The Committee on Standards shall determine whether the requirements of the Society relating to procedure have been met, and whether a satisfactory consensus has been reached. During consideration of the recommendation of a technical committee by the Committee on Standards, representatives of the committee and other parties at interest may be present and participate in the discussion. If the Committee on Standards takes favorable action upon the recommendation, the Standard is approved, and the technical committee shall report the action in its next annual report.

SEC. 4. Acceptance of Tentatives, including new Tentatives, revisions of Tentatives, tentative revisions of Standards, reversion of Standards to Tentative, and withdrawal of Tentatives shall be by action of the Committee on Standards on recommendations of technical committees. Committee recommendations may be presented at any time of the year to the Committee on Standards for action on behalf of the Society by direct submittal to Society Headquarters. The Committee on Standards shall determine whether the requirements of the Society relating to committee procedure have been met and whether the committee has reached a satisfactory consensus. During consideration at the recommendation of a technical committee, representatives of the committee and other parties at interest may be present and participate in the discussion. If the Committee on Standards takes favorable action upon the recommendation, the recommendation is approved for the Society, and the technical committee shall report the action in its next annual report.

10.2 *Tentatives and Proposals*.—Committee recommendations covering acceptance of new Tentatives, revision of Standards and reversion to Tentative, revision of Tentatives, reversion of Standards to Tentative, tentative revision of Standards, withdrawal of Tentatives, ANSI approvals, and new Proposals (see 7.3) shall be presented to the Committee on Standards for action on behalf of the Society. The Committee on Standards shall determine whether the committee has reached a satisfactory consensus. During the consideration of the recommendation of a technical committee, representatives of the committee may be presented and participate in the discussion. If the Committee on Standards takes favorable action upon the recommendation, the technical committee shall record the action in its next annual report.

10.3 *Standards*.—Technical committee recommendations covering adoption of new Standards, revision and reapproval of Standards, adoption of Tentatives as Standard, with or without revision, adoption of tentative revisions of Standards, and withdrawal of Standards, shall be presented to the Society for letter ballot. A member who desires detailed information on a recommendation may obtain it from ASTM Headquarters before he returns his letter ballot.

10.4 *Letter Ballot*:

10.4.1 A return of fifty or more ballots is required. An affirmative vote amounting to at least nine tenths of the combined affirmative and negative votes cast is required on recommendations submitted to the Society involving adoption as Standard of a proposed new Standard or of a revision of an existing Standard, or adoption of a tentative revision of a Standard (see 7.1.4, 7.1.5, 7.1.6). An affirmative vote amounting to at least two thirds of the combined affirmative and negative votes cast is required on recommendations submitted to the Society involving adoption of a Tentative as Standard, withdrawal of an existing Standard, or reapproval of a Standard. Failure to meet these requirements will automatically refer the recommendation back to the original technical committee.

10.4.2 The vote in a technical committee on a recommendation will be considered as the vote of those voting interests on the Society letter ballot. The Society letter ballot shall carry a notice that those Society members who have already voted on the recommendation in the technical committee do not need to indicate again their vote in the Society letter ballot. Such a voting interest is not precluded from expressing a different viewpoint on the Society letter ballot; in such case, this fact shall be noted on the ballot.

10.5 *Submittal to Committee on Standards*.—Upon completion of the Society letter ballot, each recommendation receiving no negative vote shall be submitted, with supporting information, to the Committee on Standards who shall declare it approved when it is established that all requirements of the Society have been met.

10.6 Report of Results.—If the Committee on Standards takes favorable action, the recommendation is approved for the Society and it shall be announced in *ASTM Standardization News*. The originating technical committee shall record the action in its next annual report.

10.7 Withdrawals.—Following approval by Society letter ballot for withdrawal, standards for which there is no replacement shall be published in the *Annual Book of ASTM Standards* for an additional year with a note calling attention to the withdrawal. For five additional years such standards will be listed in the contents of the pertinent part of the *Annual Book of ASTM Standards* and a single page for each standard will appear in that part giving the title, scope and date of withdrawal.

10.8 Negative Votes:

10.8.1 Negative Votes Previously Considered.—If a negative vote is submitted for the same reason previously considered by the technical committee having jurisdiction, the officers of the technical committee and the appropriate subcommittee chairman may certify that the reason has been considered and give the circumstances. Further consideration by the technical committee is not required and the item may go to the Committee on Standards for action (see 10.5).

10.8.2 Negative Votes Not Previously Considered.—All negative votes shall be referred to the subcommittee having jurisdiction. Action taken in response to a negative vote presenting reasons not previously considered shall require an affirmative vote amounting to at least two thirds of those voting in any one of the following circumstances: (1) a regular meeting of the originating technical committee; (2) a special meeting of the technical committee called for the purpose of considering the negative vote; (3) a regular or special meeting of the originating subcommittee, when authority to act on the matter has been delegated by the technical committee or its Executive Subcommittee, subject to their review; or (4) by a letter ballot of the technical committee. Where the use of options (1) through (4) would delay publication in the *Annual Book of ASTM Standards*, the officers of the technical committee or of the authorized subcommittee, after direct contact with the negative voter, may recommend the Standard for publication. Consideration of the reasons for the negative vote shall be placed on the agenda for the next regularly scheduled meeting of the committee. When acted upon as described the item may then go to the Committee on Standards for action (see 10.5).

10.8.3 Negative votes shall be acknowledged within 30 days of their receipt, and the acknowledgment shall state where and when the vote will be considered by the subcommittee and by the committee.

11. Patent References in Standards

11.1 Recommendations pertaining to or involving the use or proposed use in an ASTM standard of any device, test procedure, material, or process that forms the subject matter of any existing or pending patented invention, shall be reviewed by the Society's legal counsel and shall be approved by the Board of Directors (except as indicated in 11.2) prior to publication in such Standard.

11.2 When a technical committee desires to include in a standard the use of a patented invention, existing or pending, and this patented invention is one of two or more alternatives at least one of which is not patented, the Board of Directors will permit reference to such patented invention in the belief that the interests of the user of the standard are fully protected against an undesirable monopoly in that he can use at least one unpatented alternative in accordance with the provisions of the standards.

11.3 When a technical committee desires to include in a standard the use of a patented invention, existing or pending, and this patented invention is the only one specified in the standard, prior to submission to the Board of Directors, an affidavit shall have been obtained from the patent holder containing the following information:

11.3.1 Name of patented material, process, or apparatus.

11.3.2 If there is now a patent, the number; if not, a statement that a patent is pending.

11.3.3 A reference to the existing or pending ASTM standards to which the patented material, process, or apparatus is intended to apply and one or more of the following:

11.3.3.1 A statement that the patented material, process, or apparatus is dedicated to the public and that it can be freely used without permission or payment of royalty or other charge; or,

11.3.3.2 Names of companies to which licenses have been granted, and a statement that additional licenses will be made available in compliance with applicable laws to applicants throughout the world on reasonable nondiscriminatory terms and conditions, or,

11.3.3.3 A statement that a license will be made available without compensation to any applicant who certifies to the patent holder that such a license is sought only for the purpose of compliance with the standard and not for commercial profit.

11.3.4 The patent holder's affidavit, the Society's legal counsel recommendations, and the action of the ASTM Board of Directors shall be retained in the Society's files.

11.4 *ASTM Disclaimer of Liability as to Patented Inventions.*—Neither ASTM nor an ASTM committee shall be responsible for identifying all patents under which a license is required in using an ASTM standard nor for conducting inquiries into the legal validity of those patents which are brought to the Society's attention. Where applicable, an ASTM standard shall include a note worded as follows:

The American Society for Testing and Materials takes no position respecting the validity of any patent rights asserted in connection with any item mentioned in this standard. Users of this standard are expressly advised that determination of the validity of any such patent rights, and the risk of infringement of such rights, is entirely their own responsibility.

11.5 No standard requiring the use of a patented invention shall be published by ASTM except upon compliance with the foregoing provisions.

12. Reports of Technical Committees

12.1 *Annual Reports.*—Technical committees shall submit a written report annually to the Society. Technical committees shall include in their annual report the following:

12.1.1 Date and location of committee meetings held during the year.

12.1.2 Total number of members and voting interests with a breakdown of the voting interests into producers, users, and general interests when the membership is classified.

12.1.3 Administrative matters, such as changes in organization, revision of bylaws, and formation of new subcommittees.

12.1.4 Committee projects, such as symposia, papers, or publications sponsored, as well as cooperative activities with other committees and organizations.

12.1.5 Special mention, such as awards, honorary members, and death of members.

12.1.6 Personnel changes, but limited to changes of committee officers, subcommittee officers, and liaison representatives.

12.1.7 In the even-numbered years, the names of elected officers and members of the Executive Subcommittee.

12.1.8 A summary of recommendations on standards approved or accepted by the Society since the last report.

12.1.9 Activities of subcommittees.

13. Cooperation with Committees of Other Organizations

13.1 *Methods of Initiating Cooperation.*—Technical committees desiring to cooperate with committees of other organizations or to bring about the appointment of similar committees by other organizations for purpose of cooperation, shall address a recommendation to that effect to the Managing Director.

13.2 *Cooperative Relations with Government Agencies.*—Committees desiring to establish cooperative relations with government agencies shall address a recommendation to the Managing Director.

14. ASTM Official Statements or Responses to Government Agencies and Other Organizations

14.1 There are occasions when ASTM may be called upon, or may volunteer, to respond to government agencies, regulatory bodies, or other organizations in matters of standardization, test measurement, precision and accuracy, and significance of standards as related to engineering, statistical, and hazard data bases. Regardless of where the decision to prepare a statement or response may have originated, all such statements and responses shall be prepared in writing by the appropriate entity (ASTM committee, subcommittee, section or task group, or Society standing committee or ad hoc group) and transmitted to ASTM Head-

quarters. The preface to such responses will be prepared by the ASTM Board of Directors or the Managing Director, or both.

14.2 Official statements or responses shall have achieved the consensus of the originating entity, and the response report should so state. The report should begin with a clear designation as to what jurisdictional entity is submitting the response.

14.3 The official statement or response shall remain unchanged as submitted by the given ASTM entity, and the preface prepared by the Board of Directors or the Managing Director shall be reviewed by the originating entity. Copies of the official response shall be forwarded to the originating entity at the same time the response is sent to the government agency, regulatory body, or organization.

15. *Publication*

15.1 *General.*—Standards, technical papers, reports, minutes, letters to the editor, and related materials, shall be released for publication only through Society Headquarters.

15.2 *Publicity and News Statements.*—Items covering committee activities are regularly released by Society Headquarters. If publicity releases or other statements are prepared by committees, they shall be cleared through Society Headquarters before release. Committee members who are representatives of the press shall clear news statements covering committee actions with the appropriate committee officers and with Society Headquarters before publication.

16. *Expenses and Funds of Technical Committees*

16.1 *Current Expenses.*—Expenses for postage incurred in connection with business of committees will be reimbursed by the Society.

16.2 *Stationery.*—Correspondence relating to the business of committees or subcommittees shall be conducted on official stationery which will be furnished by the Society to committee and subcommittee officers.

16.3 *Other Expenses.*—Expenses for items other than postage will not be assumed by the Society unless expenditures were previously authorized by the Board of Directors on recommendation of the committee chairman, and are within amounts specifically fixed by the Board of Directors.

16.4 *Special Funds.*—Committees may raise special funds from their members through voluntary contributions, or through other means authorized by the Board of Directors. These funds as authorized by the committee and approved by the Board of Directors may be used for participation in international standardization, for costs of committee meetings, and for travel or other expenses of committee officers. Committees are also authorized to raise funds in support of research, subject to approval of the Board of Directors. All such special funds thus collected, unless otherwise authorized by the Board of Directors, shall be deposited with the Society to the credit of the committees, subject to disbursement by the Accounting Department with the approval of the committee chairman. Payment of voluntary contributions as authorized in this section shall not be required as a condition of committee membership, committee meeting attendance, or participation in committee work.

16.5 *Salaries and Fees.*—Committees shall not pay salaries or professional fees in any form to any of their elected officers or members.

17. *Discharge of Technical Committees*

17.1 Committees may be discharged by the Board of Directors, either at their own request or with their consent, on the completion of the work for which they were established, or in consequence of protracted inactivity. Committees that fail for three successive years to present a report to the Society shall be required to show cause, in a written communication to the Board of Directors, why they should not be discharged. Committees may be discharged for cause by the Board of Directors.

17.2 A committee is considered inactive if it fails to:

17.2.1 Hold meetings for two consecutive years.

17.2.2 Issue an annual report for three consecutive years.

17.2.3 Keep its standards up-to-date, or to initiate new standardization activities.

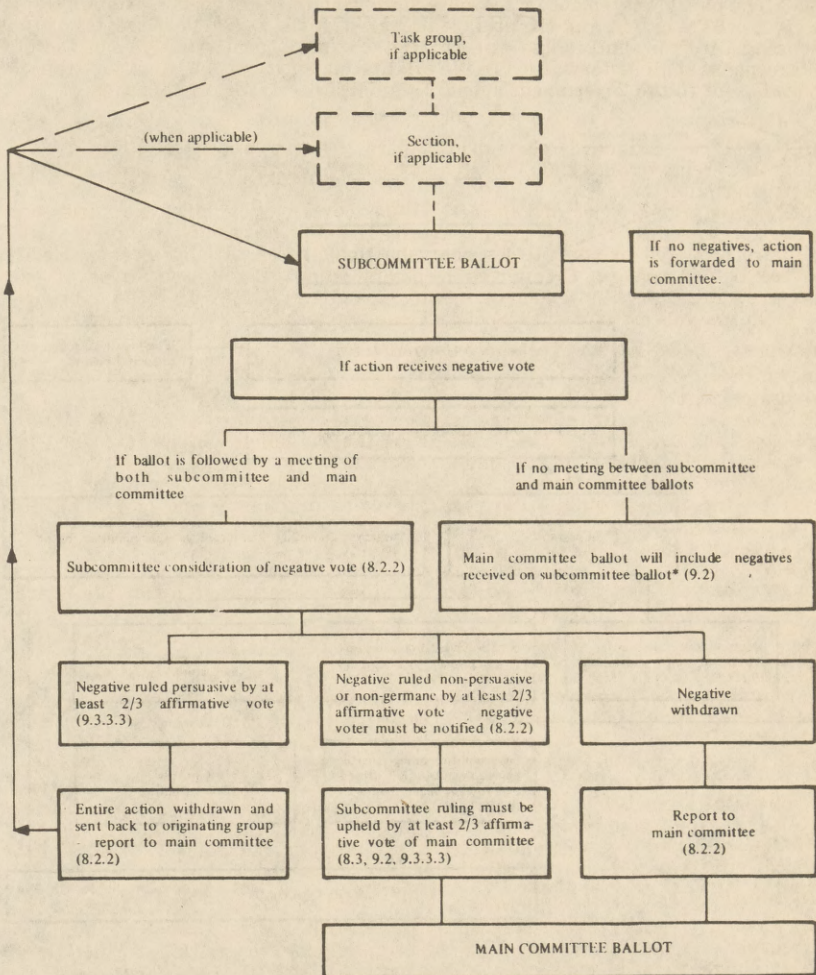
22. *Jurisdictional Problems on Standards*

22.1 Jurisdictional problems between ASTM technical committees on specific areas of standardization are preferably resolved by informal discussions between or among representatives of the technical committees involved. In the event that resolution by such methods is without success the problem shall be referred to COTCO.

APPENDIX A

FLOW CHARTS FOR PROCESSING NEGATIVE VOTES

CHART 1 — Flow Chart for Processing Negative Votes on Subcommittee Ballots



*These negatives will be considered by both subcommittee and main committee at next meeting.

CHART 2 Flow Chart for Processing Negative Votes on Main Committee Ballots

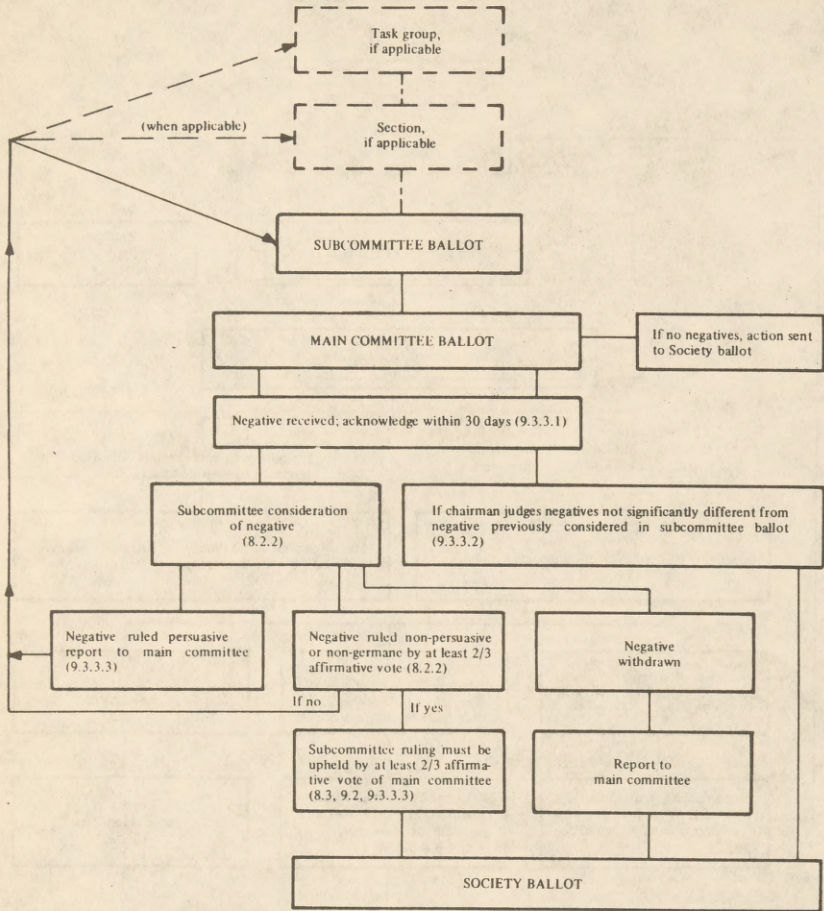
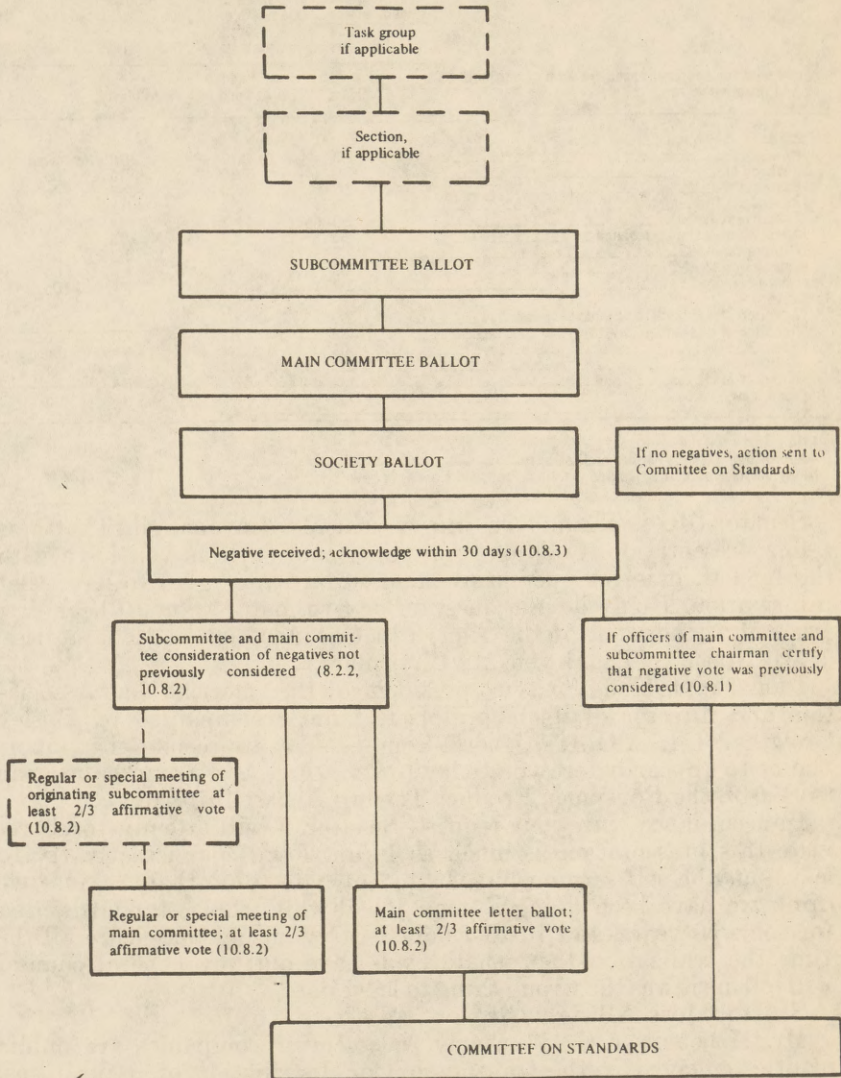


CHART 3 – Flow Chart for Processing Negative Votes on Society Ballots



APPENDIX B.—TYPES OF ACTIONS ON STANDARDS AND CORRESPONDING VOTING REQUIREMENTS

Type of review.....	Subcommittee	Main committee	Society	Committee on standards
Number of returns required for valid ballot.....	60 percent or more of members or voting interests	60 percent or more of members or voting interests	50 or more returns	
Requirement for approval based on sum of affirmative and negative votes	At least	At least	At least	
Standard:				
New.....	2/3	9/10	9/10	Reviewed.
Revision of.....	2/3	9/10	9/10	Do.
Reapproval of.....	2/3	2/3	2/3	Do.
Reversion of to tentative.....	2/3	2/3	1 NA	Do.
Tentative revision of.....	2/3	2/3	1 NA	Do.
Adoption of tentative revision.....	2/3	2/3	9/10	Do.
Withdrawal of.....	2/3	2/3	2/3	Do.
Submission to ANSI of.....	2/3	2/3	NA	Do.
Emergency standard.....	2/3	(²)	NA	Do.
Tentative:				
Adoption of as standard without revision.....	2/3	2/3	2/3	Do.
Adoption of as standard with revision.....	2/3	2/3	2/3	Do.
New.....	2/3	2/3	NA	Do.
Revision of.....	2/3	2/3	NA	Do.
Withdrawal of.....	2/3	2/3	NA	Do.
Proposed, new.....	2/3	³ 2/3	NA	Do.

¹ No action required.² Approval of executive subcommittee only.³ May be voice vote at scheduled meeting. Proposed standards have 2-yr life.

Senator Moss. Thank you very much, Mr. Cavanaugh. That was a fine presentation. Coming from experience such as you have with the ASTM, it is very persuasive and we are very glad to have that information. I may have a question or two, but I want to hear first from Mr. Hodgdon, of the American Gas Association Laboratories.

Mr. HODGDON. Thank you, Mr. Chairman.

I am Frank Hodgdon, vice president of the American Gas Association and director of its laboratories. I am accompanied by Bosley Crowther III, A.G.A.'s general counsel. We appreciate the opportunity to appear before you today to state A.G.A.'s strong opposition to S. 643, the Consumer Product Testing Act of 1975.

In accordance with your request, Senator, I will attempt to abbreviate this presentation as much as I can. I will particularly try to leave out the self-serving bits. I kind of hate to do that, because we think we have been doing a good job in this whole standards area for some 50 years, and furthermore I carry on my conscience all the time the realization that whatever I leave out, my general counsel will tell me it was the wrong thing to leave out.

Senator Moss. All right, sir.

Mr. HODGDON. A.G.A.'s nearly 300 member companies are public utilities engaged in the transmission or distribution of natural gas, America's cleanest and most efficient fuel. Our members sell over 85 percent of the gas used by the country's 160,000,000 gas consumers. A.G.A. has no gas appliance manufacturers as members. The product our members sell is not itself a consumer product, but one that must deliver its useful energy through consumer products. For this reason, our gas distribution company members became concerned about the safety of the gas-burning appliances a consumer uses long before the word "consumerism" was coined.

In May 1925, 50 years ago, A.G.A. founded a program for testing gas appliances and accessories and certifying their compliance with nationally accepted safety standards—a program which we believe has substantially benefited consumers of fuel gas by encouraging and institutionalizing improvements in the safety features of gas appliances. This effort is an ongoing one in which the gas industry, the appliance industry, and the public join together in seeking to improve both the appliances manufactured and the program itself.

A major manifestation of this concern was the organizing of the testing laboratories which I presently supervise. At a recent celebration of this semicentennial at our laboratories, Dr. Betsy Ancker-Johnson, Assistant Secretary of Commerce, hailed its famous work on the safety, quality, and efficiency of gas appliances.

In the detailed description of our program attached to this testimony, which we ask be made a part of the record, we point out that there are a number of Federal and other governmental agencies represented on the independent committee which generates the appliance standards upon which A.G.A. certification is based. Our program was originally developed in cooperation with the NBS and we have had a continuing history of cooperation with the Bureau. We understand and appreciate the need for Government participation and cooperation in these areas.

Senator Moss. That certainly will be part of the record.

Mr. HODGDON. The American Gas Association shared the concerns which led to creation of the Consumer Product Safety Commission, and reaffirmed our support of the Commission in recent hearings before this committee. Representatives of the Commission participate in the work of American National Standards Committee Z-21 on gas-utilizing appliances and accessories (for which AGA provides the secretariat and which prepares the standards applied in our program), and its subcommittees. AGA has also supported such governmental consumer information programs as the Department of Commerce voluntary energy efficiency labeling program and laboratories' accreditation program. AGA is wholeheartedly in favor of any program which provides the consumer with worthwhile, usable information about the products which he or she is buying.

I would like to note that the activities of the laboratories do not solely involve consumer safety. The national standards used in the certification program reflect reasonable levels of appliance efficiency and durability, and our research programs, both at the laboratories and through sponsored work, are constantly seeking ways to promote improvements in appliance efficiency as well as safety and reliability.

In acting as the secretariat for the Z-21 committee, AGA is well aware of the tremendous amount of time which is required to prepare product standards. Even with a fully developed group of some 50 standards (many of which originated 30 or more years ago) revisions to reflect improvements in technology still occupy an estimated 40 thousand man-hours each year on the part of approximately 225 gas appliance experts who participate voluntarily on the twenty-three Z-21 subcommittees and the parent committee. This is for one relatively discrete group of products, and does not begin to consider support services.

Senator, we find it impossible to support the proposals contained in S. 643. The American Gas Association believes that S. 643 proposes an almost impossible task for any agency, in a manner that gives virtually no direction to the agency and only institutionalizes unceasing administrative proceedings and litigation, all at substantial ultimate cost to the consumer and with a minimal likelihood of benefit.

As the bill recognizes, the FTC does not have the requisite engineering and technical capability to take on a continuing program of this nature, so there is provision for assistance from the NBS.

In areas of recognized public concern, such as conservation and consumer safety, appropriate existing Federal agencies, such as the FEA and the CPSC, are already utilizing to good advantage the expertise of the Bureau. The efforts of the Bureau should not be diverted from these important projects into unjustifiable activities. The thrust of the Commission has always been that of an investigative, adjudicative agency, rather than one prepared to deal with engineering and scientific matters.

Considering the numbers of men currently working on safety standards, which are relatively more objective than performance standards, it would seem impossible for any agency, let alone the FTC, to staff itself to deal with highly subjective matters proposed in this bill, especially for a myriad of products.

More to the point, the Commission, under this proposal, would have a virtually impossible task. As was said before, AGA is well aware of the difficulty involved in the preparation of safety standards, when relatively subjective concepts of performance and construction are at issue.

To try and frame "consumer testing protocols" which would yield reproducible and significant results with respect to "product characteristics" as defined in section 3(5) of the draft legislation, boggles the imagination.

I call your attention to the brief colloquy we had this morning on what constitutes the internal capacity of a refrigerator. That is an example of the kind of problems and the kind of difficulties in understanding people can get into when you have two products of the same class and two different standards. Then you have to compare how the two different standards act for the interests of the people who are concerned with buying the two different refrigerators.

An example we used is how could you seek to quantify the maintenance requirements of a gas range, taking into account all of the contingencies of "reasonable foreseeable misuse," in such a way that would be helpful to the consumer and at the same time be fair to the product in question.

Even if it were possible to get a balanced "protocol writing" group to agree on some of these matters, it seems virtually certain that any resulting document would immediately become the subject of protracted and expensive litigation. And if such a protocol ever became effective, for any significant product, the report would be so voluminous on each model that we doubt strongly that a consumer would ever read it, let alone understand its implication.

Finally, the Commission is authorized, in section 4, to enter into this "protocol-writing" process whenever it "determines that a con-

sumer product test protocol for a consumer product would assist consumers in making informed purchasing decisions."

To simplify our position, this means whenever they decide to write one of these, they do so, and they do so on a basis such that almost anything they decide to do can, after it is done, be said to be useful to a consumer. We are very much concerned about the cost-benefit ratio of activities of this character, and we are particularly concerned over what we feel if this thing does go at all, is the absolute necessity of putting something into the bill that will require the Commission to prove that there is a great cost-benefit—I mean a great benefit in terms of the tremendous cost that it will take. I hope when this is assessed that the Commission will be required to take into account the tremendous amount of time in the private sector, the tremendous amount of time in all the standards-writing organizations who will inevitably be bound up in this matter, as well as the tremendous cost that would be put upon manufacturers in all of their operations, because we do have to remember, Senator, I am sure—and I know I don't have to convince you of this—that every penny that is spent by Government is paid for by consumers in the form of taxes.

Every cent that is spent in industry is paid by consumers in higher prices. We think while there are great reasons and adequate reasons for pursuing safety programs, pursuing a program of this character at this time, particularly when the major safety program in this country is barely getting off the ground, beginning to fly, we hope, right, to add this kind of further burden on the manufacturing community would almost be disastrous.

We think it is highly unlikely that any work product of a worthwhile nature will ever result from the system proposed in this legislation. It will, however, expand an already swollen bureaucracy and cost substantial amounts of consumer money, both in higher taxes and more expensive products, for, even if no protocols are ever prepared, the private section will have to spend substantial amounts of money to participate in the process. Accordingly, by any cost-benefit analysis, this bill must be rated quite low.

There are, of course, a number of places in which we feel the drafting of the bill is either inadequate or displays a lack of comprehension of the issues involved. AGA is reluctant to comment on these points, because it feels this might detract from its total opposition to these proposals.

We sincerely hope this bill is not allowed to proceed any further. Thank you very much.

[The attachment referred to follows:]

THE AMERICAN GAS ASSOCIATION TESTING AND CERTIFICATION PROGRAM

This year, the American Gas Association (A.G.A.) is celebrating the golden anniversary of its Certification Program for gas appliances and accessories. As the national trade association for natural gas distribution and transmission companies, A.G.A. reflected their concern about the safety of their customers by founding, in 1925, a laboratory at which the equipment through which their product was sold could be tested for compliance with accepted, nationally-recognized standards. Today, A.G.A. has two testing laboratories—in Cleveland and Los Angeles—and tests nearly 2500 appliances and accessories each year. The following is a description of the A.G.A. program.

INTRODUCTORY

For each category of gas appliance available to the public, there is a standard (usually one which has been accepted by the American National Standards Institute ("ANSI") as an American National 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 standard for that category enters into a written contract with A.G.A. setting forth the basis on which he can participate in the A.G.A. program and use the A.G.A. registered certification mark. This mark, known as the Blue Star, is a five-pointed blue star in a circle, containing the name "American Gas Association" and the words "Certified-Design Complies with National Safety Standards."

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 A.G.A. The Directory is revised semiannually and updated with a supplement each month.

The certificate is in force for one year. If there is no change in the standard, upon satisfactory inspection, the appliance may be recertified from year to year. The Laboratories may require retesting if there is a change in the standard or to provide it with current test data.

A.G.A. 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, A.G.A. 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.

STANDARD ACTIVITIES

A.G.A. does not write the standards which are employed in its product certification program; rather it sponsors such work by providing financial and administrative assistance. A.G.A. members also participate in standards writing.

The fundamental policy of A.G.A. is that all A.G.A.-sponsored standards projects should be, whenever possible, carried on under the rules and procedures of ANSI, and that A.G.A. should promote, not dominate, the establishment of standards. Accordingly, while A.G.A. designates uninstructed A.G.A. representatives to standards-making groups (whether sponsored by A.G.A. or others). It will not designate more than a minority on any committee.

In the case of standards developed by A.G.A.-sponsored standards committees, A.G.A. transmits completed work to ANSI. Since A.G.A. does not develop standards, it cannot revise, delete from or add to proposed standards delivered to it by a sponsored standards committee; nor can it withhold submission to ANSI of any proposed standard received from a sponsored standards committee.

The standards committee which develops and revises standards for domestic and commercial gas appliances is known as "American National Standards Committee Z21 on Performance and Installation of Gas-Burning Appliances and Related Accessories." Under ANSI procedures, each such committee must have a sponsor. A.G.A., because of its concern for the safety of the appliances through which its members serve consumers, acts as sponsor for Z21 Committee. This means that A.G.A. provides that secretarial and technical assistance necessary to permit the Z21 Committee and all its many subcommittees and various working groups to perform. A.G.A. currently spends about \$300,000 each year on this function. All of this money comes from dues paid by A.G.A. members. No funds are contributed by manufacturers of gas appliances. This funding only covers staff support and does not begin to take into account the value of the man-hours of time put in on a volunteer basis by members of the Committee and its many subcommittees.

A.G.A. not only sponsors the activities of the Z21 Committee, but representatives from member companies also are designated to participate as members of Z21. Under A.G.A. 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 remaining half represents the public interest through appointees from such agencies and organizations as the United States Public Health Service, United States Bureau of Mines, United States 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 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.

The Z21 Committee coordinates the work of 23 subcommittees, each concerned with a type of appliance or gas system in domestic use. These subcommittees concern themselves not only with the appliances and systems but also with standards for installation, safety shutoff devices, regulators, and other key components.

Proposals for additions to, deletions from or changes of an existing standard 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. All meetings of the Committee and its subcommittees are open to the public at all times. It is at such meetings that decisions are reached as to whether a revision or a new standard may be needed, and the content of such material.

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. Draft proposals for all gas appliance and equipment standards are distributed to ANSI, all members of ANSI Committee Z21, and all chairmen of Z21 subcommittees, in addition to numerous 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 categories in which they may have a direct or indirect interest.

A minimum of 30 days, and usually five or six 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 change 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 ANSI Committee Z21.

When at least 80% of the subcommittee agree on a proposed text, the text is submitted to the Z21 Committee. Z21 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 Z21 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. Z21, like its subcommittees, requires at least an 80% affirmative vote to approve a proposal. Anyone casting a negative ballot on a proposal before Z21 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 acceptance as an ANSI standard.

The proposed standard is then submitted to the ANSI Board of Standards Review, which is responsible for the judicial function of determining whether a consensus exists of those substantially concerned with its scope and provisions.

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. Public notice of the existence of the standard is given by publication in ANSI's bulletin, "Standards Action."

A Technical Advisory Board (for the Z21 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 and 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 are transmitted to the sponsor for consideration and action, following which the Board of Standards Review decides 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.

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. A.G.A.'s interest lies in providing the facilities for orderly and just development of reasonable standards for all kinds of gas appliances, and A.G.A. is willing to rely on the judgment of the members of the committee which it sponsors as to what those standards should be.

TESTING ACTIVITIES

Certification of compliance with the standards, in contrast to standards making, is a function of A.G.A. alone.

In 1974 approximately 2600 test reports were prepared by the A.G.A. Laboratories for various models of gas equipment. Various estimates have been made over the years as to the percentage of the total output of the gas appliance industry displaying the A.G.A. 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%, perhaps 90%, 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 until recently, of gas ranges sold, some do not comply with national standards because they do not have automatic safety pilots for oven ignition. 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 A.G.A. Laboratories for testing and certification.

The testing process commences when a manufacturer submits an appliance to the A.G.A. 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 is the primary consideration, and is 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 thermo-couples.

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 are called for by new or revised standards. Outdoor equipment (rooftop furnaces for commercial heating, domestic air conditioners and the like; outdoor incinerators, gas grills, 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 40-mile-an-hour gale and machinery which simulates heavy rain. Another example of re-

sponse 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 the 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 this 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 the 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

A.G.A. conducts an extensive inspection program as follow-up 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 normal 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 of certified designs from warehouse stock or from the production line in case of models being produced at the time. He will check them against the Laboratories' records of required construction and make 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, A.G.A.'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 one 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 individual quality control programs 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 appliance difficulties encountered on their lines. This may be done spontaneously, as the result of customer complaints, or as a result of observations and tests by utility appliance laboratories. These reports may also come

to A.G.A. in an organized fashion through the Association's Gas Appliance Improvement Network.

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.

These reports are reviewed with the manufacturer involved who is asked for his comments and report of action to be taken. The manufacturer's reply is returned to the reporting utility, and such others as the manufacturer wishes to notify.

When 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 are 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, A.G.A.'s agreement with the manufacturer allows A.G.A. 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 A.G.A. certification seal displayed on them. A notice of revocation may be published in the Directory.

Senator Moss. Well, thank you for your testimony. We appreciate it very much. You said the A.G.A. is wholly in favor of any program which provides the consumer with worthwhile, usable information about the products which he or she is buying, but then by the time you made your peroration, you denied this.

Now, how do you reconcile that?

Mr. HODGDON. Oh, that's very easy, Senator, no problem at all. It all goes back to the English. There is one major word in there, Senator, "worthwhile."

Senator Moss. Oh, I see. I can understand in part your saying we should watch the CPSC go for a while, before we incorporate the "offeror" provisions of the Consumer Product Safety Act. I still wonder, however, if there isn't some redeeming factors here that might come out if consumers are to be provided with information about the products they are buying. How are they going to get that information, if you don't have something of this sort in business?

Mr. HODGDON. It's been my observation in the last 3 or 4 years that the industrial community generally has begun to pick up and do something about these kinds of problems.

It takes a very long time for a whole industry of any character to determine that it must set off on a new venture and to begin to do things a little more differently than they have been doing.

I don't know very much about the detailed operation of the FTC, but I know in general the Commission has lately—and by lately, you know at my age "lately" means 5, 6, 8, 10 years ago—whatever—the Commission began to start in to take some action vis-a-vis the advertising that manufacturers do and that retailers do and so on. It's a very hard thing to control, but a beginning has been made.

One of the things we have to do in our laboratories in connection with the certification of the gas appliance is to review the instructions, et cetera, that the manufacturer provides for its insulation, care, and maintenance.

We have found very great improvements in those areas and we have seen these improvements commence with the larger, more knowledgeable companies, companies more in contact with the whole world and we have seen it filter down gradually into the people who are called small businessmen.

I must say that many of the things we say here, and particularly from my standpoint as a person working in the laboratory, who has to deal with manufacturers that range from General Electric Co. and Whirlpool, and what have you, on down to one old fellow that has a listing of a certain kind of valve with us where our inspectors, when they go around to visit his shop, come back complaining about being bit on the leg by his dog when they walk back to the garage where his factory is.

We have to deal with people at that level, too.

In this country I certainly hope that small business still has a place in our scheme of things. We get very worried about large schemes and complicated structures to oversee what manufacturers do, because it is obvious to us that if we adopt all of these large and grandiose schemes, we are someday going to wind up with not being able to have small manufacturers.

In my own view—and I am speaking for myself now, is that many of the small manufacturers are the people who make great advances in our world and give us new things to deal with, and I am just afraid that particularly in the area of performance—safety can be justified, of course, with you in the area of performance, I think it is fair for our society to let a somewhat higher risk factor evolve upon the population at large when they purchase things in order not to stultify the growth of business, particularly in the area of small manufacturers who grow larger.

In my time I have seen small manufacturers start in garages and wind up in some of the prettiest, fanciest factories you will ever see in your life.

Senator Moss. Several of our witnesses thought this might encourage the smaller entrepreneur to go into business because he could conduct the tests and his product could be shown to be superior because of innovations made. The barriers to entry would be lowered and he could compete on the merits of his products.

Mr. HODGON. It's too bad we didn't have the president, owner, and general manager of the Athens, Ohio, Automobile Co. around who went out of business when he first felt threatened, because he felt he couldn't stand to go through all that. He was the first manufacturer of a very small American car and went out of business shortly before the foreign competition came in and took over most of the small car business in this country.

Senator Moss. Well, there is a divergence of opinion. S. 643 incorporates the offeror procedure which is included in the Consumer Product Safety Act.

Have you had an opportunity to see how this procedure operated during the past 2½ years, and if Congress does proceed with S. 643, do you recommend the inclusion of the offeror procedure?

Mr. HODGON. We haven't enough direct experience with it, Senator, that I think I would care to comment in any conclusive way on the

matter. Bill Cavanaugh has. I have always regarded Bill's judgment with a great deal of respect. Let me sort of go around the corner on this and say that I sincerely hope that what Mr. Cavanaugh has suggested can come to pass when it comes to governmental participation in work that is already under way in the so-called voluntary standards sector, because from my chair, I see great opportunities, great opportunities to get major improvements in existing standards that are used very thoroughly by business in our country today if only the governmental people who have great responsibilities in the same areas could come and sit and talk as freely as all the rest of us do about what their objectives are, give us a chance to talk back to them, and say what our objectives are or why and come to the same kind of laying out the problem and informing each other of the problems and how best we can reach an objective, this would be tremendously helpful, tremendously helpful.

I think it would be tremendously helpful to all of these dedicated staff people. I am not just making fun of them. They exist in CPSC, FEA, and everywhere else.

I think it would give them a chance to get some of their objectives accomplished more rapidly if this could be brought about.

Senator Moss. I was going to ask a similar question of Mr. Cavanaugh. He already talked about the offeror procedure. I wonder if you could identify the major defects in the manner in which the CPSC has implemented the offeror procedure?

Mr. CAVANAUGH. I think there are several, sir. I have already discussed one. The time frame situation. It simply doesn't work. We need, of course, a much better problem definition before we launch into this kind of activity.

Above all, as Mr. Swankin pointed out, we really have two systems going now. If you go the offeror route, as we have gone, and others have gone, when you are finished—that is when we are finished—then the Commission staff takes over and redo, apparently now—Barney can comment on it if he wants—the whole job. Our position is they ought to be in the procedure, and this is not theoretical, Senator.

This has been going on for years. Two weeks ago, I appeared before a committee discussing octane rating. As usual, we made no comment on whether there ought to be a program, but in that case it was a highly technical matter, I had two very expert people who could talk to Senator Hartke about the technicalities of this problem.

I had the chairman of the committee, who was sitting on my left—the subcommittee—and it was Dr. John Krynitsky who buys all the gasoline all over the world for the DOD. He's chairman of our gasoline committee. On my right was the chairman of D-2 Sid Andrews. He did a beautiful job. He is director of the consumer section in weights and measures and one of the world's great experts on gasoline in the State of Florida.

So the point is that the situation that I am recommending has an enormous history of success. It's been obscure because the whole problem of standards and their relevance to the quality of life has until only recently, 5 or 6 years, kind of been the unique problem of a relatively small group of people.

Now it's a public problem, and one of our major tasks is to get across and to help people understand that there is really nothing new here institutionally.

We have the institutions in being that we need if the Congress decides to go in these various ways.

Senator Moss. To what extent is ASTM participating in the proceedings to establish test protocols for vacuum cleaners?

Mr. CAVANAUGH. In 1972, as I recall, Senator—and this was in response to a desire out there in nongovernmental land, as I recall, to get an activity started in the area of test methodology for vacuum cleaners.

We have had a committee working on this, as I mentioned in my presentation, since 1972. As I think I also mentioned, they have completed five test protocols on vacuum cleaners and have another 20 or so projects under way.

Now, in the last year or so, for reasons I don't really understand, the FTC got interested in the subject of vacuum cleaners and looked around the country and found this ASTM committee, F-11 or vacuum cleaners.

We said sure, come on up and find out what the committee is doing. We would like you to put somebody on the committee, if possible. That is currently the situation in the vacuum cleaner committee.

Believe it or not—and I have no particular technical expertise in that or any other area to which ASTM addresses itself—(I do not want to acquire it). This is apparently an immensely, very complex problem. It is not a simple thing, and another important thing that has apparently emerged—and I base this comment on a report that we got from the folks at FTC, they have realized—I think they were shooting for a cleanability standard, initially—that if you just have a cleanability standard, you may warp the public's attitude and get them thinking that the only thing important about a vacuum cleaner is cleanability, and in point of fact, there are many other things that should be taken into consideration.

Voltage leakage, and a whole bunch of things of that sort. If you are going to do a job of that sort. So that they have, as I understand it now—the FTC has said you guys go ahead and do what you are doing, we are going to ask the National Bureau of Standards to help us define this problem further.

When they do, we may be back to talk to you about it.

Meanwhile, the committee is going forward with its work.

Senator Moss. Well, thank you very much, Mr. Cavanaugh, Mr. Hodgdon, for your testimony. You are both experts in your field and we are very pleased indeed to have you come and contribute to our record.

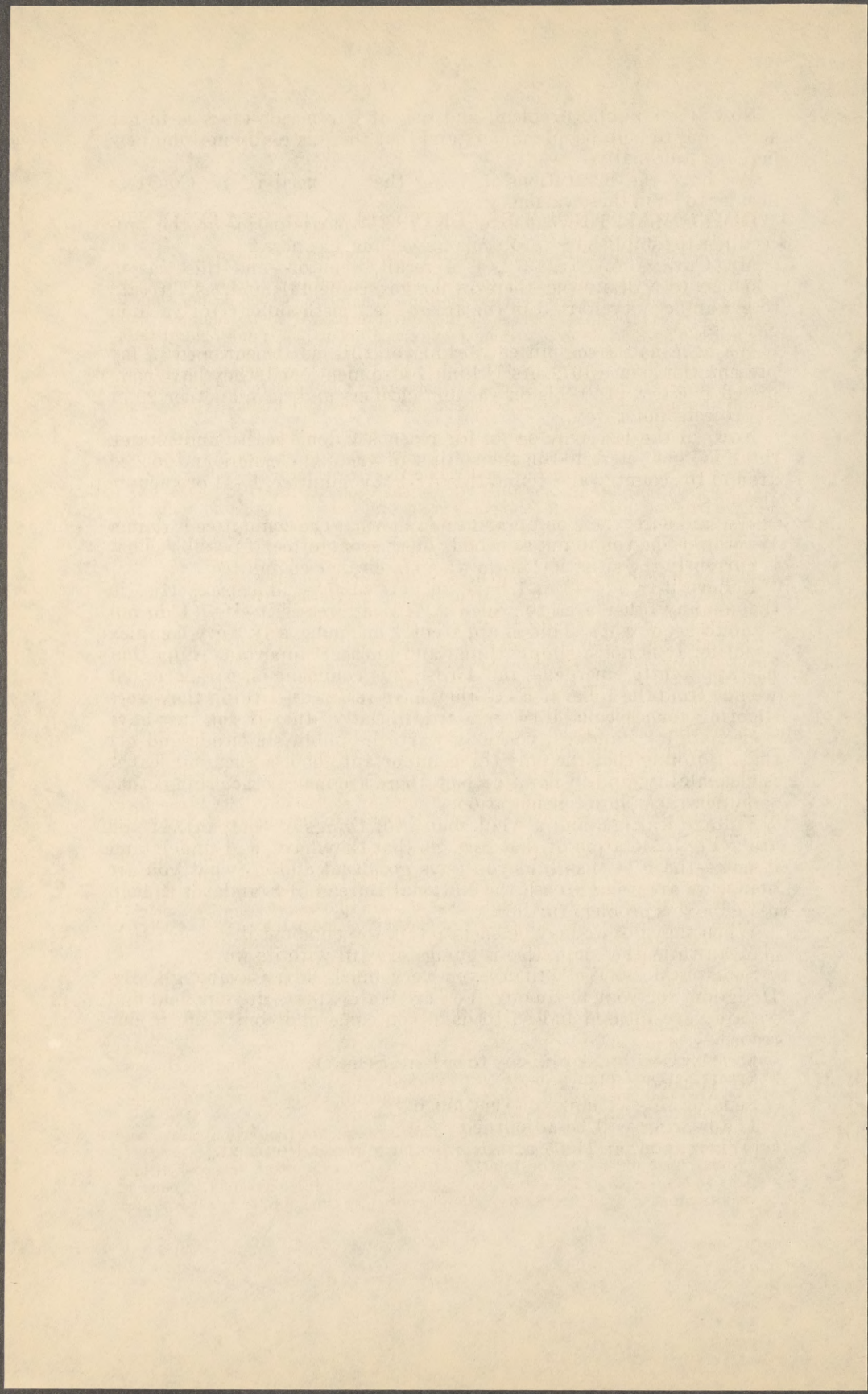
Mr. CAVANAUGH. A pleasure to be here, Senator.

Mr. HODGDON. Thank you.

Senator Moss. Thank you very much.

The hearing will be adjourned.

[Whereupon, at 11:35 a.m. the hearing was adjourned.]



ADDITIONAL ARTICLES, LETTERS, AND STATEMENTS

STATEMENT OF THE UNITED STATES INDUSTRIAL COUNCIL

The United States Industrial Council, an organization of more than 3,500 business and industrial firms employing approximately 3,000,000 people, is dedicated to preserving and strengthening the free enterprise system which has made this a great nation. We are extremely concerned about increasing federal intervention in the system and strangling of American business by governmental red tape and regulation. The Council is convinced, in fact, that unless the present trend is reversed, the free enterprise system cannot long survive. We are heading rapidly toward the kind of state socialism that has brought England to the verge of economic collapse.

S. 643, the Consumer Product Testing Act of 1975, would be another giant step in the direction of federal regulation. It would expand bureaucratic control over business operations and further undermine the free enterprise system.

This legislation, like the so-called "Consumer Protection Act," is based on the premise that the interests of consumers are not adequately considered in our free enterprise economy. It ignores the fact that competition forces manufacturers and distributors to continuously produce better products for consumers in order to gain and hold their patronage. It assumes that consumers are not capable of making intelligent decisions on purchases without being shepherded by the federal bureaucracy. It would discourage the kind of innovation which has afforded American consumers the widest choice of high quality products of any nation in the world.

The legislation would give vast new power to the Federal Trade Commission, which already holds tremendous power to regulate business practices. It would make the FTC the czar of product testing and standards, with absolute power to set standards for all consumer products and all motor vehicles and automotive products, and require compliance with those standards. It would invite lawsuits and authorize court injunctions for alleged violations of product standards that could shut down manufacturing and other business operations. Under its criminal penalties provisions, businessmen could be imprisoned and heavily fined for violation of regulations promulgated under the Act. The FTC standards violated might be inferior to the standards being used by a company for its products, yet the owner of the company would still be subject to punishment for violation of the FTC standards.

Most industries in the United States have done a good job—many, an outstanding job—of self-policing to safeguard consumers and, in turn, the best interests of the industry itself, against the making and marketing of inferior products. Industry has spent millions of dollars and many years of time in developing test protocols and setting standards. Yet under the powers conferred on the FTC by S. 643, the agency could arbitrarily throw out thoroughly tested and proven standards and develop new standards to replace them.

Organizations established by industry for the express purpose of developing performance and application standards and product testing, with years of successful experience behind them, would be subjected to the whims of bureaucrats and political appointees. The valuable work of such standards-producing organizations as Underwriters Laboratories; National Electrical Manufacturers Association; American Society of Heating, Refrigeration and Air Conditioning Engineers; American National Standards Institute; American Home Appliance Manufacturers; Air-Conditioning and Refrigeration Institute; National Fire Protection Association; and others would be endangered by S. 643.

The Act provides that the Commission shall promulgate regulations governing *the manner in which suppliers or retailers may advertise that their products have been tested* under the requirements of the Act and *the results thereof*. It also requires that once the FTC establishes a test protocol for a product, a copy of the results must be made available *without charge* by the supplier to all retailers

handling the product, and the retailer must in turn, make them available *without charge* to each consumer at the point of sale prior to the sale. The scope and the cost of dissemination of product test information to meet the requirements of the Act would be a tremendous burden for everyone involved with making and selling consumer products.

Authority given to the FTC over advertising and dissemination of product information, when added to the other regulatory powers conferred by S. 643 on the FTC, would give the agency an unwarranted degree of control over the major portion of production and marketing, including wholesaling and retailing, in this country. No administrative agency should be given such power as the broad wording of the proposed Consumer Product Testing Act grants to the Federal Trade Commission. In passing sweeping legislation on complex subjects, couched in general terms, and leaving interpretation and implementation up to an administrative agency, Congress is abrogating its responsibility. Congress has fallen into this error in recent years and as a result, is being subjected to severe criticism at this time for having created excessive bureaucracy and over-regulation of every type of activity. Notable examples of problems growing out of enactment of the type of legislation of which we speak are the uneven and sometimes ridiculous enforcement practices of the Occupational Safety and Health Act, and the maze of error, mismanagement, and fraud that has grown up under food stamp legislation.

Typical of the *carte blanche* given to the FTC by S. 643 is the section on "Test Protocols." The section leaves it entirely up to the FTC to determine "that a test protocol for a consumer product would assist consumers in making a purchasing decision." And, although the bill enumerates three factors for the FTC to consider in establishing priorities for development of test protocols, it opens the door for FTC personnel to follow wherever their bureaucratic fancy leads with a statement that they "are not limited to" those factors. Furthermore, it is up to the FTC to determine the extent to which the "relevant factors" listed in the bill apply. Thus, the way is wide open for the FTC to establish test protocols for every consumer product, as well as every product of the automotive industry.

The proposed legislation provides that the FTC may propose acceptance of existing protocols that have been issued or adopted by any federal agency or "by any other qualified agency, organization, or institution." However, the FTC is not required to accept any existing test protocols—no matter how much effort has gone into their development or how effective they are. Nor does the loosely-worded bill provide any definition of what constitutes a "qualified" organization, leaving that determination up to the FTC bureaucracy.

While the Act does require that the FTC, when it decides that a test protocol is needed for a product, shall publish that fact in the *Federal Register* and afford anyone interested the opportunity to submit an existing test protocol, there is absolutely no requirement that the FTC accept such offers. It may turn all of them down and proceed with the development of test protocols on its own.

S. 643 would add to both business costs and government costs, which the public would have to pay as consumers and again as taxpayers. The Act authorizes expenditures over a three-year period of \$9,500,000 by the FTC to conduct the program and another \$15,000,000 for the Bureau of Standards, which would be required to "develop the resources, facilities, and expertise necessary to assist and advise the Commission in the exercise of its responsibilities under this Act." It is safe to say that the total of \$24,500,000 would be only the beginning. Can anyone doubt that the FTC, once embarked on the role of czar in developing test protocols, establishing standards, and disseminating information about product standards among consumers, would rest until it had developed the program into a multi-billion dollar operation?

There is a growing revolt among the American people against governmental intervention into every aspect of daily life. The evidence is mounting that a majority of the people are tired of over-regulation and being saddled with the high costs of regulation and maintenance of an overblown federal bureaucracy. The proposed Consumer Product Testing Act flies squarely in the face of that feeling among the electorate.

For all of these reasons, the United States Industrial Council vigorously opposes S. 643 and urges its rejection by the Subcommittee.

STATEMENT ON BEHALF OF THE VACUUM CLEANER MANUFACTURERS ASSOCIATION

The Vacuum Cleaner Manufacturers Association wishes to voice its strong objection to S. 643, the Consumer Product Testing Act, a bill which we feel strikes directly at the heart of American manufacturing and merchandising.

An analysis of the bill leads us to the belief that if enacted it will stifle progressive research of American manufacturers, greatly inhibit free competition on the open market and, indeed, tend to regenerate some of the evils that early antitrust legislation sought to remedy. Not only does the bill tend to generate uniformity of product and inhibit progressive manufacturing, but, if enacted, would even interject the federal government into an area of advertising where it has no business being.

Initially, the proposed legislation would allow the federal government to set priorities with respect to product characteristics, some of which may or may not be important to the consumer in the choice of a given product. When this aspect of the bill is combined with the section that would require suppliers and retailers to advertise pursuant to regulations set forth by the Federal Trade Commission, the legislation will have created a situation where the federal government has become actively involved in the design and merchandising of any given product. There could be numerous disastrous results from such intervention. Obviously a manufacturer would concentrate all of his efforts in the design and production of a given item to conform with the characteristics covered by the protocol. He would pay little or no attention to other characteristics, which might be equally important to consumers themselves. This would most certainly result in uniformity of product and, more importantly perhaps, could well result in a movement toward uniformity of price.

Inherent in our system of free enterprise and competition is the ability and right of a consumer to purchase a superior product at a higher price, or an inferior product at a lower price, as the case may be. The concept of the "average consumer" is erroneous on its face. Obviously consumers differ in their needs, the amount of money they have for any given product, the amount of money they have to spend, and even the location where a certain product may be utilized. There are, of course, many other differences that affect the motivation of a specific consumer to buy a product.

It is obvious that once a manufacturer has used a test protocol in the development of a product, he will wish to make this known to the purchasing public through advertising. The bill, as written, however, would even regulate the manner in which the results of such testing could be utilized in advertising. There is already sufficient legislation and enforcement by governmental regulatory bodies to protect the consumer from false and misleading advertising. Further regulation of advertising by government under this legislation is therefore unwarranted.

The bill would also greatly inhibit any further development or progress in a manufacturing endeavor, for a manufacturer who has complied with a protocol would be most hesitant to develop new concepts and characteristics in his product that could require further testing. Thus the bill would promote uniformity of product, uniformity of price, and stagnation in development. Even that section of the bill dealing with the development of test protocols contains many problems.

A. Section 5(a), dealing with the proceedings for the development of a test protocol, requires a notice in the Federal Register that would describe the product and identify the product characteristics that could reliably and uniformly be tested, measured and reported. This section calls for the Commission to make a determination that a test protocol *would be of assistance to consumers* in making informed purchasing decisions. It does not, however, require a determination that the product characteristics it seeks to test are *of any great importance to the consumer*, only that they can be "reliably and uniformly tested, measured and reported." We think this is wrong.

B. Section 5(c) (3) (b) allows interested persons, including representatives of consumers and consumer organizations, to participate in the development of test protocols. There is no requirement, however, that any of these representatives of consumers or consumer organizations demonstrate any degree of expertise in the field of testing nor an ability to properly perform such testing. We think this is wrong.

C. It is obvious that the highest degree of expertise in testing any given product will be found within the private industry or industries engaged in the manufacture of that product. This is due to the fact that industry, in the continuing development of any product, must design testing as it goes along to insure the capabilities of the product. Section 5(c) (3) (d), however, strongly discourages the assistance of private industry in the development of test protocols by allowing the Commission access, for the purpose of audit and examination, to any books, documents, papers and records relevant to the development of such recommended test protocol. We think this is wrong.

Certainly anyone proposing a test protocol would wish to offer that which it deems necessary to prove the credibility of its proposed protocol. On the other hand, this section would require full and complete disclosure of all research and development accomplished by private industry in the production and development of the product for which the protocol has been suggested. A similar provision is contained in § 7(d) (e) (C) of the Consumer Product Safety Act. While there may be some justification for such a provision when dealing with public safety, the protocols called for by S. 643 do not concern themselves with safety, but have a direct impact on merchandising. This is at the same time unnecessarily expensive and disruptive of free trade and competition.

Although the intent of S. 643 is to promote the development and use of protocols, § 6 takes what was permissive and makes it mandatory. This is to say that although there is no explicit requirement that a manufacturer use a published test protocol, once such a protocol has become effective each supplier or retailer must make a copy of the complete results or a summary thereof available to the ultimate retailer. Thus there would appear to be an absolute requirement that testing be done where there is an existent test protocol. The requirement that such results be furnished without cost is both unreasonable and unenforceable inasmuch as like any other cost of manufacturing and merchandising, it will ultimately be reflected in the price of the product.

Finally, the committee will be pleased to know that members of the Vacuum Cleaner Manufacturers Association and other producers of vacuum cleaners are already voluntarily working through the American Society for Testing and Materials to develop standards for vacuum cleaners. Those standards will include test protocols on performance, durability/reliability and safety. The ASTM vacuum cleaner committee is also concerned with determining what information in the test procedure is important to consumers, in helping them to evaluate vacuum cleaner models, and in establishing means to communicate this information effectively to consumers.

The American Society for Testing and Materials system for the development of voluntary consensus standards on products and services is a due process procedure. The number of voting members representing consumers/users and general interests must be at least equal to the number of voting members representing manufacturers, where standards are developed for consumer products.

In view of the standards work being done through ASTM, the Vacuum Cleaner Manufacturers Association feels a federal law like S. 643 is unnecessary. In fact, the Vacuum Cleaner Manufacturers Association further feels a federal law would probably inhibit the progress being made on the development of standards through ASTM.

CONCLUSION

S. 643 represents strong and unnecessary governmental intrusion into the market place. Those aspects of any given product which are to be tested under this act relate directly to its merchantability. The absolute requirement of compliance with the proposed protocols would promote uniformity and stagnation which are the antithesis of free enterprise and competition. The regulation of advertising proposed by the bill is a monumental and completely unwarranted intrusion into private enterprise.

For the foregoing reasons we urge that you give no further consideration to the bill.

STATEMENT OF THE OUTDOOR POWER EQUIPMENT INSTITUTE

MR. CHAIRMAN AND COMMITTEE MEMBERS: OPEI, and the industry it represents, is greatly concerned with the attitudes of the consumer, information the consumer has in his possession, and the problem of getting that information to

the consumer. The industry, through OPEI, is presently engaged in a continued effort to establish a joint consumer education program with the Consumer Product Safety Commission (CPSC) on the very important subject of safe operation of products sold by this industry, and the hazards that occur should the failure to understand these clear safety principles be ignored by the consumer. The purpose of this joint effort is not to duplicate existing CPSC or OPEI programs.

Prior to the present effort of OPEI, the industry has had a long history of concern for the consumer as evidenced by the gathering and dissemination of information to consumers which would help them understand what the various products do, the safe operation of these products, and the serious consequences which flow from unsafe operation. In particular, several years ago, OPEI and the industry went through a process which established a voluntary safety standard program for its lawn mower products, including adequate testing procedures, and subsequently embarked on a substantial campaign to disseminate relevant safety information to consumers. This process added approximately \$48,000,000 to the retail price of mowers subject to its provisions, and reflected the input of several disciplines including those of consumer groups and CPSC. The net result of this voluntary safety standard program for lawn mower products, sponsored by OPEI, resulted in a significant increase of safety information to the consumer.

The OPEI safety program, among others, has contributed to the development of an OPEI expertise in the gathering and dissemination of relevant product information to consumers. In light of this expertise, OPEI believes it has some very important views to share with the Committee on this legislation.

TWO FUNDAMENTAL ISSUES

The Consumer Product Testing Act of 1975 (the *Act*), on its face, addresses itself to the problem of gathering and disseminating relevant information, including both product characteristic and performance information, to consumers. As OPEI analyses the bill, the primary purpose of this *Act* would be to put into the hands of the ultimate end user all the necessary information he would require in comparing product characteristics and performance against the price of the particular product. This bill raises two fundamental and threshold problems:

1. Is the mechanism that will be established by the *Act* necessary?
2. What are the practical and economic consequences of this legislation?

THE CONSUMER PRODUCT TESTING ACT OF 1975 IS UNNECESSARY

Within the overall problem of necessity, there are two important aspects which the committee must address itself to. Those include both the consumer awareness problem which appears on the face of the *Act*, and the problem with the creation and maintenance of oligopolistic structures which appears in the introduction statement of Senator Moss and Senator Magnuson.

As to consumer awareness, there are several government mechanisms presently in existence which address important different aspects of this problem. New authority would duplicate these programs. For example, CPSC and the Federal Trade Commission (FTC) have independent authority to gather and disseminate relevant product characteristic information to consumers. On the one hand, CPSC, as part of its consumer awareness program, has been developing programs relating to safety features. In addition, CPSC is presently considering proposed Consumer Union (CU) standards for lawn mowers. Some of the issues involved require adequate testing protocols for these proposed standards. Any new FTC authority to establish testing protocols would clearly overlap with existing CPSC authority creating the very real possibility of having two testing procedures for the same line of products.

FTC, on the other hand, under its new authority to regulate warranty provisions, has independent authority to gather and disseminate product characteristic information relating to the quality and performance of consumer products. Furthermore, there are other federal agencies which are engaged in the gathering and dissemination of relevant information to specific consumer groups. One cannot help but feel that there is already in existence an overall, substantial federal campaign to gather and disseminate relevant product characteristic and performance information to consumers. Very few, if any, of these federal information programs have yet to be tested adequately. Therefore, it seems very premature to establish a new overwhelming federal information consumer program directed toward *every* consumer industry in America which would multiply

the already existing efforts of several agencies, CPSC and the FTC in particular, without some apparent justification for the new program. Indeed, on its face, the Consumer Product Testing Act of 1975 seems to be little more than an extension of the FTC Warranty Act.

With regard to the second important aspect within the overall problem of necessity, that is, the creation and maintenance of an oligopolistic structure in various consumer oriented industries, as yet, there is no consensus that consumer awareness and/or confusion has helped to create or maintain oligopolistic structures which are in existence. By itself, this is an exceedingly complex and multi-variable issue which has been discussed at length in the last few decades, and which has not yet been resolved. (See, for example, *Kellogg et al.*, FTC Docket 8883, set for trial January 1976.)

THE PRACTICAL AND ECONOMIC DISADVANTAGES OF THE ACT CLEARLY OUTWEIGH ANY BENEFITS

In considering the economic impact of the *Act*, there are at least two important aspects to be reviewed including (1) the *practical* administration of the *Act*, (2) the effect on *industry structure* and the *prices* of industry products.

Government regulation, such as described in the *Act*, is an *impractical* way to deal with problems such as consumer awareness. The product characteristics listed are subject to so many variables the test data would be of very questionable value. In effect, consumers would be asked to purchase products at much *higher prices* in return for questionable benefits.

Furthermore, research and development of voluntary standards virtually halt during the *several years* necessary to establish government regulations. The consumer is thereby deprived of substantial product benefits he would have otherwise received in a more expeditious manner. For example, in the power lawn mower industry research and further development of voluntary standards have ceased for more than two years because of the CPSC proceeding. It may take several more years to get "final" regulations.

With regard to the economic impact on consumer oriented industries, the committee should recognize that the establishment and administration of procedures outlined in the *Act* might very well result in entire industries having to substantially redesign products which are presently being produced and marketed. A survey of OPEI members indicates that the establishment of new testing protocols, in addition to those which will be mandated by CPSC, would be an inefficient use of resources within the industry and would drive the cost of products up to the point of being unrealistic. CPSC mandatory standards by themselves might cause unrealistic prices. As an example of what mandatory standards imposed by the federal government can do to an industry one need only look at the present record before the CPSC.

Up to now, the proceeding has taken more than two years and is not yet completed. It has cost the industry approximately 2 million dollars to participate in this regulatory process. (The allocation of resources by CPSC is not available to the public.) It is estimated that, should the present Consumer Union standards be mandated by CPSC, they would cost the industry in the first year of compliance approximately 367 million dollars. The ten year figure for compliance, in terms of 1974 dollars, is approximately 4.5 billion dollars. It is also estimated that a 25-30% reduction in the number of manufacturers would occur. Although costs of mandated testing requirements under proposed FTC authority might not be as high as the estimated compliance costs of the CPSC proposals, nor result in such a significant structural effect, nevertheless, it should be pointed out that mandatory federal regulations have a substantial impact on the industries that are affected. Moreover, they frequently do not reflect Congressional intent as identified in the enabling act [See, "Regulatory Agency Responsibility Act," (S. 2677) introduced by Senator Biden on November 17, 1975; and National Journal, Vol 7, No. 42 (November 19, 1975) at page 3.]

RECOMMENDATION

In conclusion, OPEI recommends that the committee address the points of necessity, practical application and economic impact. If these points are reviewed, OPEI strongly believes the unalterable conclusion is that this legislation is unnecessary, practical application would be questionable at best, and the total economic impact outweighs any advantages which would be forthcoming.

STATEMENT OF HENRY P. GLASS FIDSA, CHAIRMAN, INDUSTRIAL DESIGNERS
SOCIETY OF AMERICA

I should like to introduce myself as the chairman of the subcommittee for Public Design Awareness, Government Affairs Committee, Industrial Designers Society of America. May I also introduce the chairman of this committee, Mr. Philip H. Stevens.

The Industrial Designers Society of America which we represent, is a non-profit national organization, comprising ten chapters in five major areas of the country, numbering over a thousand members. The society represents the profession of industrial design. Among our main objectives are the maintenance of high standards of design and professional integrity, the encouragement of sound design education, research, creative experiment and cooperation with industry and government. Members of this society are directly responsible for design and development of over 40 billion dollars worth of annual merchandise sales.

Senate bill S. 643 is a measure aiming to afford the consumer access to information regarding the merits and demerits of competing products in the marketplace, in order to enable him to make discriminating buying decisions. May I state that we most heartily and without qualifications, endorse this legislation. We agree most fervently with the Senators opinion that present sources of information are inadequate and often misleading, that habitual judgment by brand name and price tag bring about lower quality and higher prices instead of better and lasting value. The proposed legislation, establishing uniform protocols for consumer products, if enacted, is certain to bring about incisive improvements in these deplorable conditions.

The contemplated procedure to test properties of manufactured articles against uniform standards and bring the thus established protocols to the consumer's attention at the point of purchase is a most commendable and effective measure in the interest of helping the buying public to make intelligent selections and to guard against false claims and erroneous notions. The comments we have to offer are in no way to be construed as criticism of the proposed bill. They are merely the expression of hope that the issues which concern us are covered under a broad and general interpretation. They are certainly in the spirit, if not in the explicit letter, of this law. They could easily be incorporated through minor augmentation or, if this is not expedient, dealt with at a later date.

In any case, here are a few matters which, we believe, deserve the committee's attention: It is hoped that the term "quantifiable properties" used in connection with uniform test protocols to be established will not be understood in a restrictive, limiting sense and that it will not exclude the consideration of other, equally important properties. Many of these go far beyond measurable performance criteria, could not be evaluated by "ratings on material, durability, operating cost and effectuation of purpose" alone, and yet are important qualities, contributing, respectively detrimental to the true value and service, an article should provide for it's prospective owner.

If we may further quote the language of the bill, we are gratified to acknowledge that "environmental impact in the manufacture and disposal of products" is included in the "product characteristics" to be evaluated and, most essential to our way of thinking, in the definition of this term, the qualifying features of a consumer product are *not* limited to the properties cited before.

May we point out that some of the properties not specifically mentioned constitute essential qualifications of most objects responding to human factors: the ease of operation, the convenience, even pleasurable sensation derived from usage, the correct shape of a handle, the body-comfort of a chair, the facility to read a dial or a dashboard at a glance, the optimum shape of all things achieving maximum utility, strength and safety with minimum waste of material, judiciously chosen to fit the purpose, economical and thoughtful utilization of available resources, formgiving sensitive to human scale and proportion, the selection of appropriate surfaces, rough textured, mirror-smooth or otherwise, even to the extents of featuring harmonious color-schemes. All the properties of a product, perceived through physical, sensual or emotional faculties of the user are important qualifiers of its value, whether they are quantifiable or not.

We realize of course, that all these properties could be considered to be covered by a requirement contained in the proposed act under the term "effectuation of purpose", without unduly stretching its meaning. It is further conceivable and in fact we would recommend that new, sophisticated, but very reliable bio-feed-

back methods, should be introduced in the prescribed procedures to be employed by the designated testing agency and that results of such tests should be interpreted in commonly understandable language and included in the published protocols.

Another very important factor in consumer education and information is what we would call the foreseeable appearance-validity-span of an article. All too often the unsuspecting citizen is overwhelmed by the flashy appearance of a product. He follows his impulse, buys it, only to regret it soon. It looks hopelessly out-dated long before it has been amortized in use, often before the final installment has been paid. Occasionally such methods of superficial decoration are used to cover up serious flaws in material and workmanship. Defects and detriments of this nature are not usually detectable by the analysis of quantifiable properties, nor are they necessarily in conflict with "effectuation of purpose" and yet we feel that the consumer has the right to be forewarned. He certainly has no other available means of redress after he discovers his mistake.

The almost exact inversion of this case is also a common occurrence in the market place. A new product, the result of new technology, research or science, inventively and imaginatively applied, to fill old or new needs, is offered for sale. Its appearance startles the public, and although the article would rate very highly on all test points, no basis of comparison exists, no test protocols can be issued. What has happened so often in the past, would happen again. The new law couldn't save a perfectly good and valuable consumer item from dying an ignoble death through sales resistance.

To give just one example where a totally rational and systematic testing procedure, confined to measurable, uniform standards might not give a product the rating it deserves, I should like to cite the new "Pacer" by American Motors. It is the first closed car in automotive history to completely eliminate the dreaded "blind spot" in the driver's rear view, the cause for innumerable serious accidents. Although this automobile might be equal, superior or inferior to competitive models in regard to performance criteria, gas-mileage, service guarantees, maintenance, etc. The above mentioned feature is one of those answers to the demand of human factors, which are within the competence of a very specific professional expertise.

It should be self-evident at this point that the testifying party is referring to one important issue: the recognition of the concept "design" as one of the most meaningful and fundamental product qualifications, which can work to the advantage or disadvantage of the consumer. All the properties mentioned above, which respond to human senses and sensibilities are within the realm of the industrial designer. The solution of all problems arising in the conversion of resources and materials through selected processes and refinements into articles for human use, are his responsibility.

In recent years, significant advances in safeguarding the rights of the consumer have been accomplished. Laws, regulating veracity in advertising and labeling, truth in lending as well as product safety, have been enacted. They are implemented by congressional commissions, government agencies and enforced by the courts. Consumer lobbies are pressing for new measures for the fair and speedy settlement of complaints and for compulsory arbitration. In all these justifiable and commendable efforts, in all these heated debates, involving countless arguments between industry, commerce and the proponents of consumer protection, in all the volumes of accumulated literature on these subjects, one thing is truly amazing: the vital issue of design has been given no attention at all, the very word has hardly been mentioned!

We all know it, but we don't let it penetrate the field of our awareness . . . there is no man-made object, no article of daily use which did not originate on the drawing board of a designer.

Over 50 colleges and universities throughout the country offer curricula in industrial design, leading to bachelor- and master-degrees in this academic discipline. Over 2,000 students are enrolled in these 4 to 6 year courses, over 500 of them graduate each year. The services of industrial designers are sought and used in practically every field of human endeavour. Members of our profession have assisted research and development on myriads of projects, from the humblest dime store items to the most sophisticated implements of space travel. Despite the almost unbelievable anachronism practiced by the civil service administration in still refusing industrial design as a job qualification, I dare say that our free American society, as we know it, could neither function nor exist in its present form without the input provided by our profession.

I respectfully submit that in the implementation of the bill S. 643, the value judgment of duly qualified industrial designers should become part and parcel of

all test protocols in the interest of thorough and unbiased public education and enlightenment in regard to consumer products. If the language of the statute does not clearly reflect this request, we would sincerely hope that the committee's report would express this intent.

STATEMENT OF HORACE R. KORNEGAY, PRESIDENT, THE TOBACCO INSTITUTE, INC.

I am Horace R. Kornegay, president of the Tobacco Institute, an association of various U.S. tobacco product manufacturers. I have held this position since June 1970.

I appear here today at the request of Chairman Magnuson to testify on the tobacco industry's experience in working with the Federal Trade Commission in developing "tar" and nicotine test protocols, in the testing of all brands marketed and in disseminating the results.

Chairman Magnuson asked that I give you the benefit of our experience in industry-government cooperation to establish a standard procedure for testing the "tar" and nicotine levels of cigarettes.

The tobacco industry is pleased that the Chairman regards this cooperative effort so highly. We appreciate the generous recognition he give the tobacco industry for working cooperatively with the Federal Trade Commission. We are also pleased that he has termed this cooperative effort "a unique experience in government-industry cooperation"

We would be remiss, however, if we did not point out that very little would have been accomplished without the responsible and reasonable role played by the Chairman himself. He provided the initiative and leadership without which voluntary cooperation of industry with government so often gives way to the arbitrary regulation of industry by government. And let me add that it is by no means certain that the public interest is always better served by regulation rather than cooperation.

In the case of "tar" and nicotine testing—and by extension other consumer product testing—the public interest can be served only by the development of scientifically sound methods which produce information that has scientific validity. That is the fundamental standard for the development of testing procedures. Neither crusading zeal, nor ideological commitment, nor economic considerations must be permitted to take charge of what is essentially a search for factual information.

The history of government-industry cooperation in "tar" and nicotine testing had its genesis in March 1966 when the FTC, reversing a 10-year prohibition of "tar" and nicotine advertising, suddenly permitted and even encouraged "tar" and nicotine advertising as being "in the public interest." For the previous decade the Commission, in its own legal requirements and in legal actions before the Courts and in testimony to Congress, had held that Consumers would be misled by "tar" and nicotine statements and that these statements lacked health significance. The Departments of Commerce, Agriculture and HEW also expressed concern as to whether "tar" and nicotine statements would be in the best interests of consumers. Thus government regulatory pressure eliminated for a decade competition based on giving consumers information on the "tar" and nicotine of cigarettes.

The FTC determined that the permissible "tar" and nicotine statements must be expressed in milligrams of mainstream smoke determined by tests conducted in accordance with the Cambridge Filter Method, a methodology described in a technical journal article published in 1964 by Dr. C. L. Ogg.

The initial problem, however, was that the Commission had no scientific or technological expertise in this field. Indeed, the ensuing 12 months were marked by the release of a variety of unstandardized tests which resulted in controversial claims about "tar" and nicotine content. These results were based on tests conducted under the auspices of a mass circulation magazine and a New York State medical center.

This was the state of affairs that prompted the FTC to observe later that the "use of more than one testing method would produce different results which would only serve to confuse and mislead the public."

On June 13, 1966, Paul Rand Dixon, chairman of the FTC, told Chairman Magnuson that a new Commission Laboratory would begin testing the tar and nicotine content of cigarettes "within 60 days."

Even though the Commission assumed the responsibility for "tar" and nicotine testing, it still lacked the necessary expertise. And so on June 16—three days later—the Commission wrote a letter to Earle C. Clements, the then president of the Tobacco Institute, soliciting the benefit of the industry's technological

expertise on a number of questions that had arisen about the testing protocol that the Commission had adopted in March. "At that time," he letter stated, "the Commission understood that the Cambridge Filter Method was completely accepted as a standard testing procedure." Having learned since that there was room for modification and amplification, the Commission sought the industry's advice.

Mr. Clements assured the Commission of industry cooperation and distributed the request to each member company of the Institute. Scientists of these companies set to work, applying their accumulated experiences, skills and resources to develop the information desired by the Commission. On September 2, 1966 at the invitation of the Commission, the research directors of five major cigarette companies met with Commission staff members. At this conference, the research directors furnished a supplementary memorandum and answered a wide range of technical questions raised by the Commission staff. In addition, various relevant literature references were furnished to the Commission staff.

A week later, on September 9, a further memorandum was transmitted to the Commission embodying the answers to a number of additional questions which had arisen. In addition, cigarette company scientists repeated their continuing offer to cooperate with the Commission staff in further technical discussions and in the furnishing of further technical information.

Thereafter, during September and October of 1966, Mr. Harold Pillsbury of the Commission staff, who would be directing the Commission's testing, visited company laboratories to observe and to discuss the techniques employed.

Likewise on November 28, in connection with a number of hearings held by the Commission, a comprehensive memorandum regarding sampling, reporting, and testing methodology was submitted jointly by the cigarette manufacturers. In addition, the manufacturers assisted the Commission in obtaining properly designed equipment suitable for testing cigarettes in large volume.

Over and above these meetings, written documents, and continual consultation between company scientists and Commission staff regarding technical problems, the industry took one other step. Notwithstanding the absence of any evidence that "tar" and nicotine are related in any way to smoking and health, the industry organized the Tobacco Institute Testing Laboratory (TITL) following the announcement that the Commission was establishing its own laboratory for this purpose. TITL, as it is generally known, was established because this type of testing involves complex scientific procedures which are highly susceptible to error. TITL's objective was to utilize industry experience in connection with the technical problems raised by the Commission testing program, to assist cooperatively the Commission in the formation and operation of the Commission laboratory and to track the testing conducted by the Commission.

Four of the Commissioners visited TITL prior to the commencement of the Commission's testing, and industry personnel from TITL has continually been available for consultation with the testing staff of the Commission laboratory.

The TITL was operational in November 1966, six months before the Commission laboratory. At that time, Mr. Clements offered to make the industry laboratory available to the Commission so that the Commission could incorporate reliable "tar" and nicotine figures in its June 30, 1967 Report to Congress. The Commission declined this offer. The FTC started its first formal test on July 31, 1967 and reported the results on November 20, 1967.

I believe the record speaks for itself on the industry's good faith and willingness to cooperate to the fullest extent with the Commission. That was also the view of then FTC Chairman Dixon, who told the House Interstate & Foreign Commerce Committee in 1967 that "the tobacco manufacturers have worked with us and given us the greatest cooperation because they have the greatest expertise in this field."

But cooperation is too important and too fragile a component to be left to chance. It must be built into the system. In developing the "tar" and nicotine standards, the crucial factor, as I look back on it, was the establishment of an industry testing facility in tandem with the Commission laboratory. Our cooperation facilitated the government's work. More importantly, the dual laboratories have over the years constituted a system of checks and balances that provides some essential elements of validity and reliability of data. Or as Chairman Dixon put it in his testimony to the House Interstate and Foreign Commerce Committee:

"They will track us and we will track them . . . They will send their best technicians to check our machine, and we will send ours to check theirs." (Agency Hearings, House Interstate and Foreign Commerce Committee, March 16, 1967, Tr P697).

Our cooperation with the Commission is a continuing arrangement. Both TITL and the Commission use the same organization to pick up sample cigarettes at the same time from each of the same 50 markets. Each laboratory gets one half of the sample and shares jointly in the cost. Moreover, after each test, both laboratories exchange the raw data and compare notes to make sure that their personnel, techniques and equipment have been functioning in accordance with the uniform testing procedure.

Although I have highlighted our cooperation with the FTC, let me emphasize that cooperation was not co-optation. To this day there have always been some basic differences between the industry and the Commission on a number of aspects of the testing methodology. Many believe that the interest of the consumers would be served by refinements in the methodology employed by the Commission.

For example:

In 1966 the industry urged the Commission that cigarettes should not be smoked to a 23 mm. butt length. Instead, the butt length should be 30 mm. which is the length used in the Cambridge Filter Method, adopted by the Commission in March 1966.

It urged that the sample size should not be limited to 100 cigarettes per brand and that a minimum of 200 of each brand is necessary for statistical adequacy.

Each one of these points was advanced to insure that the Commission's testing would provide reliable and accurate results. The Commission did not share this belief. In its statement of considerations issued July 31, 1967 which gave its staff directions for conducting the first formal "tar" and nicotine tests, the Commission admitted that:

"The purpose of testing is not to determine the amount of "tar" and nicotine inhaled by any human smoker, but rather to determine the amount of "tar" and nicotine generated when a cigarette is smoked by machine in accordance with the prescribed method." (FTC Statement of Considerations, July 31, 1964, P. 3). The Commission also said that: "No two human smokers smoke in the same way. No individual smoker always smokes in the same fashion. The speed at which one smokes varies both among smokers, and usually varies with the same individual under different circumstances even within the same day. Some take long puffs (or draws); some take short puffs. That variation affects the "tar" and nicotine quantity in the smoke generated.

"Even with the same type of cigarette, individual smokers take a difference number of puffs per cigarette depending upon the circumstances. When concentrating, or talking, the number of puffs is usually less. When listening, or required to listen to another person talking, the number of puffs per cigarette, as well as the duration of each puff, usually increases. Smoking rates while reading a book may differ from smoking rates while viewing a television program. The number of puffs and puff duration (as well as butt length) will vary according to emotional state."

The Commission concluded that:

"There is no human smoker who smokes, and no cigarette that is smoked, under conditions that precisely duplicate either the Cambridge Filter Method in its original form or as modified by the Commission." (Ibid P. 2-3).

Therefore, the Congress as well as the public is entitled to know that the test results determined on the basis of these considerations may be more uniform than meaningful. The Congress, as well as the public, in considering legislation based upon testing results, should know how far and in what respect those results fail to approximate actual consumer use of the product.

STATEMENT OF THE BOATING INDUSTRY ASSOCIATIONS AND THE NATIONAL ASSOCIATION OF ENGINE AND BOAT MANUFACTURERS

This statement is submitted on behalf of the Boating Industry Associations¹ of Chicago, Illinois and the National Association of Engine and Boat Manufacturers² of New York, New York (hereinafter "BIA/NAEBM"). Together the

¹ A general partnership of associations including the Outboard Motor Manufacturers Association, Boat Manufacturers Association, Trailer Manufacturers Association and Marine Accessories and Service Association.

² A national trade association representing manufacturers of boats, engines and related marine products.

two associations have as members in excess of 2,500 boat builders, engine and motor manufacturers, accessory producers and firms servicing the industry. The associations also sponsor affiliated groups representing marine distributors, dealers, boat owners and others involved in pleasure boating.

These associations are by no means new to the business of promulgating standards for consumer safety and information.

They have testified in support of boating-related consumer protection legislation including the Federal Boat Safety Act of 1971. Under the 1971 Act, the over 1,800 boat manufacturers in this country are subject to a system of federal safety regulation so comprehensive as to affect virtually every aspect of their business planning activity. Failure to comply with the applicable regulations subjects a manufacturer to severe civil sanctions as well as to repair and recall responsibilities. We point out the existence of the Department of Transportation's through the United States Coast Guard, regulation of the boating industry as just one example of the comprehensive federal regulatory scheme that exists for the boating industry today. It should also be noted that the Consumer Product Safety Commission is attempting to assert jurisdiction over certain aspects of regulation of the boating industry. Thus, with enactment of this legislation, we would find ourselves in the position of being regulated by not one or two, but at least three federal agencies. I point out the long history of BIA/NAEBM support of consumer safety-oriented legislation in order to establish our major point that the passage of S. 643 is simply a classic case of regulatory overkill.

As previously mentioned, our industry's products are recreational boats, marine engines and associate accessory equipment. Many of these items are sold to manufacturers while others are sold directly to consumers. Each of the industry's 2,500 firms produces a variety of models and thus the choice to the consumer is almost infinite. The rate of turnover among the many number of firms in this market, most of whom are classified as small businesses, is understandably high. Those that are successful in their endeavors are those who are able to translate the large sums that are spent each year in marketing research into features which are desirable to consumers.

The boating industry's products are rarely purchased as necessities but are purchased to fulfill individual recreational goals. The safety of these products is already heavily regulated by the Coast Guard, and to some extent by the Consumer Product Safety Commission. Thus, consumers purchase boats based on availability of desirable features and the price.

Because of the many varieties of boats and other marine products and the myriad of uses to which they are put, BIA/NAEBM believes that standardized test procedures will be impossible to devise and would be of no benefit to the consumer. The consumer is already protected and the proposed new test protocols would simply inhibit those smaller companies who cannot afford the expensive testing procedures from undertaking changes in design.

Having established the reasons for the opposition of the boating industry to the bill in general, I would now like to make some brief comments on the specific provisions of S. 643.

The bill provides that whenever the Federal Trade Commission determines that a test protocol for a consumer product would "assist consumers in making informed purchasing decisions," the Commission must commence a proceeding for the development of such a protocol. This direction, coupled with the broad definition of "consumer product" in section 3(3), will put an enormous strain on the financial and personnel resources of the Federal Trade Commission. Although the Commission is also directed to consider certain relevant factors including importance of products to consumers, frequency of purchase of such products, and the cost of such products, etc., the exercise of such discretion in itself will take considerable time.

BIA/NAEBM are categorically opposed to enactment of this legislation. However, if the bill is enacted, the Commission should be directed to consider factors such as existing regulation of that product by one or more federal agencies, the cost of that regulation, the importance of safety features of the product versus performance features and the feasibility of applying standardized test procedures to products which can be used in a variety of ways, such as boating equipment. It must be noted also that the standard "assist consumers in making informed purchasing decisions" will apply in virtually every instance. Anything which gives additional information as would a protocol, would at least in the minds of the protocol's proponents, "assist consumers."

The difficulties in devising test protocols which would be meaningful to consumers with respect to "product characteristics" as defined in section 3(5) of the bill are insurmountable. For example, while marine engines have in some instances a much longer life than automobiles, there are owners who carelessly store them in direct contact with salt water or run them over gravel beds. This, to those charged with administering this law, might be "foreseeable abuse" but should all boat owners be penalized with a cost of materials that will withstand constant exposure to salt or to careless operation? Another controversial characteristic will certainly be the "environmental impact in the manufacture, use and disposal" of a product. How much impact could be quantified for testing purposes, much less in a manner helpful to a purchaser, is inconceivable.

Further, the bill calls for tests to determine the average annual cost of operation, maintenance requirements and the frequency and nature of repair. Since there would not appear to be an "average" usage, the protocol could only be based on the bias of those writing a test procedure. Certainly those characteristics will vary from boat owners who use them daily to fish in rough ocean waters and those who use them only during summer vacations.

The bill specifically recognizes that the Federal Trade Commission does not have the necessary engineering and technical capability to undertake to design test protocols on its own. Thus, the bill has provided that the Commission may accept offers to develop or propose test protocols pursuant to notice published in the *Federal Register*. Once again we have an instance of proposed legislation which can only be called a "Consultants Relief Act". Although the amount of money that is appropriated in the bill is small, costs of such contracts as well as the costs of those who will be forced to participate in a protocol proceeding are much larger than are demonstrated by the amount of money appropriated. It is hard to imagine that a cost-benefit analysis to the consumer would show that the high costs of administration of these proceedings are outweighed by significant benefits to the consumer.

The requirement in section 6 that after the Commission has published a test protocol and such protocol has become effective, the Commission shall require each supplier or retailer doing business in interstate commerce to make a copy of the complete results or a summary available to each retailer who sells directly to the public. To make such results available without charge to consumers at the point of sale is an extremely large burden to place on manufacturers and retailers. At a time when the Administration and many legislators are stridently advocating a reduction in the burdens on small businessmen, Congress should consider reducing the paper required rather than increasing it. The reporting requirements and other requirements imposed by the federal government have reached an intolerable level and this Congress should do nothing which will increase that burden. The FTC, in response to the passage of the Magnuson-Moss Warranty Act of 1974, is now in the process of devising regulations which will require retailers to maintain point-of-sale information concerning warranties. Although these regulations will be cumbersome, the amount of paper which would be necessary for a retailer to keep the complete results of all tests on all consumer products he stocks which might be the subject of protocols is absolutely staggering.

Further, the bill is extremely duplicative of procedures which are administered by other agencies. In the case of boat manufacturers and marine accessory equipment, it has been noted that the Coast Guard conducts vigorous and extensive testing activities and other proceedings to insure that a high level of safety is met by the industry. But other federal agencies also require testing procedures and specific requirements for various consumer products. The Food and Drug Administration's requirements on pharmaceuticals, the Department of Agriculture's food grading standards, and the Consumer Product Safety Commission's testing procedures are only a few examples of what could be done needlessly and expensive overlaps with other agencies.

Another aspect of this bill which is unclear is the need for such legislation. The Federal Trade Commission, by way of court decisions and recently acquired legislation,³ has far ranging powers to prevent against deceptive advertising and other unfair trade practices. The Commission is thus in an excellent position to guard against misleading or deceptive advertising based on claims that certain consumer products have lived up to performance test standards.

³ The Magnuson-Moss Warranty Act—Federal Trade Improvements Act, P.L. 93-637 (15 U.S.C. § 58).

In conclusion, I would urge the Subcommittee to weigh carefully the impact of such legislation on industries comprised of small businesses, such as the boating industry. The possibility that this bill's requirements will be so onerous as to drive some small companies out of business, thus having an anticompetitive effect, should not be dismissed lightly. If the Subcommittee believes that some industries are deceiving the public through test procedures customarily used in those industries, these ills could be corrected by appropriate legislation. Such legislation should exempt industries which are currently regulated as is the boating industry pursuant to the Federal Boat Safety Act of 1971.

Thank you. I will be happy to answer any questions the subcommittee might have.

STATEMENT OF THE NATIONAL ASSOCIATION OF MANUFACTURERS

This statement is submitted on behalf of the National Association of Manufacturers, a voluntary membership organization which includes both small and large manufacturers of nearly every type of consumer product or component who would, therefore, be directly impacted by the proposed legislation.

Our views are reflective of the overwhelming majority both of our members and the business community at large, both through their participation in the establishment of NAM policies, and their specific guidance with respect to the Bill itself.

In essence, the bill proposes to empower the Federal Trade Commission to establish standard consumer product testing procedures, called protocols; to require manufacturers to test their products under such procedures for "quality and performance", and to distribute resulting test data through the chain of distribution for use by the customer at the point of sale. The procedures would be developed under the "offeror process" by any person or government agency; or the FTC itself may develop the procedure. The FTC also would have authority to test products to assure itself that manufacturers or other testing facilities are in compliance with the standards, and are truthfully reporting the data.

In our statement today there are four major comments we wish to make about the proposed legislation. We plan to develop through discussing these points that legislation of this type is not needed; that there are serious adverse effects to consumers and manufacturers alike associated with such legislation; and that this particular bill will not accomplish its own intended purpose. These points are:

(1) The Bill is conceptually unsound, in that it does not recognize that although many individual product characteristics are subject to objective measurement, overall product quality is not subject to such measurement.

(2) The Bill ignores the fact that the Federal Trade Commission already has the authority to implement any useful purposes the proposed Act might serve.

(3) The Bill presupposes that the legal compulsion process is likely to be more effective in accomplishment of its useful purpose than the voluntary process.

(4) The costs resulting from this legislation will be enormous and are not warranted nor offset by comparable, compensating benefits to consumers.

We shall address each subject briefly in turn.

1. *Product Quality*

Most products involve a multiplicity of "product characteristics." Quality control professionals customarily classify product characteristics into several broad (and somewhat overlapping) categories as follows:

(1) Standardized "description" characteristics, both for the product overall (such as size, weight, volume, grade, or rating) or any of its constituent parts (such as dimensional tolerance of a rotating shaft, or surface finish of a bearing surface).

(2) Performance characteristics (such as cooling capacity, output power, efficiency, or brightness; or effectiveness in performing certain tasks, such as cleaning, healing, or preserving).

(3) Esthetic characteristics (such as appearance, style, finish, texture, feel, taste, odor, etc.).

(4) Features characteristics (such as, for television sets, automatic tuning; for automobiles, power steering; for refrigerators, automatic defrost).

(5) "Integrity" characteristics (such as those pertaining to safety, environmental compatibility, reliability, maintainability, durability, serviceability, and service availability).

It is essential that the fundamental differences in these classes of characteristics be understood if laws concerning their disclosure and measurement are to avoid conflict with what is technologically feasible. Some characteristics can be described objectively. That is, they are subject to scientific measurement, and therefore to common agreement among trained observers as to their presence and magnitude. But some, like most esthetic and many features characteristics, are inherently subjective in nature. Common agreement normally is not possible on the relative excellence of different styling treatments, or the relative excellence of one feature (like power brakes) versus another (like power steering).

Also it is important to distinguish between characteristics that apply to individual product units and those that apply to a population of product units. The terms reliability and durability, for example, normally apply to a population of product units, not to each product in the population individually. Thus, the statement that refrigerators have an average life expectancy of fifteen years means that half the refrigerators are replaced before fifteen years, and half continue in useful service beyond fifteen years. Needless to say, with regard to any population characteristic, it is impossible to assert that all individual products in a population will equal or exceed the population average.

Now let us define "product quality." There are many specialized definitions, reflecting the specialized roles of specialist organizations in contributing to product quality. A universalized definition, which may be termed a "consumer-oriented" definition, is: "Product quality is the relative excellence of the composite of all product characteristics in fulfilling the needs and reasonable expectations of those whom the product serves, as they perceive such fulfillment from time of offering throughout product life."

This definition recognizes that products are judged not only by the consumers who buy them, but by all who use or interact with them, including society at large. The definition also recognizes that the optimum blend of product characteristics is likely to be different for different users. For complex products, involving a multiplicity of characteristics, judgments concerning optimum overall quality are inherently subjective in nature. This is because such judgment must embrace not only all characteristics which themselves are subjective in nature, but in addition, attach subjective weightings to the relative importance of all characteristics that are objective in nature.

We point out that no two consumers have precisely the same set of needs and expectations, or use the same products precisely in the same ways, for the same purposes, and under the same conditions. In a word, the notion that overall quality is subject to objective measurement, or that a product which scores highest by any attempt at such measurement is an optimum choice for all consumers, is fallacious. To legislate such a notion would be not only disruptive to a marketing system that is remarkably sensitive to consumers' varied and changing needs and expectations, but would displace consumers themselves . . . whether collectively, segmentally, or individually . . . as the authority to be served.

The intrusion of bias affecting consumer choice is inescapable, and it will occur in many ways. It already exists within the bill. Note, for one example, that under Section 3(5), six particular product characteristics are singled out for testing, although other features may be tested as well. Two of those named are "average annual cost of operation" and "environmental impact in the manufacture, use and disposal of such product." These two features, any businessman will tell you, are among the last questions asked of retail salesmen. We do not imply that the subjects are unworthy of consumer consideration. It is obvious, however, that a bias has been introduced into the statute in favor of energy consumption and environmental factors. In the list of six there is no mention of such common characteristics as weight, size, ease of handling, versatility, noise, texture—all more fundamental product values to most consumers than the two named in Section 5. Thus, we find in the bill someone's subjective views on what should be wanted by a consumer, and what might be "good" or "bad" about a product.

The point to ponder is what further biases—intentional or inadvertant—will be introduced when the standard tests are developed and promulgated by a federal agency? They may, of course, be present unconsciously, according to the professional background or disciplines of those drafting and approving the standard, their social outlook, political philosophy, or simply personal preferences. Which "qualities" and what "performances" will be emphasized and which submerged or omitted? Will environmental virtues be promoted over "durability, or versatility and utility"? Will style, color and aesthetics—

values already deprecated by many market critics—be rejected in favor of values officially deemed more important to the national good? Indeed, there are many ways in which “consumer choice” will be distorted to serve someone’s preception of his own goals, not the personal needs and desires of the consumer.

If the difficulties are so great as described, a question naturally arises as to how and why private testing, such as “Consumers Union” has been undertaken in the marketplace, and is relied upon by some consumers. We suggest that the Committee reject the notion of projecting the needs which Consumers Union serves into an expression of need by consumers nationally. There is a world of difference between the private opinions of Consumers Union, however arrived at, and the official findings of a federal government, with compulsory and coercive regulations, inspections and records backed by threats of civil and criminal penalties and businesses. Obviously, too, the federal government will not be permitted the luxury of testing only those characteristics they choose, which is the privilege of the private tester. Companies may be aggrieved by the inadequacies and errors of the private tester, but properly do not challenge their right to test, since the function is itself a commercial venture and a part of the competitive enterprise system. Also, the private organization is subject to laws of redress in event of unlawful actions while the government so far, at least, is generally beyond the reach of the victims of its deficiencies and excesses.

One does not have to be an expert in technology or market processes to foresee the errors which will occur, or the economic injury which will flow from government mandated standards, testing and consumer reports in this complex field. Reports may emphasize the wrong qualities or the wrong models, or obsolete models, or fail to include new modifications or products, or may not consider market peculiarities—such as climates, or geographical factors, or local customs or laws. Any of these biases may be inherently destructive of one business or another.

Thus, we strongly object to Section 2 of the Bill, wherein it is stated that “the purpose of Congress in this Act (is) to establish reliable and uniform protocols for quality and performance testing” (underline added). Also, for the same reason, we object to Section 4, paragraph (2), wherein appears the statement “the ease with which the average consumer can personally ascertain, and the likelihood that he will know, the quality and performance characteristics” (underline added). Moreover, in Senator Moss’ remarks accompanying introduction of the Bill, the implication is strong that the Bill endeavors to accomplish on a national basis what Consumers Union purports to do for its subscribers, and Consumers Union does attempt to rank competitive products in accordance with its perception of overall quality.

As this Subcommittee knows, many manufacturers already supply a large amount of information on individual product characteristics. . . . witness the full page of characteristics data available to prospective purchasers of virtually any new automobile. But it is fair to say that by and large such information is made available only to the extent that it is believed useful to an appreciable segment of consumers in their buying decisions. Typically, consumers are not technologists, and technical data is not the basis for their judgments.

Let us illustrate. The kind of information Consumers Union reported it considered in appraising television quality is the following (Consumer Reports, January 1975):

Picture Quality
DC Restoration
Geometric Distortion
Interlace
Brightness and Contrast
Overscan
Picture Shrink/Line Voltage
Auto. Fine Tuning
Sharpness Control
Control Placement
Width Control

Auto. Color Control
Aircraft Flutter Rejection
Adj. Channel Rejection
Ignition and Spark Rejection
VHF & UHF Fringe Reception
Tone Quality
Cable TV Connection
Serviceability
Room Light Sensor
Quick Warmup
Warranty

Is information on all these characteristics wanted by a large proportion of consumers?

We believe that the average consumer is smart enough to understand that he or she doesn't know, and doesn't want to know, what many of the above mean, let alone compare published data on each and in this way arrive at a judgment of composite excellence. Much more typically, he or she will listen to the counsel of friends and neighbors, consider the reputation of the manufacturer and the reliability of the retailer, do some comparative shopping, and carefully compare—however he or she compares—performance, features, appearance, and price of competitive models on dealers' floors.

How often is the consumer satisfied with the outcome of this process?

Surveys conducted by one of our member companies in the electrical appliance field attempted to answer that question for household appliances. In the four years ending 1972, responds in 48,000 households, containing 665,000 "major" appliances, "small" appliance, TV sets, radios phonographs and recorders of virtually all makes and models, were asked to select which statement best described their satisfaction or dissatisfaction with each appliance they reported having—extremely satisfied, satisfied, neither satisfied nor dissatisfied, dissatisfied, and extremely dissatisfied.

Overall, they reported satisfaction with 94% of all appliances in their households. Compared to levels typically expressed in public surveys on other matters, we believe that 94% is an exceptionally high level of expressed satisfaction.

Mass produced products are intended to serve mass needs and expectations at lowest price consistent with reasonable return. The foregoing survey results would indicate a very high degree of fulfillment of that intent. Mass production, distribution, and merchandising methods will never satisfy individualistic or extremely narrow needs and wants. And while industry continued should listen to those who feel they are not properly being served, in order to expand the market for their products to the fullest practicable extent, there is a point beyond which thrusting upon all its customers the expense of furnishing what is wanted by only a few is neither in the industry of public interest.

The Bill's oversimplified treatment of the complex subject of product quality is one of our basic reasons for opposing it. It opens the door for a government agency to prescribe not only what product characteristics are to be disclosed and how they are to be measured, but how to measure the overall excellence of their blended composite. This is not only impossible, it is dangerous. In our view it is as dangerous for the government to attempt to prescribe the products people should buy as it would be for the government to attempt to prescribe the candidates they should elect or the newspapers they should read. The net result of standardizing performance parameters will provide only marginal benefit to some users (whose needs happen to correspond to the defined norms) and seriously compromise the creativity and free choice of the majority in selecting that product demonstrating parameters most beneficial to their individuals needs.

2. Existing Powers of the Federal Trade Commission

As we see it, the Federal Trade Commission already has sufficient authority to accomplish the feasible and useful portion of the Bill's provisions. The combination of Section 5(a) (1) of the Federal Trade Commission Act (reference 15 U.S.C. 41), which asserts that "unfair methods of competition in commerce, and unfair or deceptive acts or practices in commerce, are hereby declared unlawful", together with Section 202 of the recently enacted Magnuson-Moss Warranty-Federal Trade Commission Improvement Act (reference P.L. 93-637), which clearly affirms the authority of the Commission to establish rules which define, and prescribe remedies for preventing, unfair or deceptive acts or practices provides all the power that is needed to accomplish all that the proposed Act usefully might do for the consumer. In this connection, we remind the Subcommittee of testimony presented by the Chairman of the Federal Trade Commission, Mr. Lewis A. Engman, on November 11, wherein he stated, "The Commission believes that under the present law (underline added) it can establish test protocols for consumers products and require disclosure of test results."

As this Subcommittee knows, prior to enactment of P.L. 93-637, in January, of this year, the Commission's authority for substantive rulemaking was unclear, and this circumstance severely restricted the Federal Trade Commission with regard to prescribing product characteristic disclosure requirements. Even so, effective January 25, 1971, for incandescent lamps, it required both point-of-sale disclosure of average initial wattage, average initial light output, and average laboratory life, and use by the manufacturer of test methods generally recognized as adequate for assuring accuracy (reference 10CFR409).

Effective November 4, 1974, it required, whenever any representation is made concerning power output, frequency response, or distortion characteristics of sound amplifier equipment, point-of-sale disclosure of rated minimum power output, load impedance, frequency response, and rated maximum harmonic distortion, along with the use of test methods generally recognized as adequate for assuring accuracy (reference 16CFR432). We need not continue this recitation. Suffice it to say that with the explicit authority conveyed by P.L. 93-637, if not in fact prior to such conveyance, the Commission may by rule prescribe requirements for preventing unfair or deceptive acts or practices, which may include point-of-sale product characteristics disclosure along with provisions for assuring the accuracy thereof.

There are times when the need for restraint in continued regulatory expansion was never more widely articulated, including within the Congressional forum itself. To summarize on our second main point, we see little merit in promulgating a new law for accomplishing what already can be accomplished under existing law, especially when the authority of the agency charged with such accomplishment was only so recently clarified.

3. Voluntary Mechanism

As to voluntary mechanisms, we believe that more and faster progress will result from catalyzing the voluntary mechanisms that exist than will come from the legislated coercion mechanism. Some of you will remember the National Business Council for Consumer Affairs, established by executive order on August 5, 1971, and operated under the aegis of the Department of Commerce. In April of 1973 it published and distributed widely a booklet titled "Safety in the Marketplace," which only recently was recognized by the Consumer Product Safety Commission in its "Handbook and Standard for Manufacturing Safer Consumer Products" to substantially answer the question "How best can industry assume its responsibility for product safety." Another of its outputs was to stimulate the voluntary mechanisms of industry into increased activity on the subject of product safety. The number of voluntary safety standards that have since been adopted through the activities of trade associations, testing laboratories and standardizing bodies (such as American National Standards Institute) are too numerous to even estimate. The number established by the Consumer Product Safety Commission in the three years since its establishment stands at precisely zero. What better proof that the voluntary process can be more effective than the compulsory?

The voluntary process in the general case not only produces more results faster, but much less expensively. Legal due process is used to resist legislated compulsion to a mandatory course of action by all who believe that their legal rights are being abridged, a process which is both time consuming and expensive. The typical result is that nobody moves until the legal propriety of applying the mandate to all affected parties is established. In the connection we call the Subcommittee's attention to the November 12, 1975 statement to the Domestic Council by Secretary of Labor John Dunlop entitled "The Limits of Legal Compulsion". If the adopted standard does in fact accomplish a useful purpose, a competitive advantage accrues to those who conform, and ultimately virtually all competitors voluntarily make the decision to do so.

4. Economic Impact

Consistent with the Bill's concern with economic impact, as expressed in Section 4(3), we have attached our estimate of the incremental costs that would result if S. 643 were enacted and the Federal Trade Commission were to diligently pursue its authority thereunder. By our estimate consumers would be faced with approximately 3 billion dollars in "one-shot" startup costs, and 2.4 billion dollars in ongoing annual implementation cost. Under a voluntary approach, incremental costs virtually would be eliminated except to the extent that the Federal Trade Commission, under the authority it already has, finds need to proceed with mandatory regulations in instances of inadequate response or progress via voluntary mechanisms.

Our smaller members are themselves fearful of their chances to survive federally-mandated testing of their products. Their concern is not that their products may suffer by comparison with those of larger competitors. Rather, they are generally financially unable to engage in the sophisticated testing procedures of larger companies. They know they will be "out-tested." Small businesses tend to concentrate on serving specialized needs and expectations as opposed to mass needs and expectations. Investment in high-technology test centers is not

for them, nor is the continuous cost of independent laboratories. This is not to suggest that their test methods are inadequate, but instead, that they are likely to involve substantially different trade-off criteria on the optimum balance between equipment-intensive procedures versus labor-intensive measurement procedures. Their low production runs also mean higher unit costs for the testing procedures, and higher prices in the marketplace. The Committee may properly look upon this bill as another instance where government cost burdens will contribute to the already alarming declines in the small business population of our economy being ascribe to over-regulation by government.

The foregoing summarizes our main objections to S. 643 at this time. We would hope that the Subcommittee will conclude the matter with these hearings, and lay the bill permanently aside.

ATTACHMENT

ESTIMATED COSTS OF IMPLEMENTING THE PROPOSED CONSUMER PRODUCT TESTING ACT

In estimating the cost of implementing subject legislation it is necessary to make several assumptions. One assumption has to do with the number of products that are subject to the Act. The Consumer Product Safety Commission maintains that more than 10,000 kinds of products are subject to regulation under the Consumer Product Safety Act. A larger number comes under the sweep of the proposed Consumer Product Testing Act, because the Testing Act, unlike the Safety Act, does not exclude automotive products, guns, tobacco products, economic poisons, boats, and food, drugs, and cosmetics. Even so, to avoid the charge of exaggerating, we shall assume that the "universe" of consumer products subject to the proposed Testing Act is limited to 10,000.

One must also make an assumption as to how many of these 10,000 products are likely to be selected as warranting test protocols. We assume that Congress would not be introducing such blanket legislation unless it felt that protocols were required on an appreciable fraction of consumer products, so we have chosen 10% as a number large enough to justify blanket legislation and low enough to avoid a charge of exaggeration. 10% of 10,000 is 1,000 products, and this number serves as our estimate of the ultimate number of products likely to be subject to mandatory disclosure requirements and associated test protocols.

How many disclosure/protocol requirements per product? In our statement it was pointed out that Consumers Union considered some 20 characteristics in appraising the quality of television sets. Section 3(b) of the Bill itself identifies 6 characteristics as of general interest. Again, to avoid charge of exaggeration, we have assumed that on the average, 5 disclosure/protocol requirements will apply to each of the 1,000 products estimated as likely to be ultimately regulated.

We further assume that on the average there are 10 competitive manufacturers for every consumer product, and that all retailers will handle at least one of the 1,000 ultimately regulated products. Additionally, we assume that Congress intends for the law to be enforced. For this reason, we assume that all 1,000 x 10 manufacturers will need to expend whatever is necessary to understand and comply both with the law itself and all applicable regulations issuing after enactment. For dealers, in the interest of conservative cost estimating, we assume that a substantial fraction will do absolutely nothing about the law, and will suffer no cost penalties as a consequence thereof. According to "Statistical Abstract of the United States—1974," there were 1.7 million operated-all-year retail establishments in the United States in 1967 (reference Table #1283 therein). Of these, 1.1 million, or 65% of all retail establishments, grossed less than 100,000 dollars per year. We shall assume that none of these incur any incremental expense, and estimate what we believe are the likely average expenses that will be incurred by the 538,000 (or 35% of) dealers having annual sales in excess of \$100,000.

In the estimate attached, distinction is made with regard to "who spends the money." Although in the final analysis it is all of us, collectively, as consumers who will bear all incremental costs involved, the total will have its origins in the government's incremental costs and the manufacturer's/retailer's incremental costs. These two components are estimated separately. Also a distinction is made between the "one-shot" or "startup costs" associated with establishing new protocols and the disciplines/facilities necessary for their implementation on the one hand, and the annual costs associated with ongoing governmental enforcement and suppliers' compliance assurance activities on the other.

Per the attachment, start-up costs are estimated at 2.9 billion dollars, and ongoing annual implementation costs at 2.4 billion dollars per year.

	Government	Manufacturer	Retailer
1. Startup costs:			
A. Develop test protocols:			
(1) Assume an average of 3 technical-person-years (total of 12 people for 3 months) in formulating each protocol. Assume \$50,000 per year labor plus overhead costs	¹ 120,000		
(2) Assume 1½ legal-person-years (2 persons for 3 months) to draft protocol and carry it through proposal, comment response, and final version	¹ 20,000		
(3) Assume cost of laboratory check out of protocol (time of technicians plus material costs) is \$10,000 per protocol	¹ 10,000		
(4) Assume that industry, including trade associations, in composite will spend 200 person days commenting on proposed protocol (—equivalent to 1 person year)		¹ 40,000	
(5) Assume manufacturers affected by protocol will require total of 6 person months (engineering, manufacturing including quality control and legal) to incorporate new protocol into manufacturing system—10 times \$20,000 equals \$200,000		¹ 200,000	
(6) Assume average expense of modifying test equipment to conform to prescribed protocol is \$10,000 (10 times \$10,000 equals \$100,000)		¹ 100,000	
(7) Assume 538,000 retailers incur \$1,000 expense to learn about, and train employees concerning, new disclosure per protocol requirement. Assume each protocol affects 1/100 of all dealers (538,000 times 1/100 times \$1,000)			¹ 5,380,000
Total per protocol	¹ 150,000	¹ 340,000	¹ 5,380,000
Total for 1,000 times 5 protocols	(1) 750,000,000	(2) 1,700,000,000	(3) ² 538,000,000
Grand total "startup costs"—(1) plus (2) plus (3)			2,988,000,000
2. Annual operating costs:			
(a) FTC costs—when all 5,000 protocols have been promulgated, FTC expenses will be those of enforcement only. Assume Congress limits this to \$5,000,000 per year	5,000,000		
(b) Cost to maintain understanding of law and regulations:			
Manufacturers: 10,000 times \$2,000 annual legal fees		20,000,000	
Retailers: 538,000 times \$500 annual legal fees			269,000,000
(c) Cost to assure ongoing compliance manufacturers—(¼ engineer and ¼ quality control specialist to track each protocol) 10,000 times 5 times \$20,000		1,000,000,000	
(d) Manufacturers—added production testing to assure continuous protocol compliance. Assume \$10,000 per year average for each protocol (10,000 times 5 times \$10,000)		500,000,000	
(e) Retailers—maintain training of sales personnel. Assume \$1,000 per year per retailer (538,000 times \$1,000)			538,000,000
Total	5,000,000	1,520,000,000	807,000,000
Grand total			2,432,000,000

¹ Per protocol.

² In case of dealers, assume learning and training costs do not increase either with the number of products subject to regulation or the number of protocols per product, so that total is 538,000 times \$1,000.

Note: Recap: Startup costs, \$2,988,000,000; annual operating costs, \$2,432,000,000.

STATEMENT OF HERBERT T. GILKEY, DIRECTOR OF GOVERNMENT AND CONSUMER
AFFAIRS, AIR-CONDITIONING AND REFRIGERATION INSTITUTE

My name is Herbert T. Gilkey. I am a registered professional engineer in the States of Ohio and Iowa, a member and Fellow of the American Society of Heating, Refrigerating and Air-Conditioning Engineers, and a member of the American Society of Mechanical Engineers. I am here today as a member of the staff and a representative of the Air-Conditioning and Refrigeration Institute (ARI).

The Air-Conditioning and Refrigeration Institute is a national trade association composed of the manufacturers of more than 90 percent of all U.S.-made equipment and related components and materials used in refrigerating systems and air-conditioning systems. (The ARI scope does not include appliance-type products). ARI welcomes the opportunity to appear here today. We hope that the information and comments presented will be constructive and helpful to the Subcommittee.

General comments

Section 2 of the Consumer Product Testing Act (S. 643) states that informed consumers are essential to the fair and efficient functioning of a free market economy. The bill makes no assertion that consumers are now uninformed, and provides no basis for drawing such a conclusion. In other words the bill makes no claim of a demonstrated need for such far-reaching legislation. Speaking for its own industry, ARI asserts that consumers now have available information on the "quality and performance" of products of this industry to make informed purchasing decisions.

This bill would inject the Federal government into the marketplace in a way which is completely inconsistent with the free enterprise system as we know it today. Already the government has involved itself in regulating the safety of consumer products. There is much to be said for that effort, but now, under this bill, the Federal government would decide which other characteristics of what products are important consumers. It would prescribe test protocols for judging and comparing these characteristics. It would require that products be tested under these protocols, often in facilities which would have to be constructed, equipped, and staffed for this purpose. It would require that the test results be made available wherever the products are sold and in whatever media they are advertised. The bill ultimately could require government testing of thousands of individual products. Even if as a practical matter this protocol program were aimed at a relatively few products, the adoption of such a program would represent a major step toward government control of business.

The entire bill is in direct contradiction to the concept of a free market economy. However strongly government feels that it must protect citizens from products which are "not good for them", from false claims, from misleading advertising and the like, there can be no good basis for government to inject itself into the marketplace as not only the judge that determines which products meet the needs of consumers and which do not, but also the authority which defines the needs of the consumer in the first place. We believe that judgments and evaluations of this type will inevitably evolve into arbitrary and artificial specifications.

The cost of developing and administering this protocol program would be borne by the consumer, both as a customer and as a taxpayer. The increased costs of manufacturing and marketing consumer products must be passed on to the consumer, since manufacturers of consumer products have only this one source of income. The very great cost of government administration, testing and compliance would have to be added to the taxpayer's bill. These additional costs would provide, at best, a benefit which is of doubtful value.

Performance data on many consumer products which is useful in comparing the characteristics of similar models when making a purchasing decision is currently available. For example, the Air-Conditioning and Refrigeration Institute provides comparative data of a very detailed nature on many products of the air-conditioning and refrigeration industry, including unitary air conditioners, unitary heat pumps, packaged terminal air conditioners, drinking water coolers and central-system humidifiers. The publication on unitary air conditioners and unitary heat pumps list, for example, the certified capacity, energy consumption and the energy efficiency ratio for more than 6,700 different models of these products. By referring to these data, designers, installers and consumers of central cooling units are able to purchase equipment on the basis of energy

efficiency, as well as overall performance. Publications containing these data are supplied by ARI to over 30,000 engineers, builders, contractors, architects, utilities, government agencies, technical schools and consumers. This directory of certified products is revised at least semi-annually. (In passing, it should be noted that the test methods used in developing the information described above are those published in standards of the American Society of Heating, Refrigerating and Air-Conditioning Engineers, a technical society.)

The comparative analysis publications which are envisioned by S. 643 would not be likely to be nearly as timely as these ARI publications, and therefore would have highly doubtful usefulness for consumers. It is difficult enough for manufacturers to provide current catalog and promotion data to the dealers and customers of their own products because of the frequent changes and improvements made almost daily. It appears to ARI that by the time the government tests, evaluates and compares products from many manufacturers, publishes the data and gets it to consumers, the data often would be out of date and of marginal value to those consumers. There is some evidence of this in existing private publications, such as Consumer Reports, which usually restrict their evaluations to a very few models of a limited number of manufacturers. Furthermore, these reports often become available to consumers only after much of the model year has elapsed.

Every responsible businessman is in favor of providing prospective customers with knowledge of his product. ARI is by no means arguing against greater consumer knowledge. Its programs of certification and testing of products within its scope, which have been mentioned above, are of significance in any discussion of greater consumer knowledge. Likewise, ARI has testified before legislative committees, including the Senate Committee on Commerce, in favor of providing consumers with information through energy labeling and disclosure of efficiency of consumer products.

Quality and performance are, unquestionably, very important to consumers; however, faced with a "need-to-buy" situation, the consumer must also consider price and the integrity of the seller. Without some input on these other factors, a report listing only laboratory results of testing on comparative quality and performance may be misleading. We sincerely doubt the value of S. 643, because it does not offer any means to measure the integrity of the seller.

In the free enterprise environment of this country, it has always been essential that businessmen evaluate and compare their products with the products being offered by competitors. How successful a company is will be determined, in part, by the overall value of its product, compared with the product of its competitor, and by how well the seller communicates this to the prospective purchaser. Consumers have, and will continue to have, access to all kinds of pertinent information about the quality, price, performance, etc., of a product, simply because this is a vital part of the communication between buyer and seller. There is also extensive communication between satisfied—or dissatisfied—users and potential buyers.

Similarly, a great deal of information about product performance is already covered by government regulations, such as the trade regulation rules and the advertising substantiation program of the Federal Trade Commission.

It appears to us that, if S. 643 is enacted, there will be less variety in the marketplace. Small competitors could be forced out of business as a result of minimum performance criteria which could come into existence. Any measure which provides means for the control of product values by the government can be anti-competitive and contradicts the spirit of antitrust law.

An important reservation which we have about the bill grows out of the fact that government testing would be involved. The types of testing and the product characteristics selected by the government could produce unrealistic or utterly useless standards that would, in fact, reduce the usefulness of a given product to a consumer. It might further result in forcing higher prices which could not be afforded by the consumer.

We are concerned about this test program because it would tend to substantially reduce innovation and creativity. Any program of this type encourages manufacturers to meet standards based on the materials and techniques which have been available for some time. As a result, S. 643 could cause consumers to be deprived of desirable product features, characteristics, or improved levels of performance, since their added cost could make the product non-competitive.

We believe that this bill must be judged on its effect on the American free enterprise system. That system has provided to the consumer a continuing freedom to choose, without interference from the government, the products which

he most needs and desires. The system, at the same time, has given manufacturers freedom to produce goods which have the characteristics to meet the customers needs. And it has given to the manufacturer the freedom to create and to improve products as his innovators (inventors, laboratory specialists, application engineers, experts in manufacturing technology) show that this improvement or new product is feasible.

S. 643 would authorize the Federal Government to step into the marketing process and require the prospective customers be told: "Here are the important characteristics of this product. Here are the characteristics which you need to consider in deciding whether you should buy this product (referring to it by its brand name) or whether you should buy another product of the same type (referring to the second or third product by its brand name). Here is a ranking of all competing products of this type according to government testing of these important characteristics. Here is what government thinks is best for you."

Manufacturers of that product will be required to concentrate on the specified "important" characteristics, predetermined but not necessarily valid in relation to the needs of the consumer, the ultimate judge. Other characteristics, which the government may overlook or may judge to be less important, will receive less attention, and less innovative emphasis. Further, for the characteristics prescribed in the protocol, emphasis will tend to shift from innovations, which would further improve the product, to established procedures to make sure the criteria are satisfied. The incentive to develop new characteristics or even new products will be lessened and may, in fact, disappear for some manufacturers. We believe that S. 643 can bring about a most undesirable uniformity of product, not at all in keeping with the American free enterprise system.

ARI believes that the passage of this bill would interfere with and duplicate activities already established in the economy of our country. To a very large degree, manufacturers of consumer products already perform research and development testing before putting their products on the market. They already test prototypes, as well as production samples, for many of the same purposes contemplated in this bill, and for evaluation and quality control purposes. Furthermore, ARI points out, many private organizations already test and evaluate products as a service both to the public and to manufacturers not equipped for such testing.

In other words, ARI asserts that this bill would duplicate and expand investment, personnel, energy and material costs already being expended. The consumer-taxpayer would have to pay for this.

We point out, in addition, that this bill contemplates testing requirements in areas where the validity of the results will be highly questionable, since many of the causes of poor performance and short life of a product cannot be reproduced in a laboratory. The effects on a product of improper or inadequate installation by a party not under the control of the manufacturer cannot be reproduced in the laboratory. We believe that investment and operating costs, costs of samples and their transportation, costs of materials used in testing, energy requirements, etc. would be largely or totally wasted.

Specific comments

In addition to the general statement of ARI opinion about S. 643 which is contained in the preceding part of my statement, I want to make several specific comments about various provisions in this bill. These comments are made in case Congress persists in passing S. 643 in this or some other form. While we oppose the bill as a whole, we believe that alteration of certain provisions should be considered. Even with such improvements, however, ARI opposes S. 643.

Section 3 of the bill contains definitions of various important terms used in the bill. Section 3(3) defines "consumer product". This definition is the same as the definition of "consumer product" used in the Consumer Product Safety Act. It is extremely broad and, we are sure, intentionally so. ARI suggests that this definition should be changed to slightly narrow this definition. The words "or otherwise" at the end of the definition in Section 3(3) at line 18, page 2, should be deleted and additional language inserted at that point, as follows: "or other non-commercial and non-industrial occupancies."

In Section 3(5) the definition of "product characteristics" includes "(A) effectuation of purpose". From the standpoint of the air-conditioning industry, ARI feels that these words by themselves may be misleading and may cause a great deal of trouble. Would an air conditioner by "effectuating" its purpose when tests show in the laboratory that it will deliver a stated amount of cool air during a given time period? Or would its effectuation of purpose occur

when it is demonstrated that the air conditioner will maintain stated conditions in a home? If S. 643, containing the definition presently stated in Section 3(5), is passed, an administrator might decide that the second alternative is the case. However, the air conditioner is only part of a complex system; hence the most efficient, quietest, most accurately rated air conditioner cannot meet this second alternative unless it has been correctly chosen for the particular house, has been correctly installed, receives its electrical energy within the limits of specified voltage and frequency prescribed by a public utility commission, is properly maintained and is not tampered with by the owner. (ARI points out that unitary air conditioners are not intended for do-it-yourself installation and/or servicing. They should be installed by qualified contractors and serviced by qualified technicians.)

"Effectuation of purpose", as the term might be applied to air conditioners, should be replaced by "output capacity", "energy input", "sound output rating", and "indoor air delivery capability". Other characteristics would be used for other products.

We believe that "product characteristics" should not relate to the quality and performance of a system containing product after its installation, particularly in the case of an air conditioner, since so much depends on the quality of installation of the air-conditioning system, heat pump or other system combining consumer products with other elements such as ductwork, piping and electrical wiring which require proper installation and adequate maintenance.

ARI believes, therefore, that the definition of "product characteristics" in Section 3(5) would be clarified if the following language were added after the word "product" at line 6, page 3: "as delivered by the manufacturer".

Another definition in this section may pose a problem. Section 3(6) defines "retailer" as a person to whom a consumer product is delivered or sold for purposes of sale or distribution by such person to a consumer.

Manufacturers who are members of ARI are aware that an air conditioner for a "tract" home is usually sold by the manufacturer, a distributor or dealer to a builder, installed by the distributor, dealer or some subcontractor, and the home containing it is thereupon sold to the consumer by the builder or tract-developing organization. Who is the "retailer"? Who is directly responsible to the consumer for problems with the air conditioner? Because of the requirement for proper engineering judgment and proper installation technique by the contractor who installs the air-conditioning system, we believe that, except for warranties on the compressor and other mechanical running parts of the air conditioner itself, the installer-contractor should be the person who is responsible for the performance of the air-conditioning system. We believe that the Committee report dealing with this subject should make this clear.

Section 4, "Test Protocols", sets out the requirement that a proceeding for the development of a protocol be commenced by the Commission whenever it determines that a protocol will assist consumers in making informed purchasing decisions. In making this determination, this section requires that various factors be considered in establishing priorities among consumer products, i.e., the Commission shall decide on which product(s) a protocol would best serve consumers, and establish a priority list of products considered feasible to be covered by protocols.

ARI considers that the Commission should rely heavily on existing industry, scientific and technical personnel, in addition to its own staff, in making the determination in question and in establishing the priorities in question. Briefly, Section 4 calls for the Commission to consider all relevant factors in establishing these priorities, including such factors as "the importance of each consumer product to the average consumer", "the ease with which the average consumer can personally ascertain, and the likelihood that he will know the quality and performance characteristics of each consumer product prior to purchase", and "the economic impact for suppliers, retailers and consumers of prescribing test protocols for each consumer product".

ARI believes that industry expertise would be helpful, indeed vital, to the Commission in considering these factors and establishing these priorities.

For this reason, we suggest that additional language be inserted in Section 4, following the word "protocol", at line 8, page 4: "During its consideration of the factors bearing on this determination, the Commission shall consult with manufacturers of the product, trade association(s) representing manufacturers of the product, technical societies whose members, among others, include technicians, engineers and scientists employed by manufacturers of the product or engaged in

application of the product to its intended use, and private testing laboratories which test the product."

We believe that using this expertise would make more valid and worthwhile the Commission's determination that a test protocol for a particular product would assist consumers in making informed purchasing decisions.

ARI believes that the development of the notice described in subparagraphs (1) through (4) of Section 5(a), beginning at line 5, page 5, should be based on the same kind of consultation. We suggest, therefore, that during the drafting of the notice envisioned by Section 5(a), this consultation could be required through the insertion, following the word "paragraph" at line 8, page 5, of the following language: "During its drafting of this notice, the Commission shall consult with manufacturers of the product, trade association(s) representing manufacturers of the product, and technical societies whose members, among others, include technicians, engineers and scientists employed by manufacturers of the product or engaged in the application of the product to its intended end use."

We suggest that in Section 5(a) (1), at line 9, page 5, the words "identify and" precede the word "describe". We believe that the identification of the product is as important as the description of the product.

Section 5(a) (3) calls for the notice to state the Commission's determination that a consumer product test protocol would be of assistance to consumers in making informed purchasing decisions. ARI asks on what the Commission would base this determination? We suggest strongly that hearings would be vital for the purpose of establishing these facts prior to the Commission's determination.

Section 5(d) provides that the Commission may proceed to develop and publish in the Federal Register a proposed test protocol whenever it has published a notice in the Federal Register, has not accepted an existing test protocol, and has determined that the development of such a protocol by the Commission itself would be of benefit to the public. It may do this regardless of whether it has accepted offers to develop such a proposed test protocol.

ARI is concerned about the time frame in which this might take place. It does not believe it would be beneficial for the Commission to proceed to develop and publish a test protocol without the lapse of a reasonable amount of time after the Commission publishes a notice pursuant to Section 5(d) (1) which invites any person to submit to the Commission an existing protocol or to offer to develop a protocol.

Section 5(a) (4) allows thirty days for the submission of an existing protocol or an offer to develop the proposed test protocol. ARI suggests that this thirty-day period be extended to ninety days in Section 5(a) (4), and that in Section 5(d) the same ninety-day period be inserted in line 21, page 8, following the word "section" but before the semi-colon, as follows: "but no earlier than 90 days after the publication of this notice;"

Section 5(g) provides that each test protocol shall specify the date such protocol is to take effect, and this date shall be between 30 and 180 days after promulgation, 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 in the Federal Register. It is almost inconceivable that in this short time any manufacturer of air-conditioning or refrigeration equipment could establish its compliance with such a protocol. ARI believes that one year should be the minimum time between the date of promulgation and the effective date. This is particularly important for unitary or packaged-terminal air conditioners, or any other products with components assembled by other than the equipment manufacturer.

Section 8(a) allows the Commission to "conduct or contract" for compliance testing of consumer products subject to consumer product test protocols, in order to insure the "veracity" of test results determined by suppliers, retailers or any other person who has tested such consumer products. ARI believes that many qualified private testing laboratories will be available and agreeable to this assignment. We believe that the Commission should not have the unequivocal alternative of "conducting or contracting" this testing operation. We believe that Section 8(a) at line 20, page 12, should read:

"The Commission may contract, pursuant to subsection (d) of this section, for compliance testing of consumer products subject to consumer test protocols in order to insure the validity of test results determined by suppliers, retailers, or any other person who has tested such consumer products. If no qualified private testing laboratory is agreeable to entering into a contract to conduct this compli-

ance testing, the Commission may conduct the the testing through the use of government facilities."

"Validity" has been substituted for the word "veracity" on the basis that what is being sought is not the truth of the statements made by suppliers, retailers or other persons who have tested the consumer product but the correctness (validity) of the testing method.

In order to make the duty of suppliers, in connection with the compliance testing, a more clearly stated duty, we suggest that Section 8(b) be changed by the addition following the word "Commission", at line 4, page 13 of the bill, of the following language: "or its contract testing laboratory". This would make certain that in all appropriate cases, the products to be tested are sent to a private testing laboratory rather than to the Commission or the Bureau of Standards.

Conclusion

Under this bill the Federal government would be directed to decide what characteristics of what products are "important" to consumers, to establish test protocols for judging and comparing these "important" characteristics, to require that products be tested for these "important" characteristics under the protocols and to require that these test results be given to consumers. ARI believes that, however well intentioned the administrators of the test protocol program might be, they could not possibly possess the experience or knowledge needed to determine what products and what characteristics are "important" in the selection of products by millions of purchasers in the countless purchases they make each day. At this point, government agencies do not have enough people with the technical and engineering skills needed to develop test protocols for the thousands of products on the market. Nor do they have enough people with the engineering skills to judge the soundness of test methods on protocols developed by others, or the facilities needed to carry out the compliance testing program which S. 643 would set up. Nor can they ever define what is important to a consumer without eliminating his freedom of choice.

Before the government could even begin to develop these engineering skills, thousands of additional government employees would have to be recruited and trained, millions of tax dollars would have to be invested in testing facilities, and years of experience would have to be accumulated.

For all of these reasons, ARI recommends that S. 643 not receive the favorable consideration of this Subcommittee.

DOERFER ENGINEERING CONSULTANTS,
DESIGNERS AND FABRICATORS,
Cedar Falls, Iowa, November 5, 1975.

HON. WARREN G. MAGNUSON,
U.S. Senate, Washington, D.C.

DEAR SENATOR MAGNUSON: I ask you to consider strongly and use all your influence to reject the proposal of bill S. 643 on "Consumer Product Testing Act of 1975".

The staggering cost to manufacturers and government will so impede the development of this country that its product growth will fall way behind other countries of the world. We have been steadily falling behind since World War II and rapidly approaching the same economic conditions that England now faces.

Further, equal and fair regulation would be required on all import products. This would greatly reduce foreign trade and further endanger our balance of payments.

The cost in dollars and the slowing down of civilization's advancement far outweighs the good to be gained, so please assist in the rejection of this bill.

Cordially,

HOMER N. LEYMASTER, *General Manager.*

EMERSON ELECTRIC Co.,
St. Louis, Mo., November 7, 1975.

HON. FRANK E. MOSS,
*U.S. Senator from Utah,
Washington, D.C.*

MY DEAR SENATOR MOSS: In the October 31, 1975, issue of BNA's Product Safety & Liability Reporter, Congressman John E. Moss was quoted as saying,

"The old doctrine of 'caveat emptor' must be replaced with a program which will provide consumers with complete and comparable data on durability, performance, and cost of operation."

For forty-two years of my working life, I have been involved in Product Development, Engineering, and Research and Development. Included has been substantial involvement in developing Test Procedures (industry term) or Test Protocols (Government term) and the actual testing of products.

This experience has shown me that tests to meaningfully evaluate durability, performance, and cost of operation are almost impossible. The biggest variable is that no two people use a product in exactly the same way or expect the exact same result from the product. For example, let's compare product performance as gotten by my neighbor and me. We are both college graduates. I have an engineering education and have been involved in engineering most of my working life. My neighbor has a business education and has been involved in marketing and finance.

With this background in mind, let's compare performance of a couple of products we own.

I have had my rotary lawn mower since 1961. My next door neighbor has bought several in that time. We both use the same make. The difference is that I take care of mine and he doesn't take care of his. Regarding durability, should the mower manufacturer say, "This mower is expected to last from 1 to 20 years depending on how it is taken care of"?

Another example, my next door neighbor spends twice as much for electricity for air conditioning as I do. This cost difference has nothing to do with efficiency difference in our air conditioners. The two main differences are that my house is better insulated and I have a large exhaust fan. Due to the better insulation, my air conditioner runs less to maintain comfort when needing the air conditioner. Due to the large exhaust fan, there are weeks in the spring and fall and days during the summer when my house can be kept comfortable by the use of the exhaust fan without running the air conditioner.

This difference occurs with two houses located in exactly the same climatic conditions and having the same energy cost.

If the comparison were made between two homes that are a few hundred miles apart, there could be a wide variation in climatic conditions and energy cost. How could all of this be written so that the average consumer could understand and benefit from the information.

I cannot imagine an air conditioner manufacturer making a statement on how much the average annual operating cost of his air conditioner would be.

The above discourse is intended to illustrate the impracticality of trying to inform the consumer regarding product durability and operating cost. Frequency and nature of repair could be equally difficult.

I have not read the House Bill (H.R. 10177), but I have read the Senate Bill (S. 643). It also covers environmental impact. The average consumer has no interest in environmental impact. As for me, I'm curious. How is a manufacturer supposed to describe the environmental impact of the manufacture, use, and disposal of, say, a clothes washing machine?

If the consumer is interested to obtain comparative product information, he will get a lot better data at a lower cost to him if he will just subscribe to a magazine like the Consumer Report. These Reports are based on comparative tests, on competing consumer products, run by an unbiased group under the same test conditions.

Any tests run by separate manufacturers to test protocols established by the Government will be almost valueless as far as being beneficial to a consumer in making an intelligent purchase decision.

If you have any friends or acquaintances involved in Product Development or Testing, please ask their opinion on this matter.

I can only request that the Consumer Product Testing Act be dropped because it will be an added expense to Government, industry, and, therefore, to the consumer. I, personally, believe the benefit to the consumer will be nil.

Sincerely yours,

L. K. STRINGHAM,
Vice President, Consumer Affairs.

ASSOCIATION OF HOME APPLIANCE MANUFACTURERS,
Chicago, Ill., December 10, 1975.

Hon. FRANK E. MOSS,
U.S. Senate
Washington, D.C.

DEAR SENATOR MOSS: In reviewing Mr. Charles Borum's testimony on S. 643, the Consumer Product Testing Act, before you on November 12, 1975, I find it important to convey information to you which will provide more critical detail concerning certain questions you presented to Mr. Borum.

I request that my comments be included in the record of the hearings on the subject bill. Unfortunately, Mr. Borum, in responding to your questions, did not have before him the September, 1975 *Consumer Reports* you made reference to.

1. You stated, "Now, all of the manufacturers are claiming essentially the same amount of capacity in the refrigerator; but there was great variation, it showed, when *Consumer Reports* tested that. It was as much as about 20 to 25 percent difference in capacity."

For top freezer models, the variation in capacity for the six models tested by Consumers Union was 10%; the variation in manufacturers' claimed capacity for the same six models was 3%.

For side-by-side models, variation in capacity for the ten models tested by Consumers Union was 20%; the variation in manufacturers' claimed capacity for the same ten models was 9%. These differences can better be understood as I proceed.

2. You stated that consumers might be misled and then go on to say, "That's probably because there's no protocol among refrigerator manufacturers."

There is a common protocol used (to my knowledge) by all refrigerator manufacturers. This protocol is American National Standard B38.1-1970, American National Standard-Methods of Testing for Household Refrigerators, Combination Refrigerator-Freezers and Household Freezers.

3. You further state, "It may not be purposely deceptive. It may simply be because they have a different standard of measuring. What's your answer to that?"

The American National Standard quoted above was developed under the sponsorship of the professional engineering society, the American Society of Heating, Refrigerating and Air Conditioning Engineers. To become an American National Standard, it was necessary to achieve a consensus approval from all interested parties. Consumers Union was an interested party to the development of that Standard, but chooses to use its own standard in measuring refrigerator capacity volume.

Mr. Borum explains, "First of all, AHAM does have a test standard by which it measures the capacity of refrigerators. Second, there will be variations in test standards where there are subjective or judgmental factors involved; and that's the problem in the refrigerator capacity testing."

Whether you are referring to differences between Consumers Union's values and the manufacturers' values or the wider variation between Consumers Union's values as opposed to little variation between manufacturers' values, is a matter based strictly on which protocol is used and the subjectivity of that protocol.

Consumers Union, although a party to the American National Standard B38 has traditionally been critical of the industry's method of measuring. In an attempt to improve the American National Standard B38, if indeed there is a need, the Consumers Union method of measurement was reviewed by the American National Standard B38 Committee. An evaluation of the Consumers Union standard has indicated that it contains subjective or judgmental factors and therefore the Consumers Union test procedure would not produce repeatable results within laboratories and between laboratories. Because there are only one or two technicians performing these tests at Consumers Union, the results obtained there are repeatable there and only there. The method for determining the volume of refrigerators and freezers has to be extremely precise in order that two people making a measurement on two different refrigerators of the same volume at two different places will indeed arrive at statistically significant repeatable data. The American National Standard accomplishes this.

4. Mr. Borum goes on to explain that obviously different test protocols will provide different results.

The American National Standard referred to in #3 above, is the protocol that's most universally used. This American National Standard attempts to address itself realistically to a measure of usable refrigerated space in a test protocol that

is repeatable. The definition of usable space is one that forever will be debated because different people have different ideas of what is usable space. If one consumer, as an extreme example, would pack his refrigerator exclusively with milk cartons and another consumer would take exactly the same model refrigerator and pack it exclusively with grapefruits, the one with the milk cartoons would likely occupy more usable space. As Mr. Borum explained, the Europeans even go further and lay the refrigerator on its back and fill it with sand and measure the amount of sand and claim that to be the volume of the refrigerator. This, of course, assumes every nook and cranny of the refrigerator as usable space which certainly is not the case.

The basic difference between the Consumers Union test protocol and the American National Standard involves the judgmental factors previously mentioned. The American National Standard eliminates the refrigerated volume that can be precisely defined as *not* usable but does not attempt to make subjective judgments of the usability of other spaces. The Consumers Union protocol attempts to differentiate between usable and non-usable refrigerated volume by vague definitions which the Committee believes can be interpreted uniformly only by one or two individuals making all of the measurements and working together in the same laboratory. Unfortunately, such a protocol does not lend itself to consistent volume measurements and opens up numerous questions on the usability of any given space. These measurements cannot be repeated in another laboratory unless the inclusion or exclusion of a given space is precisely defined. The American National Standard precisely defines all volumes that are included so that these measurements can be repeated by anyone desiring to make the measurements.

I believe, Senator Moss, this item explains your comment, "Yes, but using the same standard to test, they come out very differently, you see. That's the point. If you use a standard measurement and take out this judgment factor—and incidentally, the manufacturers give themselves the high side on every single one of these—you come out with a great variation using the same standard of testing. That's my point."

5. You further state, "So, if you use a common test protocol, then you get a different answer from what each of these manufacturers wants to claim for himself. That's the point."

Note above, that I state that by using the American National Standard, the one most universally used and the one used by the industry, you do *not* get a different answer. In fact, the Association of House Appliance Manufacturers has a Certification Program whereby the claims of manufacturers are actually checked and thus verified by an independent laboratory under contract to AHAM. All of these values are listed in a Directory of Certified Refrigerators and Freezers, which is published twice a year. A current copy for your information is attached. This provides the consumer with an opportunity to make comparisons based on claims measured by a common repeatable protocol. (American National Standard B38.1.)

6. This Directory is evidence that your statement, "In using the protocol to determine, for instance, the capacity, cubic feet we were talking about in refrigerators, that it comes out differently for different manufacturers, depending on how they want to interpret it?", is *not* correct.

The interpretation of the protocol by the manufacturers must be identical. The protocol was developed so that its interpretation is identical and application is without subjective variations. In fact, the Certification Program described in the attached Directory shows that the manufacturers' claims are checked by an independent laboratory so that there cannot be a difference in interpretation.

I appreciate the opportunity to point these things out to you and would certainly look forward to the privilege of meeting with you and reviewing them in further detail; it is so very important that you have an understanding of the facts as they exist.

Respectfully,

HERBERT PHILLIPS.

1975 DIRECTORY OF CERTIFIED REFRIGERATORS AND FREEZERS

[Second special edition with Certified Energy Consumption, September 1975.]

ASSOCIATION OF HOME APPLIANCE MANUFACTURERS

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The Certification Program

The Association of Home Appliance Manufacturers (AHAM) sponsors a program to verify the total refrigerated volume, total shelf area and energy consumption ratings of household refrigerators and freezers.

This program gives assurance to the public, by the presence of the AHAM certification seal that the calculations of total refrigerated volume and total shelf area of a household refrigerator or freezer have been independently verified in accordance with American National Standard B38.1 (Methods of testing for household refrigerators, combination refrigerator-freezers, and household freezers.) Energy consumption is independently verified in accordance with AHAM Standard HRF-2-ECFT and the procedure in the Procedural Guide (Section II — Certified Ratings) for the Refrigerator-Freezer Certification Program.

The certification program is open to all manufacturers, both members and non-members of AHAM, and to firms that market private brand models. Participation is voluntary. AHAM is the sponsor and the verifying authority of the program.

AHAM has entered into a contract with Electrical Testing Laboratories, Inc (ETL) whereby ETL performs the calculations of total refrigerated volume and total shelf area in accordance with the certification program. Energy consumption verification is provided only under the challenge procedure.

According to the certification agreement between AHAM and participants, all models manufactured or marketed by a participant and offered for sale in the United States are certified in accordance with this program.

Certification Seals

One of two AHAM certification seals — illustrated on the title page of the directory — is affixed to each product of a model certified under this program.

Definition of the Seals

- a) A dark blue and silver AHAM seal certifying total refrigerated volume, total shelf area and energy consumption (for refrigerators and upright freezers). This seal is the mark issued by AHAM to all manufacturers and private brand sellers of refrigerator-freezers and upright freezers who are licensees in a program in which AHAM verifies that the total refrigerated volume, total shelf area and energy consumption rating(s) of all refrigerator-freezers and upright freezers bearing this mark are accurately stated and determined in accordance with the requirements of the certification program.
- b) A light blue and silver AHAM seal certifying total refrigerated volume and energy consumption (for chest freezers). This seal is the mark issued by AHAM to all manufacturers and private brand sellers of chest freezers who are licensees in a program in which AHAM verifies that the total refrigerated volume and energy consumption rating(s) of all chest freezers bearing this mark are accurately stated and determined in accordance with the requirements of the certification program.

Use of the Seals in Advertising

These recommendations are made by the AHAM Certification Licensee Committee to provide participants in the AHAM Refrigerator and Freezer Certification Program with guidance in use of the seals in advertising, etc., to eliminate confusion or misrepresentation.

Defining What Is Being Certified

Only the total refrigerated volume, total shelf area and energy consumption ratings are certified on refrigerators

and upright freezers; and only the total refrigerated volume and energy consumption ratings are certified on chest freezers, as clearly indicated on the respective seals. No implication should ever be made that the seal certifies any other feature or performance factor.

Note that for certain models there are two certified energy consumption ratings and for others, one. This is because units having anti-sweat heater switches have been tested with the heater switch in both the lowest and highest energy consumption positions. Anti-sweat heaters are heaters built into the cabinet to prevent accumulation of moisture on the outer surface under humid conditions. In the energy consumption column, the smaller figure denotes kWh/month measured with the heater switch in the low energy consuming position. The larger figure denotes kWh/month with the heater switch in the high energy consuming position. A single figure denotes the kWh/month for models without anti-sweat heater switches.

Seal Reproductions

Facsimiles or reproductions of the seal may be used in advertising or promotional literature. However, no alteration of the seal design is authorized and all copy should be legible in reproductions.

Mixing Certified and Noncertified Models

Refrigerator and freezer models that are not under certification should not be listed, indicated or described on literature, advertisements or point-of-purchase material in which certified models also are listed or described.

Stating the Verifying Authority

No reference should ever be made that verification is provided by any organization other than AHAM, which is sole verifying authority under the program.

Reference to Testing Laboratory

Any reference to the testing organization retained under the program should clearly indicate that its function in the program is limited to technical administration, verification of measurement data and energy consumption challenge testing.

For instance, the statement "total refrigerated volume and total shelf area ratings are verified by AHAM based on checks of measurements and calculations by the testing laboratory" is acceptable.

But the statement "total refrigerated volume, total shelf area and energy consumption ratings are verified by AHAM and the testing laboratory" is not acceptable, because it implies incorrectly that the laboratory has a separate verifying function. Energy consumption ratings are verified by AHAM only under the challenge procedure.

Certification Directories

The certification directory lists all currently produced models bearing the AHAM certification seal. Each new

directory supersedes the previous one. The date on the cover indicates when the directory was published. Directories are published January and June each year.

Information on any changes occurring between issues of the directory will be on file at AHAM and may be obtained upon request.

The model numbers shown may have prefix and/or suffix numbers or letters which do not denote a change in total refrigerated volume, total shelf area and/or energy consumption rating(s). Any model number which has a prefix or suffix denoting a change in total refrigerated volume, total shelf area and/or energy consumption rating(s) is listed in this directory as a separate number.

New Terminology

This Directory reflects the following changes in terminology for better consumer understanding of the factors certified:

1. Net General Refrigerated Volume has been changed to Fresh Food Compartment Volume;
2. Net Freezer Refrigerated Volume has been changed to Freezer Compartment Volume;
3. Net Refrigerated Volume has been changed to Total Refrigerated Volume;
4. Net Shelf Area has been changed to Total Shelf Area.

Directory Symbols

The following symbols are used in the directory to indicate

- (1) the type and configuration of the models certified:

Refrigerators

- SD—Single Door
- TF—Top Freezer
- BF—Bottom Freezer
- SS—Side-by-Side

Freezers

- UF—Upright Freezer
- CF—Chest Freezer

- (2) the type of defrost system of the models certified:

M—Manual Defrost — A defrost system in which the defrosting action for all refrigerated surfaces is initiated manually.

P—Partial Automatic — A defrost system in which the defrosting action for the refrigerated surfaces in the refrigerator compartment is initiated and terminated automatically and the defrosting action for the refrigerated surfaces in the freezer is initiated manually.

A—Automatic Defrost — A defrost system in which the defrosting action for all refrigerated surfaces is initiated and terminated automatically.

Cost of Energy Range Charts

A national energy labeling program for refrigerators, refrigerator-freezers and freezers provides consumers with point-of-sale, comparative information on the energy costs of these appliances.

An energy label is attached to each new unit shipped from the factory. The label tells consumers the certified cubic foot volume, average monthly energy consumption in kilowatt hours, and average monthly cost of operation in dollars and cents (based on 4¢ per kWh) for that specific model. A table is also provided which lists monthly cost of energy at different electric rates to help the consumer

determine his cost at his local rate. In addition, the range of energy costs for all brands within a given size and defrost type classification is given.

Manufacturers participating in the program will use the data from charts published in January of each year to determine the comparative cost of energy ranges to be included on the label for each model manufactured.

Inquiries and Comments

Comments or questions on AHAM's Refrigerator and Freezer Certification Program should be directed to: Mr. Herbert Phillips, Technical Director, c/o AHAM.

Total Refrigerated Volume and Cost of Energy Ranges for Refrigerators

Rated Refrigerated Volume In Cubic Feet	Ranges of Total Refrigerated Volume In Cubic Feet	Ranges of Cost of Energy In Dollars Per Month at a Rate of 4 Cents Per Kilowatt-Hour	
		Minimum	Maximum
Less than 2.5	Less than 3.5	1.10	2.00
2.5 to less than 3.5	1.5 to & including 4.5	1.10	2.70
3.5 to less than 4.5	2.5 to & including 5.5	1.10	2.70
4.5 to less than 5.5	3.5 to & including 6.5	1.40	2.70
5.5 to less than 6.5	4.5 to & including 7.5	1.40	2.70
6.5 to less than 7.5	5.5 to & including 8.5	1.40	2.20
7.5 to less than 8.5	6.5 to & including 9.5	1.80	2.20
8.5 to less than 9.5	7.5 to & including 10.5	1.80	2.40
9.5 to less than 10.5	8.5 to & including 11.5	1.80	2.40
10.5 to less than 11.5	9.5 to & including 12.5	1.80	2.40
11.5 to less than 12.5	10.5 to & including 13.5	1.80	2.60
12.5 to less than 13.5	11.5 to & including 14.5	1.80	2.90
13.5 to less than 14.5	12.5 to & including 15.5	1.80	2.90
14.5 to less than 15.5	13.5 and over	1.80	2.90

Total Refrigerated Volume and Cost of Energy Ranges for Combination Refrigerator-Freezers

Rated Total Refrigerated Volume In Cubic Feet	Ranges of Total Refrigerated Volume In Cubic Feet	Ranges of Cost of Energy In Dollars Per Month At a Rate of 4 Cents Per Kilowatt-Hour For Models With			
		Partial Automatic Defrost		Automatic Defrost	
		Minimum	Maximum	Minimum	Maximum
Less than 10.5	Less than 11.5	3.00	4.40	—	—
10.5 to less than 11.5	9.5 to & including 12.5	3.00	4.40	5.30	6.20
11.5 to less than 12.5	10.5 to & including 13.5	3.00	4.40	5.30	6.80
12.5 to less than 13.5	11.5 to & including 14.5	3.00	4.80	4.60	6.80
13.5 to less than 14.5	12.5 to & including 15.5	3.20	4.80	4.60	6.80
14.5 to less than 15.5	13.5 to & including 16.5	2.20	4.80	3.50	7.80
15.5 to less than 16.5	14.5 to & including 17.5	2.20	3.20	3.50	8.30
16.5 to less than 17.5	15.5 to & including 18.5	2.20	2.20	3.50	8.30
17.5 to less than 18.5	16.5 to & including 19.5	—	—	4.00	9.70
18.5 to less than 19.5	17.5 to & including 20.5	—	—	4.00	9.70
19.5 to less than 20.5	18.5 to & including 21.5	—	—	4.00	9.70
20.5 to less than 21.5	19.5 to & including 22.5	—	—	4.80	9.60
21.5 to less than 22.5	20.5 to & including 23.5	—	—	4.80	9.60
22.5 to less than 23.5	21.5 to & including 24.5	—	—	5.50	10.70
23.5 to less than 24.5	22.5 to & including 25.5	—	—	5.50	10.70
24.5 to less than 25.5	23.5 to & including 26.5	—	—	7.90	10.70
25.5 to less than 26.5	24.5 to & including 27.5	—	—	8.00	8.00
26.5 to less than 27.5	25.5 to & including 28.5	—	—	8.00	8.00
27.5 to less than 28.5	26.5 to & including 29.5	—	—	8.00	8.00
28.5 to less than 29.5	27.5 to & including 30.5	—	—	8.00	8.00
29.5 and over	28.5 and over	—	—	—	—

When anti-sweat switches are provided, the maximum values of cost of energy are listed as determined with the anti-sweat heaters fully energized, and the minimum values with the anti-sweat heaters switched to their lowest energy consuming setting.

Total Refrigerated Volume and Cost of Energy Ranges for Freezers

Rated Total Refrigerated Volume In Cubic Feet	Ranges of Total Refrigerated Volume In Cubic Feet	Ranges of Cost of Energy In Dollars Per Month At a Rate of 4 Cents Per Kilowatt-Hour For Units With			
		Manual Defrost		Automatic Defrost	
		Minimum	Maximum	Minimum	Maximum
Less than 5.5	Less than 6.5	2.30	3.40	—	—
5.5 to less than 6.5	4.5 to & including 7.5	2.30	3.40	—	—
6.5 to less than 7.5	5.5 to & including 8.5	2.40	3.40	—	—
7.5 to less than 8.5	6.5 to & including 9.5	2.40	3.20	—	—
8.5 to less than 9.5	7.5 to & including 10.5	2.80	4.30	—	—
9.5 to less than 10.5	8.5 to & including 11.5	2.80	4.30	—	—
10.5 to less than 11.5	9.5 to & including 12.5	3.00	4.30	6.60	6.90
11.5 to less than 12.5	10.5 to & including 13.5	3.00	5.10	6.30	6.90
12.5 to less than 13.5	11.5 to & including 14.5	3.40	5.10	6.30	6.90
13.5 to less than 14.5	12.5 to & including 15.5	3.40	6.80	6.30	7.90
14.5 to less than 15.5	13.5 to & including 16.5	3.40	6.80	5.40	7.90
15.5 to less than 16.5	14.5 to & including 17.5	3.70	6.80	5.20	7.90
16.5 to less than 17.5	15.5 to & including 18.5	3.50	5.60	5.20	7.50
17.5 to less than 18.5	16.5 to & including 19.5	3.50	5.60	5.20	7.50
18.5 to less than 19.5	17.5 to & including 20.5	3.50	5.50	6.00	7.50
19.5 to less than 20.5	18.5 to & including 21.5	3.60	6.10	6.00	7.50
20.5 to less than 21.5	19.5 to & including 22.5	3.60	6.60	6.60	7.80
21.5 to less than 22.5	20.5 to & including 23.5	4.20	6.60	7.80	7.80
22.5 to less than 23.5	21.5 to & including 24.5	4.90	6.60	7.80	7.80
23.5 to less than 24.5	22.5 to & including 25.5	4.90	6.90	—	—
24.5 to less than 25.5	23.5 to & including 26.5	5.30	6.90	—	—
25.5 to less than 26.5	24.5 to & including 27.5	5.30	8.40	—	—
26.5 to less than 27.5	25.5 to & including 28.5	5.40	8.40	—	—
27.5 to less than 28.5	26.5 to & including 29.5	6.40	8.40	—	—
28.5 to less than 29.5	27.5 to & including 30.5	6.40	6.80	9.80	9.80
29.5 and over	28.5 and over	6.80	6.80	9.80	9.80

When anti-sweat switches are provided, the maximum values of cost of energy are listed as determined with the anti-sweat heaters fully energized, and the minimum values with the anti-sweat heaters switched to their lowest energy consuming setting.

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Model	Type and Defrost System*	Refrigerated Volume*			Shelf Area	Energy Consumption kWh/mo†		Model	Type and Defrost System*	Refrigerated Volume*			Shelf Area	Energy Consumption kWh/mo†	
		Fresh Food	Freezer	Total						Cu.Ft.	Cu.Ft.	Cu.Ft.			
ADMIRAL															
Admiral Group, Rockwell International								C1255L	SD-M	10.51	1.69	12.2	16.2	59	
1701 E. Woodfield Road								C1255	SD-M	10.51	1.69	12.2	16.2	59	
Schaumburg, Illinois 60172								T1354	TF-P	9.69	2.53	12.2	15.0	101	
								T1354L	TF-P	9.69	2.53	12.2	15.0	101	
								T1453	TF-P	10.56	3.76	14.3	17.2	120	
								T1453L	TF-P	10.56	3.76	14.3	17.2	120	
Refrigerator								INT1554	TF-A	11.34	3.67	15.0	18.2	162	
C1053	SD-M	8.77	1.21	10.0	13.8	59		SKNT155	TF-A	11.34	3.67	15.0	18.2	162	
C1053L	SD-M	8.77	1.21	10.0	13.8	59		INT1554	TF-A	11.34	3.67	15.0	19.0	162	

*See explanation and definitions in front of directory.

[†]Maximum and minimum energy consumption in kWh/month are given for models with an anti-sweat heater switch; single values are given for models without anti-sweat heater switch.

Model	Type and Defrost System*	Refrigerated Volume*			Shelf Area Sq.Ft.	Energy Consumption AWh/mo†
		Fresh Food Cu.Ft.	Freezer Cu.Ft.	Total Cu.Ft.		
(ADMIRAL continued)						
KNT155	TF-A	11.34	3.67	15.0	19.2	162
NT1654	TF-A	11.10	4.36	15.5	22.5	163
NT1656	TF-A	11.10	4.36	15.5	24.9	163
SKNT165	TF-A	11.10	4.36	15.5	25.2	163
FNT165	TF-A	11.10	4.36	15.5	25.2	163
NT1854	TF-A	13.21	4.70	17.9	23.0	173
KNT185	TF-A	13.25	4.70	18.0	26.5	173
FNT185	TF-A	13.28	4.70	18.0	26.6	173
SKNT185	TF-A	13.28	4.70	18.0	26.6	173
NT1858	TF-A	13.25	4.70	18.0	27.0	173
INT1858	TF-A	13.25	4.70	18.0	27.0	173
KNT215	TF-A	14.84	6.60	21.4	31.3	165
NT2156	TF-A	14.80	6.60	21.4	31.3	165
SKNT215	TF-A	14.80	6.60	21.4	31.3	165
INT2159	TF-A	14.76	6.60	21.4	31.6	165
INT2159L	TF-A	14.76	6.60	21.4	31.6	165
BINT2158	TF-A	14.84	6.60	21.4	31.8	165
NT2159	TF-A	14.84	6.60	21.4	31.9	165
ND1954	SS-A	13.00	6.31	19.3	21.9	150
ND1958	SS-A	13.00	6.39	19.4	25.7	165
ND2057	SS-A	13.51	6.59	20.1	24.7	150
ASIND205	SS-A	13.51	6.57	20.1	25.7	165
IND2059	SS-A	13.51	6.57	20.1	26.3	173
ND2058	SS-A	13.51	6.67	20.2	25.8	165
KND2059	SS-A	13.51	6.67	20.2	26.4	165
ND2259	SS-A	15.16	6.57	21.7	30.1	180
ND2257	SS-A	15.17	6.59	21.8	28.6	169
KND2259	SS-A	15.16	6.67	21.8	30.2	180
IND2459	SS-A	15.16	8.51	23.7	32.4	191
BIND2458	SS-A	15.17	8.67	23.8	28.3	191
IND2859	SS-A	17.58	10.13	27.7	38.0	201
Freezer						
F1053	UF-M		10.1	10.4		92
NF1355	UF-A		13.2	13.9		158
KF135	UF-M		13.2	15.0		127
SKF135	UF-M		13.2	15.0		127
F1354	UF-M		13.2	15.0		127
NF1657	UF-A		15.8	16.9		162
F1653	UF-M		15.8	18.0		135
F1656	UF-M		15.8	18.0		135
KF165	UF-M		15.8	18.0		135
SKF165	UF-M		15.8	18.0		135
F1855	UF-M		18.0	20.0		135
F2056	UF-M		20.2	21.1		138
SKF205	UF-M		20.2	21.1		138
NF2057	UF-A		20.2	21.9		182
CF866	CF-M		8.2			81
CF1556	CF-M		15.3			122
CF2054	CF-M		20.3			135
CF2057	CF-M		20.3			135
CF2568	CF-M		25.4			173
AGWAY						
Universal Cooperatives, Inc.						
111 Glamorgan						
Alliance, Ohio 44601						
Freezer						
UV10	UF-M		10.4	11.6		108
UV17F	UF-A		16.8	15.8		170
UV17	UF-M		16.9	16.7		140
UV21	UF-M		21.1	22.8		153
#UC10	CF-M		9.9			81
#UC15	CF-M		14.8			100
#UC20	CF-M		20.1			117
#UC25	CF-M		24.7			133
BRADFORD						
W. T. Grant						
New York, New York 10018						
Refrigerator						
WTG93492	TF-A	12.40	4.60	17.0	20.2	136

Model	Type and Defrost System*	Refrigerated Volume*			Shelf Area Sq.Ft.	Energy Consumption AWh/mo†
		Fresh Food Cu.Ft.	Freezer Cu.Ft.	Total Cu.Ft.		
WTG93559	TF-A	12.40	4.60	17.0	25.5	136
WTG93591	TF-A	14.20	6.80	21.0	29.8	147
Freezer						
79509	UF-A		15.7	18.2		142
79970A	UF-A		15.7	18.2		142
79053B	UF-M		16.1	16.5		106
79053C	UF-M		16.1	16.5		106
79962	UF-M		19.2	17.6		101
79962A	UF-M		19.2	17.6		101
79202	CF-M		5.3			58
79004A	CF-M		15.3			104
79954	CF-M		20.3			118
BROICH						
Broich Sales Company						
5800 Maitt Lane						
Edina, Minn. 55436						
Freezer						
NFF180W	UF-M		18.0	18.6		88
NFF200W	UF-M		20.1	21.6		90
NFF300FF	UF-A		30.4	29.1		245
NFF300REG.	UF-M		31.1	30.1		170
CATALINA						
White Stores, Inc.						
3910 Calfield Road						
Wichita Falls, Texas 76307						
Refrigerator						
130-5150	TF-A	12.40	4.60	17.0	25.6	136
130-5160	TF-A	12.40	4.60	17.0	25.6	136
130-5290	SS-A	14.56	7.44	22.0	27.0	182 211
Freezer						
130-5580	UF-A		18.7	22.7		149
130-5570	UF-M		21.1	20.6		106
CAPRI						
Universal Cooperatives, Inc.						
111 Glamorgan						
Alliance, Ohio 44601						
Freezer						
UV-10	UF-M		10.4	11.6		108
LLV12-1	UF-M		12.9	13.2		90
UV17F	UF-A		16.8	15.8		170
UV17	UF-M		16.9	16.7		140
LLV16	UF-M		16.0	18.9		106
LLV18F	UF-A		18.7	22.7		149
UV21	UF-M		21.1	22.8		153
LLV19	UF-M		19.2	22.9		101
LLV21	UF-M		21.1	23.8		106
LLH5	CF-M		5.3			58
#UC10	CF-M		9.9			81
LLH8	CF-M		8.3			73
NH10	CF-M		10.1			75
#UC15	CF-M		14.8			100
LLH15	CF-M		15.3			104
#UC20	CF-M		20.1			117
LLH20	CF-M		20.3			118
#UC25	CF-M		24.7			133
LLH25	CF-M		25.3			134
CHILL CHEST						
Revco, Inc.						
1100 Memorial Drive						
West Columbia, South Carolina 29169						
Freezer						
#VF10	UF-M		10.4	11.6		108
#AVNF17	UF-A		16.8	15.8		170

*See explanation and definitions in front of directory.

†Maximum and minimum energy consumption in kWh/month are given for models with an anti-sweat heater switch; single values are given for models without anti-sweat heater switch.

Voluntary change of previously certified data.

Δ Correction of previous listing.

Model	Type and Defrost System*	Refrigerated Volume*				Shelf Area Sq.Ft.	Energy Consumption kWh/mo†
		Fresh Food Cu.Ft.	Freezer Cu.Ft.	Total Cu.Ft.			
(CHILL CHEST continued)							
#VF17	UF-M			16.9	16.7	140	
#VF21	UF-M			21.1	22.8	153	
#C6	CF-M			6.1		68	
#C10	CF-M			9.9		81	
#C15	CF-M			14.8		100	
#C20	CF-M			20.1		117	
#C25	CF-M			24.7		133	

COLDSPOT

Sears Roebuck & Company
Chicago, Illinois 60607

Refrigerator

564.73700	SD-M	1.37	.13	1.5	2.9	45
564.73711	SD-M	1.37	.13	1.5	2.9	45
564.73730	SD-M	1.37	.13	1.5	2.9	45
845.73840	SD	2.32	.14	2.5	3.9	28
845.73841	SD-M	2.32	.14	2.5	3.9	28
845.73860	SD-M	4.11	.29	4.4	6.8	53
845.73861	SD-M	4.11	.29	4.4	6.8	53
Δ 218.73750	SD-M	4.31	.45	4.8	7.4	68
Δ 218.73720	SD-M	4.31	.45	4.8	7.4	68
94602	SD-M	5.44	.34	5.7	9.6	35
7651210	SD-M	11.17	1.27	12.4	15.3	45
7651290	SD-M	11.17	1.27	12.4	15.3	45
7661210	SD-M	11.12	1.76	12.9	18.0	45
7661290	SD-M	11.12	1.76	12.9	18.0	45
7653210	SD-M	10.95	2.00	13.0	18.3	65
7653290	SD-M	10.95	2.00	13.0	18.3	65
7664010	SD-M	11.73	2.26	14.0	16.3	73
7664090	SD-M	11.73	2.26	14.0	16.3	73
7642010	TF-P	9.21	2.76	12.0	14.1	90
7642090	TF-P	9.21	2.76	12.0	14.1	90
7662010	TF-P	9.20	2.76	12.0	14.1	90
7662090	TF-P	9.20	2.76	12.0	14.1	90
7652310	TF-P	9.20	3.10	12.3	16.1	110
7652390	TF-P	9.20	3.10	12.3	16.1	110
7653110	TF-A	9.53	3.46	13.0	17.1	169
7653190	TF-A	9.53	3.46	13.0	17.1	169
7653310	TF-P	10.96	3.10	14.1	16.6	120
7653390	TF-P	10.96	3.10	14.1	16.6	120
7654010	TF-A	11.18	2.97	14.1	16.7	159
7654090	TF-A	11.18	2.97	14.1	16.7	159
7654110	TF-A	11.14	3.00	14.1	18.5	159
7654190	TF-A	11.14	3.00	14.1	18.5	159
7655110	TF-A	10.92	4.25	15.2	20.3	161
7655190	TF-A	10.92	4.25	15.2	20.3	161
7655311	TF-A	10.92	4.25	15.2	20.3	161
7655710	TF-A	10.92	4.25	15.2	21.0	161
7655790	TF-A	10.92	4.25	15.2	21.0	161
7645310	TF-A	10.92	4.29	15.2	21.8	161
7655210	TF-A	10.92	4.25	15.2	23.6	161
7657110	TF-A	12.30	4.77	17.0	22.8	169
7657190	TF-A	12.30	4.77	17.0	22.8	169
7667810	TF-A	12.24	4.77	17.0	22.8	104 116
7657010	TF-A	12.40	4.60	17.0	24.0	136
7657510	TF-A	12.40	4.60	17.0	25.6	136
7657411	TF-A	12.31	4.75	17.1	23.0	167 182
7657210	TF-A	12.31	4.75	17.1	26.5	182
7659010	TF-A	13.65	5.35	19.0	26.9	146
7659410	TF-A	13.41	5.71	19.1	26.1	175 189
7659312	TF-A	13.56	5.70	19.3	25.1	175 189
7649110	TF-A	13.56	5.75	19.3	26.9	189
7649010	TF-A	13.56	5.74	19.3	27.5	189
7659210	TF-A	13.56	5.70	19.3	28.2	189
7659612	TF-A	14.57	7.63	22.2	27.4	135 146
7659510	TF-A	14.66	7.63	22.3	27.7	135 146
7630212	SS-A	12.50	6.50	19.0	19.8	205
7650510	SS-A	12.66	6.34	19.0	20.9	177 188
7640210	SS-A	12.76	6.37	19.1	21.9	188

Model	Type and Defrost System*	Refrigerated Volume*				Energy Consumption kWh/mo†
		Fresh Food	Freezer	Total	Shelf Area Sq.Ft.	
7651410	SS-A	12.76	6.34	19.1	22.4	177 188
7650610	SS-A	14.67	7.45	22.1	23.0	170 180
7660310	SS-A	14.77	7.50	22.3	22.2	180
7651610	SS-A	14.77	7.50	22.3	25.7	170 180
7650710	SS-A	14.66	9.34	24.0	28.8	190 221

Freezer

2606	UF-M	6.0	6.4	75
2506	UF-M	6.0	9.5	75
2609	UF-M	9.0	12.6	78
2509	UF-M	9.0	12.6	78
47725140	UF-A	11.6	11.3	164
47725130	UF-M	12.0	12.5	102
47726340	UF-A	15.2	13.8	158 181
47726360	UF-A	15.2	13.8	158 181
47725340	UF-A	15.2	13.8	166 189
47725360	UF-A	15.2	13.8	166 189
47724240	UF-A	15.3	13.9	198
47725300	UF-A	15.4	11.9	198
47726220	UF-M	15.8	15.3	136
47725200	UF-M	15.9	12.9	136
47724230	UF-M	15.9	15.4	136
47726340	UF-A	19.5	20.4	164 187
47726530	UF-A	19.5	20.4	164 187
47726560	UF-A	19.5	20.4	164 187
47725540	UF-A	19.5	20.4	164 187
47725550	UF-A	19.5	20.4	164 187
47725560	UF-A	19.5	20.4	164 187
47725530	UF-A	19.6	21.7	187
47725520	UF-M	20.0	23.6	127
757.725940	UF-A	30.4	29.1	245
757.725920	UF-M	31.1	30.1	170
1506	CF-M	6.0	8.4	84
1509	CF-M	9.0	7.9	79
1512	CF-M	12.0	9.6	96
1520	CF-M	15.0	9.0	170
1521	CF-M	15.1	17.0	170
1543	CF-M	17.3	129	
1544	CF-M	17.3	129	
1547	CF-M	17.3	129	
1560	CF-M	22.1	164	
1561	CF-M	22.3	164	
1563	CF-M	22.3	164	
1564	CF-M	22.3	164	
1582	CF-M	27.1	209	

CO-OP

Universal Cooperatives, Inc.
111 Glamorgan
Alliance, Ohio 44601

Freezer

UV10	UF-M	10.4	11.6	108
LLV12-1	UF-M	12.9	13.2	90
LLV16	UF-M	16.0	18.9	106
UV17F	UF-M	16.8	15.8	170
UV17	UF-M	16.9	16.7	140
LLV18F	UF-A	18.7	22.7	149
LLV19	UF-M	19.2	22.9	101
UV21	UF-M	21.1	22.8	153
LLV21	UF-M	21.1	23.8	106
LLH5	CF-M	8.3	5.8	58
LLH8	CF-M	8.3	7.3	73
#UC10	CF-M	9.9	8.1	81
NH10	CF-M	10.1	7.5	75
#UC15	CF-M	14.8	10.0	100
LLH15	CF-M	15.3	10.4	104
#UC20	CF-M	20.1	11.7	117
LLH20	CF-M	20.3	11.8	118
#UC25	CF-M	24.7	13.3	133
LLH25	CF-M	25.3	13.4	134

*See explanation and definitions in front of directory.

†Maximum and minimum energy consumption in kWh/month are given for models with an anti-sweat heater switch; single values are given for models without anti-sweat heater switch.

#Voluntary change of previously certified data.

ΔCorrection of previous listing.

Model	Type and Defrost System*	Refrigerated Volume*				Shelf Area, Sq.Ft.	Energy Consumption (kWh/month)
		Fresh Food Cu.Ft.	Freezer Total Cu.Ft.	Shelf Cu.Ft.	Net Cu.Ft.		
CORNELIUS							
The Cornelius Co. 2727 North Ferry St. Anoka, Minnesota 55303							
Refrigerator							
28-5329-000	SD-M			4.8	8.8		37
CORONADO							
Gamble Skogmo, Inc. 15 N. Eighth Street Minneapolis, Minnesota 55401							
Refrigerator							
RE15-2904E	SD-M	8.77	1.21	10.0	13.8		59
RE15-2924E	SD-M	10.51	1.69	12.2	16.2		59
RE15-3134E	TF-A	10.02	2.34	12.4	14.9	156	
RE15-2944E	TF-P	10.56	3.76	14.3	17.2	120	
RE15-2954E	TF-P	10.56	3.76	14.3	17.2	120	
RE15-2964E	TF-P	10.56	3.76	14.3	17.2	120	
RE15-3104E	TF-A	11.34	3.67	15.0	21.5	162	
RE15-3114E	TF-A	11.34	3.67	15.0	21.5	162	
RE15-3124E	TF-A	11.34	3.67	15.0	21.5	162	
RE15-3134E	TF-A	11.34	3.67	15.0	21.5	162	
RE15-3125A	TF-A	11.05	4.36	15.4	21.5	163	
RE15-3115A	TF-A	11.05	4.36	15.4	21.5	163	
RE15-3125A	TF-A	11.05	4.36	15.4	21.5	163	
RE15-3244E	TF-A	12.35	4.36	16.7	25.4	167	
RE15-3254E	TF-A	12.35	4.36	16.7	25.4	167	
RE15-3264E	TF-A	12.35	4.36	16.7	25.4	167	
RE15-3274E	TF-A	12.35	4.36	16.7	25.4	167	
RE15-3284E	TF-A	13.25	4.70	18.0	26.5	173	
RE15-3294E	TF-A	13.25	4.70	18.0	26.5	173	
RE15-3354E	TF-A	14.80	6.60	21.4	31.3	163	
RE15-3364E	TF-A	14.80	6.60	21.4	31.3	163	
RE15-3374E	TF-A	14.80	6.60	21.4	31.3	163	
RE15-3365A	TF-A	14.80	6.60	21.4	31.3	163	
RE15-3375A	TF-A	14.80	6.60	21.4	31.3	163	
RE15-3385A	TF-A	14.80	6.60	21.4	31.3	163	
RE15-3344E	TF-A	14.80	6.60	21.4	31.3	163	
RE15-3355A	SS-A	13.46	6.51	20.0	21.7	150	
RE15-3345A	SS-A	13.46	6.51	20.0	21.7	150	
RE15-3355A	SS-A	13.46	6.51	20.0	21.7	150	
RE15-3404E	SS-A	15.18	6.66	21.8	24.8	180	
RE15-3414E	SS-A	15.18	6.66	21.8	24.8	180	
RE15-3424E	SS-A	15.18	6.66	21.8	24.8	180	
RE15-3434E	SS-A	15.18	6.66	21.8	24.8	180	
RE15-3504E	SS-A	15.16	8.51	23.7	28.7	191	
RE15-3514E	SS-A	15.16	8.51	23.7	28.7	191	
RE15-3524E	SS-A	15.16	8.51	23.7	28.7	191	
RE15-3534E	SS-A	15.16	8.51	23.7	28.7	191	
Freezer							
RE4-8102U	UF-M		12.9	13.2	90		
RE4-8102W	UF-M		12.9	13.2	90		
RE4-8152Y	UF-A		15.7	18.2	142		
RE4-8152Z	UF-A		15.7	18.2	142		
RE4-8162Y	UF-A		15.7	18.2	142		
RE4-8162Z	UF-A		15.7	18.2	142		
RE4-8172Y	UF-A		15.7	18.2	142		
RE4-8172Z	UF-A		15.7	18.2	142		
RE4-8122Y	UF-M		16.0	19.5	106		
RE4-8132Y	UF-M		16.0	19.5	106		
RE4-8132Z	UF-M		16.0	19.5	106		
RE4-8122S	UF-M		16.0	19.5	106		
RE4-8122W	UF-M		16.0	19.5	106		
RE4-8132S	UF-M		16.0	19.5	106		
RE4-8132W	UF-M		16.0	19.5	106		
RE4-8122Z	UF-M		16.0	19.5	106		
RE4-8112Y	UF-M		16.1	16.5	106		
RE4-8112Z	UF-M		16.1	16.5	106		
RE4-8112S	UF-M		16.1	16.5	106		
RE4-8112W	UF-M		16.1	16.5	106		
RE4-8142Y	UF-M		21.1	24.8	106		

Model	Type and Defrost System*	Refrigerated Volume*				Shelf Area	Energy Consumption
		Cu.Ft.	Fresh Food	Freezer Total	Sq.Ft.		
RE4-8142Z	UF-M		21.1	24.8	106		
RE4-8142S	UF-M		21.1	24.8	106		
RE4-8142W	UF-M		21.1	24.8	106		
RE4-9033S	CF-M		5.3		58		
RE4-9033U	CF-M		5.3		58		
RE4-9033W	CF-M		5.3		58		
RE4-9033X	CF-M		5.3		58		
RE4-9033Y	CF-M		5.3		58		
RE4-9043S	CF-M		8.3		73		
RE4-9053S	CF-M		8.3		73		
RE4-9063S	CF-M		8.3		73		
RE4-9043T	CF-M		8.3		73		
RE4-9053T	CF-M		8.3		73		
RE4-9063T	CF-M		8.3		73		
RE4-9043W	CF-M		8.3		73		
RE4-9053W	CF-M		8.3		73		
RE4-9063W	CF-M		8.3		73		
RE4-9043X	CF-M		8.3		73		
RE4-9043Y	CF-M		8.3		73		
RE4-9053X	CF-M		8.3		73		
RE4-9053Y	CF-M		8.3		73		
RE4-9063X	CF-M		8.3		73		
RE4-9063Y	CF-M		8.3		73		
RE4-9075C	CF-M		10.1		75		
RE4-9075A	CF-M		10.1		75		
RE4-9075B	CF-M		10.1		75		
RE4-9075D	CF-M		10.1		75		
RE4-9075E	CF-M		10.1		75		
RE4-8052Y	CF-M		15.3		104		
RE4-8052W	CF-M		15.3		104		
RE4-8062Y	CF-M		15.3		104		
RE4-8062W	CF-M		15.3		104		
RE4-8072Y	CF-M		15.3		104		
RE4-8072W	CF-M		15.3		104		
RE4-8082Y	CF-M		20.3		118		
RE4-8082W	CF-M		20.3		118		
RE4-9042Y	CF-M		20.3		118		
RE4-9042W	CF-M		20.3		118		
RE4-9002S	CF-M		25.3		134		
RE4-9002W	CF-M		25.3		134		
CREST LINE							
Beck & Gregg Box 984 Atlanta, Georgia 30301							
Freezer							
#C6	CF-M		6.1		68		
#C10	CF-M		9.9		81		
#C15	CF-M		14.8		100		
#C20	CF-M		20.1		117		
#C25	CF-M		24.7		133		
ECONOCOLD							
Magic Chef, Inc. 740 King Edward Avenue Cleveland, Tenn. 37311							
Refrigerator							
FA146-1	SD-M	11.76	1.92	13.7	16.9	44	
FB166-2	TF-A	11.99	3.62	15.6	21.9	103	
FC196-3	SS-A	11.07	7.40	18.5	23.1	111	
EDESA							
Fabrelec Apartado 409 Bilbao, Spain							
Refrigerator							
F-2110	SD-M	3.33	.30	3.6	5.2	68	
Δ F-2140	SD-M	4.01	.59	4.6	8.5	68	
Δ F-2200	SD-M	5.46	.48	5.9	9.8	54	
Δ F-2245	SD-M	6.87	.48	7.3	10.1	54	
Δ F-2300	SD-M	8.98	.75	9.7	12.6	55	

*See explanation and definitions in front of directory.

†Maximum and minimum energy consumption in kWh/month are given for models with an anti-sweat heater switch; single values are given for models without anti-sweat heater switch.

‡Voluntary change of previously certified data.

Δ Correction of previous listing.

Model	Type and Defrost System*	Refrigerated Volume*				Shelf Area	Energy Consumption
		Fresh Food	Freezer	Total			
		Cu.Ft.	Cu.Ft.	Cu.Ft.	Sq.Ft.		kWh/mo†

(EDES continued)

Δ F-2335	SD-M	9.82	.75	10.5	14.5		58
Δ F-2250/2P	TF-P	6.27	1.49	7.7	11.8		81
Δ F-2300/2P	TF-P	7.43	1.87	9.3	12.5		109
Δ F-2370/2P	TF-P	9.51	2.46	12.0	15.1		105

FAIRCREST

J. M. Fields Co.
450 West 33 St.
New York, N.Y. 10001

Freezer

VF10	UF-M			10.4	11.6		108
VNF17	UF-A			16.8	15.8		170
VF17	UF-M			16.9	16.7		140
VF21	UF-M			21.1	22.8		153
C6	CF-M			6.1			68
C10	CF-M			9.9			81
C15	CF-M			14.8			100
C20	CF-M			20.1			117
C25	CF-M			24.7			133

FREEZE MASTER

Revo, Inc.
1100 Memorial Drive
West Columbia, S.C. 29169

Freezer

VF10	UF-M			10.4	11.6		108
VNF17	UF-A			16.8	15.8		170
VF17	UF-M			16.9	16.7		140
VF21	UF-M			21.1	22.8		153
C6	CF-M			6.1			68
C10	CF-M			9.9			81
C15	CF-M			14.8			100
C20	CF-M			20.1			117
C25	CF-M			24.7			133

FIRESTONE

Firestone Tire and Rubber Co.
1200 Firestone Parkway
Akron, Ohio 44317

Freezer

05-19-005-3	UF-M			12.9	13.2		90
05-19-003-7	UF-M			16.0	19.5		106
05-19-006-1	UF-M			19.2	20.7		101
05-19-401-6	CF-M			5.3			58
05-19-402-4	CF-M			5.3			58
05-19-400-8	CF-M			5.3			58
05-19-404-0	CF-M			8.3			73
05-19-405-9	CF-M			8.3			73
05-19-406-7	CF-M			8.3			73
05-19-491-1	CF-M			15.3			104
05-19-501-2	CF-M			20.3			118
05-19-512-8	CF-M			25.3			134

FRIGIDAIRE

General Motors Corp.
300 Taylor Street
Dayton, Ohio 45401

Refrigerator

D-43	SD-M	3.88	.37	4.3	7.9		40
I-43	SD-M	3.88	.37	4.3	7.9		40
D-100	SD-M	8.39	1.62	10.0	15.6		55
D-116	SD-M	9.76	1.88	11.6	17.5		53
FPI-121T	TF-A	9.13	3.04	12.1	15.6		133
FCD-123T	TF-P	8.84	3.45	12.3	15.4		75
FCD-150T	TF-P	10.65	4.39	15.0	18.5		80
FPI-152T	TF-A	10.43	4.75	15.2	19.6		137
FPCL-152TA	TF-A	10.43	4.75	15.2	23.2		137
F-152T	TF-A	10.43	4.75	15.2	24.6		137

Model	Type and Defrost System*	Refrigerated Volume*				Shelf Area	Energy Consumption
		Fresh Food	Freezer	Total			
		Cu.Ft.	Cu.Ft.	Cu.Ft.	Sq.Ft.		kWh/mo†

FPCL-152T-7	TF-A	10.43	4.75	15.2	24.6		137
FPCL-152T	TF-A	10.43	4.75	15.2	24.9		137
FPS-170TA	TF-A	12.26	4.75	17.0	23.9		144
FPC-170T-2.7	TF-A	12.26	4.75	17.0	24.3		144
FPCL-170T-2	TF-A	12.26	4.75	17.0	24.3		144
F-170T	TF-A	12.26	4.75	17.0	25.3		144
F-170T-7	TF-A	12.26	4.75	17.0	25.3		144
FPS-170T-7	TF-A	12.26	4.75	17.0	25.3		144
FPS-170T	TF-A	12.26	4.75	17.0	25.6		144
FPI-170T	TF-A	12.26	4.75	17.0	25.8		144
FPCL-170T-7	TF-A	12.26	4.75	17.0	26.2		144
FPCL-170T	TF-A	12.26	4.75	17.0	26.2		144
FPC-170T-1	TF-A	12.26	4.75	17.0	26.7		144
FPE-200T1	TF-A	14.02	5.94	20.0	28.5		152
F-206T	TF-A	14.66	5.94	20.6	31.9		146
FPCL-206T	TF-A	14.66	5.94	20.6	31.9		146
FPCL-206T-8	TF-A	14.66	5.94	20.6	31.9		146
F-206T-8	TF-A	14.66	5.94	20.6	31.9		146
FPCL-165V-7	SS-A	10.46	6.04	16.5	20.8		196
FPCL-165V	SS-A	10.46	6.04	16.5	20.8		196
FCL-16V	SS-A	10.46	6.04	16.5	20.8		158
FPC-203V3-1	SS-A	13.30	6.97	20.3	25.3		205
FPC-203V3-8	SS-A	13.30	6.97	20.3	25.3		205
FCL-20V	SS-A	13.30	7.04	20.3	25.6		154
FS-20V	SS-A	13.30	7.04	20.3	25.6		154
FPCL-203V	SS-A	13.30	7.04	20.3	25.6		205
FPS-203V	SS-A	13.30	7.04	20.3	25.6		205
FPCL-203V-8	SS-A	13.30	7.04	20.3	25.6		205
FPS-203V-8	SS-A	13.30	7.04	20.3	25.6		205
FPCL-203V3	SS-A	13.30	6.97	20.3	25.8		205
FPCL-203V3-8	SS-A	13.30	6.97	20.3	25.8		205
FCL-20V3	SS-A	13.30	6.97	20.3	25.8		159
FCL-22V	SS-A	13.94	8.10	22.0	30.8		158
FPCL-220V	SS-A	13.94	8.10	22.0	30.8		183
FPCL-220V-8	SS-A	13.94	8.10	22.0	30.8		183

Freezer

F-128U	UF-M			12.9	13.2		90
UF-128	UF-M			12.9	13.2		90
FP-156U	UF-A			15.6	17.1		134
UFP-156	UF-A			15.6	17.1		143
UFP-157	UF-A			15.7	18.2		142
F-160U	UF-M			16.0	19.5		106
UF-160	UF-M			16.0	19.5		106
FP-174U	UF-A			17.4	17.1		153
UFP-174	UF-A			17.4	17.1		159
UFP-187	UF-A			18.7	22.7		149
F-191U	UF-M			19.2	22.9		101
UF-191	UF-M			19.2	22.9		101
F-211U	UF-M			21.1	23.8		106
UF-211	UF-M			21.1	23.8		106
F-053C	CF-M			5.3			58
CF-053	CF-M			5.3			58
F-083C	CF-M			8.3			73
CF-083	CF-M			8.3			73
CF-101	CF-M			10.1			75
F-101C	CF-M			10.1			75
F-153C	CF-M			15.3			104
CF-153	CF-M			15.3			104
F-203C	CF-M			20.3			118
CF-203	CF-M			20.3			118
F-253C	CF-M			25.3			134
CF-253	CF-M			25.3			134

GENERAL ELECTRIC

General Electric Co.
Appliance Park
Louisville, Kentucky 40225

Refrigerator

TA10DR	SD-M	8.44	1.05	9.5	13.9		46
TA12SR	SD-M	9.66	1.83	11.5	16.3		49
TB12SR	TF-P	9.15	2.60	11.8	16.0		95
TB14SS	TF-P	9.81	3.79	13.6	19.5		109

*See explanation and definitions in front of directory.

†Maximum and minimum energy consumption in kWh/month are given for models with an anti-sweat heater switch; single values are given for models without anti-sweat heater switch.

Δ Correction of previous listing.

Model	Type and Defrost System*	Refrigerated Volume*			Shelf Area	Energy Consumption
		Fresh Food Cu.Ft.	Freezer Cu.Ft.	Total Cu.Ft.		

(GENERAL ELECTRIC continued)

TBF14SR	TF-A	9.63	4.58	14.2	17.8	134
TBF14DR	TF-A	9.63	4.58	14.2	21.2	114 134
TBF16VR	TF-A	11.28	4.30	15.6	19.6	129 149
TBF16AR	TF-A	11.28	4.30	15.6	20.3	129 149
TBF16SR	TF-A	11.28	4.30	15.6	21.5	129 149
TBF16DR	TF-A	11.28	4.30	15.6	24.4	129 149
TBF18ER	TF-A	12.92	4.65	17.6	15.3	145 165
TBF18VR	TF-A	12.92	4.65	17.6	24.0	145 165
TBF18DR	TF-A	12.92	4.65	17.6	26.7	145 165
TBF21RR	TF-A	13.81	6.82	20.6	27.2	148 168
TBF21KR	TF-A	13.79	6.96	20.8	28.9	132 152
TBF21CR	TF-A	13.81	6.94	20.8	29.3	132 152
TBF21DR	TF-A	13.79	6.96	20.8	30.0	132 152
TFF18ES	SS-A	11.90	6.46	18.4	20.0	128 144
TFF19VS	SS-A	12.29	6.46	18.8	20.6	128 144
TFF19DS	SS-A	12.29	6.46	18.8	22.8	128 144
TFF22RS	SS-A	14.92	6.63	21.6	25.5	156 172
TFF22KS	SS-A	14.98	6.80	21.8	25.8	132 148
TFF22DS	SS-A	14.98	6.80	21.8	25.9	132 148
TFF24RS	SS-A	14.92	8.58	23.5	27.6	161 177
TFF24DS	SS-A	14.98	8.77	23.8	27.8	137 153

Freezer

CA10DS	UF-M		10.1	11.1	107	
CA12CS	UF-M		11.6	11.6	99	
CA15DS	UF-M		14.8	15.1	115	
CA15ES	UF-M		14.8	15.1	115	
ΔCAF16CS	UF-A		15.8	18.0	180	
CAF16CR	UF-A		15.8	18.0	180	
CAF19CS	UF-A		18.7	22.7	149	
CA19DS	UF-M		19.2	22.9	101	
CA21DS	UF-M		21.1	23.8	106	
CB8DR	CF-M		8.3		73	
CB13DR	CF-M		14.8		105	
CB13DS	CF-M		15.3		104	
CB20DR	CF-M		20.3		118	
CB23DR	CF-M		25.3		134	

GIBSON

Gibson Appliance Corporation
Gibson Appliance Center
Greenville, Michigan 48838

Refrigerator

**ΔRM15C7	SD-P	14.52	.68	15.2	20.7	115
RS-364R	TF-A	10.28	3.73	14.0	20.1	140
RT17F3	TF-A	12.40	4.60	17.0	22.3	136
RT17F4	TF-A	12.40	4.60	17.0	23.2	136
RT17F5	TF-A	12.40	4.60	17.0	23.2	136
RT17F7	TF-A	12.40	4.60	17.0	25.6	136
RT19F3	TF-A	13.65	5.35	19.0	23.5	146
RT19F5	TF-A	13.65	5.35	19.0	24.3	146
RT19F7	TF-A	13.65	5.35	19.0	26.9	146
RT21F5	TF-A	14.20	6.80	21.0	29.9	147
RT21F7	TF-A	14.20	6.80	21.0	31.6	147
RS19F7	SS-A	12.24	6.31	18.6	22.2	205
RS22F7	SS-A	14.72	7.34	22.1	27.6	182 211
RS24F7	SS-A	14.72	9.30	24.0	29.7	190 221

Freezer

FV14M3WEAA	UF-M		14.4	14.8	85	
FV14M3AEAA	UF-M		14.4	14.8	85	
FV14M3CEAA	UF-M		14.4	14.8	85	
FV14M3HEAA	UF-M		14.4	14.8	85	
FV14M2WEAA	UF-M		14.4	14.8	85	
FV14M2AEAA	UF-M		14.4	14.8	85	
FV14M2CEAA	UF-M		14.4	14.8	85	
FV14M2HEAA	UF-M		14.4	14.8	85	
FV14M2WEAB	UF-M		14.4	14.8	85	
FV14M2AEAB	UF-M		14.4	14.8	85	
FV14M2CEAB	UF-M		14.4	14.8	85	
FV14M2HEAB	UF-M		14.4	14.8	85	
FV14M3WEAB	UF-M		14.4	14.8	85	

Model	Type and Defrost System*	Refrigerated Volume*			Shelf Area	Energy Consumption
		Fresh Food Cu.Ft.	Freezer Cu.Ft.	Total Cu.Ft.		

FV14M3AEAB	UF-M		14.4	14.8	85	
FV14M3CEAB	UF-M		14.4	14.8	85	
FV14M3HEAB	UF-M		14.4	14.8	85	
FV16F6WEFA	UF-M		15.7	18.6	142	
FV16F6WEFB	UF-A		15.7	18.6	142	
FV16F6AEFA	UF-A		15.7	18.6	142	
FV16F6AEFB	UF-A		15.7	18.6	142	
FV16F6HEFA	UF-A		15.7	18.6	142	
FV16F6HEFB	UF-A		15.7	18.6	142	
FV16M6WEFA	UF-M		16.0	18.9	106	
FV16M6WEFB	UF-M		16.0	18.9	106	
FV16M6AEFA	UF-M		16.0	18.9	106	
FV16M6AEFB	UF-M		16.0	18.9	106	
FV16M6HEFA	UF-M		16.0	18.9	106	
FV16M6HEFB	UF-M		16.0	18.9	106	
FV16M6WEFC	UF-M		16.0	18.9	106	
FV16M6WEFD	UF-M		16.0	18.9	106	
FV16M6AEFC	UF-M		16.0	18.9	106	
FV16M6AEFD	UF-M		16.0	18.9	106	
FV16M6HEFC	UF-M		16.0	18.9	106	
FV16M6HEFD	UF-M		16.0	18.9	106	
FV16M3WEAA	UF-M		16.3	18.2	94	
FV16M3AEAA	UF-M		16.3	18.2	94	
FV16M3HEAA	UF-M		16.3	18.2	94	
FV16M3WEAB	UF-M		17.6	18.2	94	
FV16M3AEAB	UF-M		17.6	18.2	94	
FV16M3HEAB	UF-M		17.6	18.2	94	
FV18M6WEAB	UF-M		18.3	17.5	98	
FV18M6CEAB	UF-M		18.3	17.5	98	
FV18M6HEAB	UF-M		18.3	17.5	98	
FV18M6WEAA	UF-M		18.3	17.5	98	
FV18M6AEAA	UF-M		18.3	17.5	98	
FV18M6CEAA	UF-M		18.3	17.5	98	
FV18M6HEAA	UF-M		18.3	17.5	98	
FV18M2WEAA	UF-M		18.3	18.2	98	
FV18M2AEAA	UF-M		18.3	18.2	98	
FV18M2CEAA	UF-M		18.3	18.2	98	
FV18M2HEAA	UF-M		18.3	18.2	98	
FV18M2WEAB	UF-M		18.3	18.2	98	
FV18M2AEAB	UF-M		18.3	18.2	98	
FV18M2CEAB	UF-M		18.3	18.2	98	
FV18M2HEAB	UF-M		18.3	18.2	98	
FV19F6WEFA	UF-A		18.7	22.7	149	
FV19F6WEFB	UF-A		18.7	22.7	149	
FV21M6WEFC	UF-M		21.1	23.8	106	
FV21M6WEFD	UF-M		21.1	23.8	106	
FV21M6WEFA	UF-M		21.1	23.8	106	
FV21M6WEFB	UF-M		21.1	23.8	106	
FV21M2WEFC	UF-M		21.2	21.6	106	
FV21M2WEFD	UF-M		21.2	21.6	106	
FV21M2WEFA	UF-M		21.2	21.6	106	
FV21M2WEFB	UF-M		21.2	21.6	106	
FV30F6WFHA	UF-A		30.4	29.1	245	
FV31M6WFHA	UF-M		30.4	30.1	170	
FH05M3AEFA	CF-M		5.3		58	
FH05M3HEFA	CF-M		5.3		58	
FH05M3WEFC	CF-M		5.3		58	
FH05M3AEFC	CF-M		5.3		58	
FH05M3WEFA	CF-M		5.3		58	
FH05M3WEFE	CF-M		5.3		58	
FH05M3AEFE	CF-M		5.3		58	
FH05M3HEFE	CF-M		5.3		58	
FH05M3WEFF	CF-M		5.3		58	
FH05M3AEFF	CF-M		5.3		58	
FH05M3HEFF	CF-M		5.3		58	
FH05M3WEFD	CF-M		5.3		58	
FH05M3AEFD	CF-M		5.3		58	

*See explanation and definitions in front of directory.

†Maximum and minimum energy consumption in kWh/month are given for models with an anti-sweat heater switch; single values are given for models without anti-sweat heater switch.

ΔCorrection of previous listing.

**This model is not included in the range chart since it is the only single door partial automatic defrost unit built.

Model	Type and Defrost System*	Refrigerated Volume*			Shelf Area Sq.Ft.	Energy Consumption kWh/month
		Fresh Food	Freezer	Total		
		Cu.Ft.	Cu.Ft.	Cu.Ft.		
(GIBSON continued)						
FH05M3HEFD	CF-M		5.3		58	
FH05M3HEFC	CF-M		8.3		58	
FH08M3WEFC	CF-M		8.3		73	
FH08M3AEFC	CF-M		8.3		73	
FH08M3HEFC	CF-M		8.3		73	
FH08M3WEFA	CF-M		8.3		73	
FH08M3AEFA	CF-M		8.3		73	
FH08M3HEFA	CF-M		8.3		73	
FH08M3WEFE	CF-M		8.3		73	
FH08M3AEFE	CF-M		8.3		73	
FH08M3HEFE	CF-M		8.3		73	
FH08M3WEFF	CF-M		8.3		73	
FH08M3AEFF	CF-M		8.3		73	
FH08M3HEFF	CF-M		8.3		73	
FH08M3WEFD	CF-M		8.3		73	
FH08M3AEFD	CF-M		8.3		73	
FH08M3HEFD	CF-M		8.3		73	
FH10M4AEFA	CF-M		10.1		75	
FH10M4HEFA	CF-M		10.1		75	
FH10M4WEFA	CF-M		10.1		75	
FH10M4WEFC	CF-M		10.1		75	
FH10M4AEFC	CF-M		10.1		75	
FH10M4HEFC	CF-M		10.1		75	
FH10M4WEFE	CF-M		10.1		75	
FH10M4AEFE	CF-M		10.1		75	
FH10M4HEFE	CF-M		10.1		75	
FH10M4WEFF	CF-M		10.1		75	
FH10M4AEFF	CF-M		10.1		75	
FH10M4HEFF	CF-M		10.1		75	
FH10M4WEFD	CF-M		10.1		75	
FH10M4AEFD	CF-M		10.1		75	
FH10M4HEFD	CF-M		10.1		75	
FH15M3WEFA	CF-M		15.3		104	
FH15M3WEFB	CF-M		15.3		104	
FH15M6WEFA	CF-M		15.3		104	
FH15M6WEFB	CF-M		15.3		104	
FH15M6AEFA	CF-M		15.3		104	
FH15M6AEFB	CF-M		15.3		104	
FH15M6HEFA	CF-M		15.3		104	
FH15M6HEFB	CF-M		15.3		104	
FH15M3WFAA	CF-M		15.3		104	
FH15M6WFAA	CF-M		15.3		104	
FH15M6WFAA	CF-M		15.3		104	
FH15M6FAAA	CF-M		15.3		104	
FH20M6WEFA	CF-M		20.3		118	
FH20M6WEFB	CF-M		20.3		118	
FH20M2WEFA	CF-M		20.3		118	
FH20M2WEFB	CF-M		20.3		118	
FH20M6WEFC	CF-M		20.3		118	
FH20M2WEFC	CF-M		20.3		118	
FH20M6WFAA	CF-M		20.3		118	
FH25M6WEFA	CF-M		25.3		134	
FH25M6WEFB	CF-M		25.3		134	
FH25M6WFAA	CF-M		25.3		134	

HOLIDAY

Lowe's Companies, Inc.
Box 111
North Wilkesboro, North Carolina 28659

Freezer

#VF10	UF-M	10.4	11.6	108
#ΔVNF17	UF-A	16.8	15.8	170
#VF17	UF-M	16.9	16.7	140
#VF21	UF-M	21.1	22.8	153
#C6	CF-M	6.1		68
#C10	CF-M	9.9		81
#C15	CF-M	14.8		100
#C20	CF-M	20.1		117
#C25	CF-M	24.7		133

*See explanation and definitions in front of directory.

†Maximum and minimum energy consumption in kWh/month are given for models with an anti-sweat heater switch; single values are given for models without anti-sweat heater switch.

Voluntary change of previously certified data.

Δ Correction of previous listing.

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Model	Type and Defrost System*	Refrigerated Volume*			Shelf Area Sq.Ft.	Energy Consumption kWh/month
		Fresh Food Cu.Ft.	Freezer Total Cu.Ft.	Freezer Total Cu.Ft.		
		Fresh Food Cu.Ft.	Freezer Total Cu.Ft.	Freezer Total Cu.Ft.		
HOTPOINT						
Hotpoint Div. of General Electric Co. 5600 West Taylor Street Chicago, Illinois 60644						
Refrigerator						
SSD10CR	SD-M	8.44	1.05	9.5	13.9	46
SSD12CR	SD-M	10.41	1.44	11.9	15.0	56
CTA12CR	TF-P	9.13	2.46	11.6	13.7	85
CTA14CR	TF-P	9.76	3.85	13.6	19.1	109
CTF14CR	TF-A	9.60	4.58	14.2	18.0	134
CTF15DR	TF-A	10.70	4.39	15.1	20.4	129
CTF16FR	TF-A	11.26	4.32	15.6	23.2	129
CTF16CR	TF-A	11.26	4.39	15.7	22.2	129
CTF16ER	TF-A	11.26	4.39	15.7	23.2	129
CTF18CR	TF-A	12.91	4.78	17.7	24.6	145
CTF18ER	TF-A	12.91	4.78	17.7	25.5	145
CTF21CR	TF-A	13.76	6.92	20.7	32.0	132
CTF21ER	TF-A	13.85	6.94	20.8	31.4	132
CSF19DR	SS-A	12.29	6.54	18.8	21.5	128
CSF19ER	SS-A	12.29	6.67	19.0	23.7	128
CSF22KR	SS-A	14.88	6.91	21.8	25.9	157
CSF22ER	SS-A	14.97	6.91	21.9	26.2	151
CSF24KR	SS-A	14.88	8.88	23.8	28.0	162

Freezer						
FV10AS	UF-M		10.1	11.1	107	
FV12CS	UF-M		11.6	11.7	107	
FV15AS	UF-M		14.8	15.1	115	
FV15CS	UF-M		14.8	15.1	115	
FVF16CR	UF-A		15.8	18.0	180	
FVF16CS	UF-A		15.8	18.0	180	
FVF19CS	UF-A		18.7	22.7	149	
FV19CS	UF-M		19.2	22.9	101	
FV21CS	UF-M		21.1	23.8	106	
FH8CR	CF-M		8.3		73	
FH15CR	CF-M		14.8		105	
FH15CS	CF-M		15.3		104	
FH20CR	CF-M		20.3		118	
FH25CR	CF-M		25.3		134	

HOOVER

The Hoover Company
North Canton, Ohio

Refrigerator

R-3075	SD-M	2.61	.26	2.9	5.6	51
R-3011	SD-M	3.95	.43	4.4	8.2	44

IGNIS

Ignis U.S.A. Corp.
1700 Broadway
New York, N.Y. 10019

Refrigerator

Δ140AP	SD-M	4.14	.35	4.5	7.0	51
Δ140EP	SD-M	4.31	.45	4.8	7.4	68

Freezer

CV129	UF-M		4.5	6.2	62	
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IMPERIAL

Recvo, Inc.
1100 Memorial Drive
West Columbia, South Carolina 29169

Freezer

#VF10	UF-M	10.4	11.6	108
#ΔVNF17	UF-A	16.8	15.8	170
#VF17	UF-M	16.9	16.7	140
#VF21	UF-M	21.1	22.8	153
#C6	CF-M	6.1		68

Model	Type and Defrost System*	Refrigerated Volume*			Shelf Area Sq.Ft.	Energy Consumption kWh/month
		Fresh Food	Freezer	Total		
		Cu.Ft.	Cu.Ft.	Cu.Ft.		
(IMPERIAL continued)						
#C10	CF-M		9.9		81	
#C15	CF-M		14.8		100	
#C20	CF-M		20.1		117	
#C25	CF-M		24.7		133	
KELVINATOR						
Kelvinator Appliance Co.						
4248 Kalamazoo Ave. S.E.						
Grand Rapids, Michigan 49509						
Refrigerator						
TPX1401N	TF-A	10.28	3.73	14.0	20.1	140
TSK170KN	TF-A	12.40	4.60	17.0	23.2	136
TDK170KN	TF-A	12.40	4.60	17.0	23.9	136
TCK170KN	TF-A	12.40	4.60	17.0	26.0	136
TSK190KN	TF-A	13.65	5.35	19.0	24.5	146
TDK190KN	TF-A	13.65	5.35	19.0	26.8	146
TCK190KN	TF-A	13.65	5.35	19.0	27.7	146
TDK210KN	TF-A	14.20	6.80	21.0	29.6	147
TCK210KN	TF-A	14.20	6.80	21.0	30.4	147
FCK220KN	SS-A	14.66	7.33	22.0	26.9	182 211
FDK220KN	SS-A	14.70	7.33	22.0	27.2	182 211
FDK240KN	SS-A	14.66	9.34	24.0	29.2	190 221
Freezer						
UDM144KA0	UF-M		14.4	14.8	85	
UDM144KC0	UF-M		14.4	14.8	85	
UDM144KH0	UF-M		14.4	14.8	85	
UDM144KW0	UF-M		14.4	14.8	85	
USM144KA0	UF-M		14.4	14.8	85	
USM144KC0	UF-M		14.4	14.8	85	
USM144KH0	UF-M		14.4	14.8	85	
USM144KW0	UF-M		14.4	14.8	85	
UCM144KA1	UF-M		14.4	14.8	85	
UCM144KC1	UF-M		14.4	14.8	85	
UCM144KH1	UF-M		14.4	14.8	85	
UCM144KW0	UF-M		14.4	14.8	85	
UCM144KA0	UF-M		14.4	14.8	85	
UCM144KC0	UF-M		14.4	14.8	85	
UCM144KH0	UF-M		14.4	14.8	85	
UDM144KA1	UF-M		14.4	14.8	85	
UDM144KC1	UF-M		14.4	14.8	85	
UDM144KH1	UF-M		14.4	14.8	85	
USM144KA1	UF-M		14.4	14.8	85	
USM144KC1	UF-M		14.4	14.8	85	
USM144KH1	UF-M		14.4	14.8	85	
UCN157K-W	UF-A		15.7	18.2	142	
UCN157K-1W	UF-A		15.7	18.2	142	
UCN157K-A	UF-A		15.7	18.2	142	
UCN157K-1A	UF-A		15.7	18.2	142	
UCN157K-H	UF-A		15.7	18.2	142	
UCN157K-1H	UF-A		15.7	18.2	142	
UDM182KW0	UF-M		18.3	18.2	98	
UCM182KW1	UF-M		18.3	18.2	98	
UCM182KA1	UF-M		18.3	18.2	98	
UCM182KC1	UF-M		18.3	18.2	98	
UCM182KH1	UF-M		18.3	18.2	98	
JDM182KW1	UF-M		18.3	18.2	98	
UDM182KA1	UF-M		18.3	18.2	98	
UDM182KC1	UF-M		18.3	18.2	98	
UDM182KH1	UF-M		18.3	18.2	98	
UCM182KA0	UF-M		18.3	18.2	98	
UCM182KC0	UF-M		18.3	18.2	98	
UCM182KH0	UF-M		18.3	18.2	98	
UDM182KW0	UF-M		18.3	18.2	98	
UDM182KA0	UF-M		18.3	18.2	98	
UDM182KC0	UF-M		18.3	18.2	98	
UDM182KH0	UF-M		18.3	18.2	98	
UCN187K	UF-A		18.7	22.7	149	
Model						
UCN187K-1	UF-A		18.7	22.7	149	
UCM211K	UF-M		21.1	23.8	106	
UCM211K-1	UF-M		21.1	23.8	106	
UCM211K-2	UF-M		21.1	23.8	106	
UCM211K-3	UF-M		21.1	23.8	106	
CSM53K	CF-M		5.3		58	
CSM53K-1	CF-M		5.3		58	
CSM53K-2	CF-M		5.3		58	
CSM53K-3	CF-M		5.3		58	
CSM53K-4	CF-M		5.3		58	
CDM83K	CF-M		8.3		73	
CDM83K-1	CF-M		8.3		73	
CDM83K-2	CF-M		8.3		73	
CDM83K-3	CF-M		8.3		73	
CDM83K-4	CF-M		8.3		73	
CCM101K	CF-M		10.1		75	
CCM101K-1	CF-M		10.1		75	
CCM101K-3	CF-M		10.1		75	
CCM101K-4	CF-M		10.1		75	
FCI01G-7	CF-M		10.1		75	
CCM101K-2	CF-M		10.1		75	
HDM153K-2	CF-M		15.3		104	
HDM153K-3	CF-M		15.3		104	
HDM153K	CF-M		15.3		104	
HDM153K-1	CF-M		15.3		104	
HSM153K	CF-M		15.3		104	
HSM153K-1	CF-M		15.3		104	
HDM153K-5	CF-M		15.3		104	
HDM153K-4	CF-M		15.3		104	
HSM153K.GWO	CF-M		15.3		104	
HDM153K.GWO	CF-M		15.3		104	
HCM203K	CF-M		20.3		118	
HCM203K-1	CF-M		20.3		118	
HCM203K-2	CF-M		20.3		118	
HCM203K.GWO	CF-M		20.3		118	
HCM253K	CF-M		25.3		134	
HCM253K-1	CF-M		25.3		134	
HCM253K.GWO	CF-M		25.3		134	
MARQUETTE						
Marquette Corporation						
199 Walnut Street						
Hudson, Wisconsin 54016						
Refrigerator						
175F-1	TF-A	12.40	4.60	17.0	25.3	136
195F-1	TF-A	13.65	5.35	19.0	26.8	146
245FS-1	SS-A	14.56	9.48	24.0	29.2	190 221
Freezer						
133V	UF-M		12.9	13.2	90	
163VF	UF-A		15.7	18.6	142	
163V	UF-M		16.0	16.5	106	
163V-1	UF-M		16.1	16.5	106	
193VF	UF-A		18.7	22.7	149	
193V	UF-M		19.2	17.6	101	
213V	UF-M		21.1	24.8	106	
053H	CF-M		5.3		58	
W053H	CF-M		5.3		58	
W083H	CF-M		8.3		73	
083H	CF-M		8.3		73	
153H-1	CF-M		15.3		104	
153H	CF-M		15.3		104	
203H-1	CF-M		20.3		118	
203H	CF-M		20.3		118	
253H	CF-M		25.3		134	
NATIONAL						
Revco, Inc.						
1100 Memorial Drive						
West Columbia, South Carolina 29169						
Freezer						
#VF10	UF-M		10.4	11.6	108	

*See explanation and definitions in front of directory.

†Maximum and minimum energy consumption in kWh/month are given for models with an anti-sweat heater switch; single values are given for models without anti-sweat heater switch.

#Voluntary change of previously certified data.

Model	Type and Defrost System*	Refrigerated Volume*			Shelf Area Sq.Ft.	Energy Consumption kWh/mo†
		Fresh Food Freezer Total				
		Cu.Ft.	Cu.Ft.	Cu.Ft.		
(NATIONAL continued)						
#AVNF17	UF-A		16.8	15.8		170
#VF17	UF-M		16.9	16.7		140
#VF21	UF-M		21.1	22.8		153
#C6	CF-M		6.1			68
#C10	CF-M		9.9			81
#C15	CF-M		14.8			100
#C20	CF-M		20.1			117
#C25	CF-M		24.7			133

O'KEEFE & MERRITT

The Tappan Company
250 Wayne Street
Mansfield, Ohio 44902

Refrigerator

95-1204-00	SD-M	10.51	1.69	12.2	16.2	59
95-1204-17	SD-M	10.51	1.69	12.2	16.2	59
95-1204-26	SD-M	10.51	1.69	12.2	16.2	59
95-1214-00	SD-M	10.51	1.69	12.2	16.2	59
95-1214-17	SD-M	10.51	1.69	12.2	16.2	59
95-1214-26	SD-M	10.51	1.69	12.2	16.2	59
95-1424-00	TF-P	10.56	3.76	14.3	17.2	120
95-1424-17	TF-P	10.56	3.76	14.3	17.2	120
95-1424-26	TF-P	10.56	3.76	14.3	17.2	120
95-1434-00	TF-P	10.56	3.76	14.3	17.2	120
95-1434-17	TF-P	10.56	3.76	14.3	17.2	120
95-1434-26	TF-P	10.56	3.76	14.3	17.2	120
95-1544-00	TF-A	11.34	3.67	15.0	20.5	162
95-1544-05	TF-A	11.34	3.67	15.0	20.5	162
95-1544-17	TF-A	11.34	3.67	15.0	20.5	162
95-1544-26	TF-A	11.34	3.67	15.0	20.5	162
95-1844-00	TF-A	13.18	4.70	17.9	26.5	173
95-1844-05	TF-A	13.18	4.70	17.9	26.5	173
95-1844-17	TF-A	13.18	4.70	17.9	26.5	173
95-1844-26	TF-A	13.18	4.70	17.9	26.5	173
95-1864-00	TF-A	13.26	4.70	18.0	27.0	173
95-1864-05	TF-A	13.26	4.70	18.0	27.0	173
95-1864-17	TF-A	13.26	4.70	18.0	27.0	173
95-1864-26	TF-A	13.26	4.70	18.0	27.0	173
95-2164-00	TF-A	14.84	6.60	21.4	31.9	165
95-2164-05	TF-A	14.84	6.60	21.4	31.9	165
95-2164-17	TF-A	14.84	6.60	21.4	31.9	165
95-2164-26	TF-A	14.84	6.60	21.4	31.9	165
95-2084-00	SS-A	13.51	6.67	20.2	26.0	165
95-2084-05	SS-A	13.51	6.67	20.2	26.0	165
95-2084-17	SS-A	13.51	6.67	20.2	26.0	165
95-2084-26	SS-A	13.51	6.67	20.2	26.0	165
95-2284-05	SS-A	15.16	6.67	21.8	30.2	180
95-2284-00	SS-A	15.16	6.67	21.8	30.2	180
95-2284-17	SS-A	15.16	6.67	21.8	30.2	180
95-2284-26	SS-A	15.16	6.67	21.8	30.2	180
95-2494-00	SS-A	15.15	8.51	23.7	31.7	191
95-2494-05	SS-A	15.15	8.51	23.7	31.7	191
95-2494-17	SS-A	15.15	8.51	23.7	31.7	191
95-2494-26	SS-A	15.15	8.51	23.7	31.7	191
95-2484-00	SS-A	15.15	8.66	23.8	32.0	191
95-2484-05	SS-A	15.15	8.66	23.8	32.0	191
95-2484-17	SS-A	15.15	8.66	23.8	32.0	191
95-2484-26	SS-A	15.15	8.66	23.8	32.0	191

J. C. PENNEY

J. C. Penney Company
1301 Avenue of the Americas
New York, N.Y. 10019

Refrigerator

867-3102-50-122	SD-M		1.7	1.9	31	
Δ 867-3105	SD-M	4.04	3.5	4.4	7.1	51
867-3110	SD-M	8.44	1.05	9.5	13.9	46
867-0012	TF-P	9.18	2.42	11.6	14.6	85
867-0114	TF-A	9.34	4.51	13.9	17.9	134
867-0314	TF-A	9.34	4.51	13.9	20.5	114 134

Model	Type and Defrost System*	Refrigerated Volume*			Shelf Area	Energy Consumption kWh/month
		Fresh Food Cu.Ft.	Freezer Total Cu.Ft.	Cu.Ft.		
867-0116	TF-A	11.16	4.39	15.6	20.6	129 149
867-0316	TF-A	11.16	4.39	15.6	23.4	129 149
867-0018	TF-A	12.88	4.74	17.6	23.3	145 165
867-0318	TF-A	12.88	4.74	17.6	25.0	145 165
867-0219-50	TF-A	13.65	5.35	19.0	26.0	146
867-0120	TF-A	13.05	6.91	20.0	23.9	132 152
867-0320	TF-A	13.05	6.91	20.0	30.2	132 152
867-0319	SS-A	12.23	6.27	18.5	23.1	128 144
867-0119	SS-A	12.28	6.27	18.6	23.0	128 144
867-0621	SS-A	14.60	6.51	21.1	25.9	157 173
867-0322-50	SS-A	14.56	7.44	22.0	27.0	182 211

Freezer

867-6605	UF-M		4.5	6.2	62	
867-1613-50-011	UF-M		12.9	13.2	90	
867-1715-50-011	UF-A		15.7	18.2	142	
867-1715-51-011	UF-A		15.7	18.2	142	
867-1715-50-211	UF-M		15.7	18.2	142	
867-1715-51-211	UF-M		15.7	18.2	142	
867-1715-50-311	UF-A		15.7	18.2	142	
867-1715-51-311	UF-M		15.7	18.2	142	
867-1716	UF-A		15.8	18.0	180	
867-1616-52-011	UF-M		16.0	18.9	106	
867-1616-53-011	UF-M		16.0	18.9	106	
867-1616-52-211	UF-M		16.0	18.9	106	
867-1616-53-211	UF-M		16.0	18.9	106	
867-1616-52-311	UF-M		16.0	18.9	106	
867-1616-50-011	UF-M		16.0	18.9	106	
867-1616-51-011	UF-M		16.0	18.9	106	
867-1616-50-211	UF-M		16.0	18.9	106	
867-1616-53-211	UF-M		16.0	18.9	106	
867-1616-50-311	UF-M		16.0	18.9	106	
867-1616-51-311	UF-M		16.0	18.9	106	
867-1616-52-011	UF-M		16.0	18.9	106	
867-1516-53-011	UF-M		16.1	16.5	106	
867-1516-50-011	UF-M		16.1	16.5	106	
867-1516-51-011	UF-M		16.1	16.5	106	
867-1718-50-011	UF-A		18.7	22.7	149	
867-1718-51-011	UF-A		18.7	22.7	149	
867-1718-50-211	UF-A		18.7	22.7	149	
867-1718-51-211	UF-A		18.7	22.7	149	
867-1718-50-311	UF-M		18.7	22.7	149	
867-1718-51-311	UF-M		18.7	22.7	149	
867-1619-52-011	UF-M		19.2	19.7	101	
867-1619-53-011	UF-M		19.2	19.7	101	
867-1619-50-011	UF-M		19.2	19.7	101	
867-1619-51-011	UF-M		19.2	19.7	101	
867-1621-52-011	UF-M		21.1	23.8	106	
867-1621-53-011	UF-M		21.1	23.8	106	
867-1621-50-011	UF-M		21.1	23.8	106	
867-1621-51-011	UF-M		21.1	23.8	106	
867-1731-50-010	UF-M		31.1	30.1	170	
867-6805-51-011	CF-M		5.3		58	
867-6805-50-011	CF-M		5.3		58	
867-6805-52-011	CF-M		5.3		58	
#867-6806	CF-M		6.1		68	
867-6808-50-000	CF-M		8.3		73	
867-6808-51-000	CF-M		8.3		73	
867-6808-52-000	CF-M		8.3		73	
#867-1915	CF-M		14.8		100	
867-1815-50-011	CF-M		15.3		104	
867-1815-51-011	CF-M		15.3		104	
#867-3020	CF-M		20.1		117	
867-1821-51-011	CF-M		20.3		118	
867-1820-50-011	CF-M		20.3		118	
867-1820-51-011	CF-M		20.3		118	
867-1820-50-211	CF-M		20.3		118	
867-1820-51-211	CF-M		20.3		118	
867-1820-50-311	CF-M		20.3		118	
867-1820-51-311	CF-M		20.3		118	
867-1821-50-011	CF-M		20.3		118	

*See explanation and definitions in front of directory.

†Maximum and minimum energy consumption in kWh/month are given for models with an anti-sweat heater switch; single values are given for models without anti-sweat heater switch.

#Voluntary change of previously certified data.

ΔCorrection of previous listing.

Model	Type and Defrost System*	Refrigerated Volume*			Shelf Area Sq.Ft.	Energy Consumption kWh/mo†
		Fresh Food Cu.Ft.	Freezer Cu.Ft.	Total Cu.Ft.		

(J. C. PENNEY continued)

867-1825-50-011	CF-M		25.3			134
867-1825-51-011	CF-M		25.3			134

PHILCO COLD GUARD

Aeronutronic Ford Corp.

Union Meeting Road

Blue Bell, Pennsylvania 19422

Refrigerator

RS14B3	CODE210	SD-M	11.76	1.92	13.7	16.9	44
RD16G6	CODE110	TF-A	11.99	3.62	15.6	18.0	95
RD16G7	CODE110	TF-A	11.99	3.62	15.6	21.9	103
RD16G2	CODE110	TF-P	12.27	3.47	15.7	17.3	54
RD17G8	CODE110	TF-A	12.37	4.65	17.0	25.8	104
RD17G7	CODE110	TF-A	12.40	4.65	17.1	22.6	101
RD19F7	CODE120	TF-A	13.75	5.17	18.9	24.6	116
RD19F8	CODE120	TF-A	13.75	5.17	18.9	27.3	100
RD22F8	CODE120	TF-A	14.91	7.03	21.9	33.6	123
RD22F7	CODE120	TF-A	15.00	7.03	22.0	32.2	121
RT17B6	CODE110	SS-A	10.01	6.57	16.6	18.3	117
RT17B8	CODE120	SS-A	10.01	6.57	16.6	19.9	109
RT19B8	CODE110	SS-A	11.07	7.40	18.5	23.1	111
RT21B8	CODE110	SS-A	13.31	7.40	20.7	26.0	133
RT24F8	CODE110	SS-A	13.69	9.87	23.8	29.1	144

REVCO

Revo, Inc.

1100 Memorial Drive

West Columbia, South Carolina 29169

Freezer

#VF10	UF-M		10.4	11.6	108
#AVNF17	UF-A		16.8	15.8	170
#VF17	UF-M		16.9	16.7	140
#VF21	UF-M		21.1	22.8	153
#C6	CF-M		6.1		68
#C10	CF-M		9.9		81
#C15	CF-M		14.8		100
#C20	CF-M		20.1		117
#C25	CF-M		24.7		133

SIGNATURE

Montgomery Ward & Company

619 West Chicago Avenue

Chicago, Illinois 60607

Refrigerator

ALIC1004	SD-M		4.14	35	4.5	7.0	51
HMG1015-00	SD-M		8.77	1.21	10.0	13.8	59
HMG1235-00	TF-P		9.69	2.53	12.2	15.0	101
HMG1235-10	TF-P		9.69	2.53	12.2	15.0	101
HMG1325-00	TF-A		10.02	2.34	12.4	14.9	156
HMG1325-02	TF-A		10.02	2.34	12.4	14.9	156
HMG1325-03	TF-A		10.02	2.34	12.4	14.9	156
HMG1325-05	TF-A		10.02	2.34	12.4	14.9	156
UFO-1545-00	TF-A		10.44	4.74	15.2	18.1	146
UFO-1555-20	TF-A		10.44	4.74	15.2	22.5	146
UFO-1555-00	TF-A		10.44	4.74	15.2	23.5	146
UFO-1715-20	TF-A		12.28	4.74	17.0	18.0	153
UFO-1715-00	TF-A		12.28	4.74	17.0	18.4	153
UFO-1755-20	TF-A		12.28	4.74	17.0	23.2	153
UFO-1755-00	TF-A		12.28	4.74	17.0	23.6	153
UFO-1755-00	TF-A		12.28	4.74	17.0	24.3	153
UFO-1755-00	TF-A		12.28	4.74	17.0	24.7	153
HMG2135-00	TF-A		14.80	6.60	21.4	31.3	165
HMG2135-03	TF-A		14.80	6.60	21.4	31.3	165
HMG2135-05	TF-A		14.80	6.60	21.4	31.3	165
HMG2135-20	TF-A		14.80	6.60	21.4	31.3	165
HMG2135-23	TF-A		14.80	6.60	21.4	31.3	165
HMG2135-25	TF-A		14.80	6.60	21.4	31.3	165
HMG2135-22	TF-A		14.80	6.60	21.4	31.3	165

Model	Type and Defrost System*	Refrigerated Volume*			Shelf Area Sq.Ft.	Energy Consumption kWh/mo†
		Fresh Food Cu.Ft.	Freezer Cu.Ft.	Total Cu.Ft.		

HMG2135-02	TF-A	14.80	6.60	21.4	31.3	165
HMG2145-20	TF-A	14.76	6.60	21.4	31.6	165
HMG2145-22	TF-A	14.76	6.60	21.4	31.6	165
HMG2145-23	TF-A	14.76	6.60	21.4	31.6	165
UFO-1625-00D	SS-A	10.46	6.05	16.5	16.9	158
UFO-1625-00	SS-A	10.46	6.05	16.5	16.9	196
UFO-1645-20D	SS-A	10.46	6.04	16.5	19.3	158
UFO-1645-20	SS-A	10.46	6.04	16.5	19.3	196
UFO-1645-00D	SS-A	10.46	6.06	16.5	20.7	158
UFO-1645-00	SS-A	10.46	6.06	16.5	20.7	196
HMG1915-00	SS-A	13.36	6.58	19.9	23.3	165
HMG1915-20	SS-A	13.36	6.58	19.9	23.3	165
HMG2156-00	SS-A	13.51	6.54	20.1	21.9	150
HMG2156-03	SS-A	13.51	6.54	20.1	21.9	150
HMG2156-05	SS-A	13.51	6.54	20.1	21.9	150
HMG2156-02	SS-A	13.51	6.54	20.1	21.9	150
HMG2156-20	SS-A	13.51	6.54	20.1	21.9	150
HMG2156-23	SS-A	13.51	6.54	20.1	21.9	150
HMG2156-25	SS-A	13.51	6.54	20.1	21.9	150
HMG2156-22	SS-A	13.51	6.54	20.1	21.9	150
HMG2176-00	SS-A	13.51	6.58	20.1	25.3	165
HMG2176-03	SS-A	13.51	6.58	20.1	25.3	165
HMG2176-05	SS-A	13.51	6.58	20.1	25.3	165
HMG2176-02	SS-A	13.51	6.58	20.1	25.3	165
HMG2176-20	SS-A	13.51	6.58	20.1	25.3	165
HMG2176-23	SS-A	13.51	6.58	20.1	25.3	165
HMG2176-25	SS-A	13.51	6.58	20.1	25.3	165
HMG2176-22	SS-A	13.51	6.58	20.1	25.3	165
UFO-2175-20	SS-A	13.30	6.99	20.3	24.0	205
UFO-2175-00	SS-A	13.30	6.99	20.3	25.4	205
HMG2285-20	SS-A	15.18	6.56	21.7	27.4	180
HMG2285-23	SS-A	15.18	6.56	21.7	27.4	180
HMG2285-25	SS-A	15.18	6.56	21.7	27.4	180
HMG2285-22	SS-A	15.18	6.56	21.7	27.4	180
HMG2285-21	SS-A	15.18	6.56	21.7	27.4	180
HMG2275-00	SS-A	15.18	6.66	21.8	27.5	180
HMG2275-03	SS-A	15.18	6.66	21.8	27.5	180
HMG2275-05	SS-A	15.18	6.66	21.8	27.5	180
HMG2275-02	SS-A	15.18	6.66	21.8	27.5	180
HMG2275-01	SS-A	15.18	6.66	21.8	27.5	180
HMG2275-20	SS-A	15.18	6.66	21.8	27.5	180
HMG2275-23	SS-A	15.18	6.66	21.8	27.5	180
HMG2275-25	SS-A	15.18	6.66	21.8	27.5	180
HMG2275-22	SS-A	15.18	6.66	21.8	27.5	180
HMG2485-20	SS-A	15.16	8.50	23.7	31.7	191
HMG2485-23	SS-A	15.16	8.50	23.7	31.7	191
HMG2485-25	SS-A	15.16	8.50	23.7	31.7	191
HMG2485-22	SS-A	15.16	8.50	23.7	31.7	191
HMG2485-21	SS-A	15.16	8.50	23.7	31.7	191
HMG2495-00	SS-A	15.16	8.64	23.8	31.4	191
HMG2495-03	SS-A	15.16	8.64	23.8	31.4	191
HMG2495-05	SS-A	15.16	8.64	23.8	31.4	191
HMG2495-02	SS-A	15.16	8.64	23.8	31.4	191
HMG2495-01	SS-A	15.16	8.64	23.8	31.4	191
HMG2495-20	SS-A	15.16	8.64	23.8	31.4	191
HMG2495-23	SS-A	15.16	8.64	23.8	31.4	191
HMG2495-25	SS-A	15.16	8.64	23.8	31.4	191
HMG2895-00	SS-A	17.58	10.29	27.9	37.4	201
HMG2895-03	SS-A	17.58	10.29	27.9	37.4	201
HMG2895-05	SS-A	17.58	10.29	27.9	37.4	201
HMG2895-02	SS-A	17.58	10.29	27.9	37.4	201
HMG2895-20	SS-A	17.58	10.29	27.9	37.4	201
HMG2895-23	SS-A	17.58	10.29	27.9	37.4	201
HMG2895-25	SS-A	17.58	10.29	27.9	37.4	201
HMG2895-22	SS-A	17.58	10.29	27.9	37.4	201
HMG2895-21	SS-A	17.58	10.29	27.9	37.4	201
HMG2895-01	SS-A	17.58	10.29	27.9	37.4	201

Freezer

LIC-4005-06	UF-M		4.5	6.2	62
HMG4025-00	UF-M		10.1	10.4	92

*See explanation and definitions in front of directory.

†Maximum and minimum energy consumption in kWh/month are given for models with an anti-sweat heater switch; single values are given for models without anti-sweat heater switch.

#Voluntary change of previously certified data.

ΔCorrection of previous listing.

Model	Type and Defrost System*	Refrigerated Volume*			Shelf Area Sq.Ft.	Energy Consumption kWh/mo†
		Fresh Food Freezer Total				
		Cu.Ft.	Cu.Ft.	Cu.Ft.		
(SIGNATURE continued)						
HMG4315-00	UF-M		13.3	10.4	127	
HMG4525-00	UF-A		16.0	16.4	162	
HMG4655-00	UF-A		16.0	16.4	162	
HMG4655-03	UF-A		16.0	16.4	162	
HMG4655-05	UF-A		16.0	16.4	162	
HMG4655-02	UF-A		16.0	16.4	162	
HMG4645-02	UF-M		16.0	17.4	135	
HMG4645-03	UF-M		16.0	17.4	135	
HMG4645-05	UF-M		16.0	17.4	135	
HMG4535-00	UF-M		16.1	13.5	135	
HMG4535-00	UF-M		16.1	13.5	135	
HMG4865-00	UF-A		18.2	19.5	187	
HMG4865-03	UF-A		18.2	19.5	187	
HMG4865-05	UF-A		18.2	19.5	187	
HMG4865-02	UF-A		18.2	19.5	187	
FFT-4855-00A	UF-A		18.7	22.7	149	
FFT-4855-00B	UF-A		18.7	22.7	149	
FFT-4855-02A	UF-A		18.7	22.7	149	
FFT-4855-02B	UF-A		18.7	22.7	149	
FFT-4855-03A	UF-A		18.7	22.7	149	
FFT-4855-03B	UF-A		18.7	22.7	149	
FFT-4935-001	UF-M		19.2	19.7	101	
FFT-4935-00K	UF-M		19.2	19.7	101	
FFT-4935-021	UF-M		19.2	19.7	101	
FFT-4935-02K	UF-M		19.2	19.7	101	
FFT-4935-031	UF-M		19.2	19.7	101	
FFT-4935-03K	UF-M		19.2	19.7	101	
FFT-4935-00G	UF-M		19.2	19.7	101	
FFT-4935-00H	UF-M		19.2	19.7	101	
FFT-4935-02G	UF-M		19.2	19.7	101	
FFT-4935-02H	UF-M		19.2	19.7	101	
FFT-4935-03G	UF-M		19.2	19.7	101	
FFT-4935-03H	UF-M		19.2	19.7	101	
FFT-4935-00C	UF-M		19.2	20.8	101	
FFT-4935-00D	UF-M		19.2	20.8	101	
FFT-4935-02C	UF-M		19.2	20.8	101	
FFT-4935-03C	UF-M		19.2	20.8	101	
FFT-4935-03D	UF-M		19.2	20.8	101	
FFT-4935-02D	UF-M		19.2	20.8	101	
FFT-4935-00E	UF-M		19.2	20.8	101	
FFT-4935-00F	UF-M		19.2	20.8	101	
FFT-4935-02E	UF-M		19.2	20.8	101	
FFT-4935-02F	UF-M		19.2	20.8	101	
FFT-4935-03E	UF-M		19.2	20.8	101	
FFT-4935-03F	UF-M		19.2	20.8	101	
FFT-4935-00A	UF-M		19.2	20.8	101	
FFT-4935-00B	UF-M		19.2	20.8	101	
FFT-4935-02A	UF-M		19.2	20.8	101	
FFT-4935-02B	UF-M		19.2	20.8	101	
FFT-4935-03A	UF-M		19.2	20.8	101	
FFT-4935-03B	UF-M		19.2	20.8	101	
HMG4955-00	UF-A		20.1	21.3	182	
HMG4955-03	UF-A		20.1	21.3	182	
HMG4955-05	UF-A		20.1	21.3	182	
HMG4955-02	UF-A		20.1	21.3	182	
FFT-4945-00G	UF-M		21.2	23.8	106	
FFT-4945-00H	UF-M		21.2	23.8	106	
FFT-4945-02G	UF-M		21.2	23.8	106	
FFT-4945-02H	UF-M		21.2	23.8	106	
FFT-4945-03G	UF-M		21.2	23.8	106	
FFT-4945-03H	UF-M		21.2	23.8	106	
FFT-4945-00C	UF-M		21.2	23.8	106	
FFT-4945-00D	UF-M		21.2	23.8	106	
FFT-4945-02C	UF-M		21.2	23.8	106	
FFT-4945-02D	UF-M		21.2	23.8	106	
FFT-4945-03C	UF-M		21.2	23.8	106	
FFT-4945-03D	UF-M		21.2	23.8	106	
FFT-4945-00E	UF-M		21.2	23.8	106	
FFT-4945-00F	UF-M		21.2	23.8	106	
FFT-4945-02E	UF-M		21.2	23.8	106	
FFT-4945-02F	UF-M		21.2	23.8	106	
FFT-4945-03E	UF-M		21.2	23.8	106	

Model	Type and Defrost System*	Refrigerated Volume*				Shelf Area Sq.Ft.	Energy Consumption kWh/mo†
		Fresh Food Cu.Ft.	Freezer Cu.Ft.	Total Cu.Ft.	Freezer Total Cu.Ft.		
FFT-4945-03F	UF-M			21.2	23.8	106	
FFT-4945-00A	UF-M			21.2	23.8	106	
FFT-4945-00B	UF-M			21.2	23.8	106	
FFT-4945-02A	UF-M			21.2	23.8	106	
FFT-4945-02B	UF-M			21.2	23.8	106	
FFT-4945-03A	UF-M			21.2	23.8	106	
FFT-4945-03B	UF-M			21.2	23.8	106	
LRG4995-00A	UF-M			31.1	30.6	170	
FFT-8035-00D	CF-M			5.4		58	
FFT-8035-00E	CF-M			5.4		58	
FFT-8045-06D	CF-M			5.4		58	
FFT-8045-06E	CF-M			5.4		58	
FFT-8035-00C	CF-M			5.4		58	
FFT-8045-06C	CF-M			5.4		58	
FFT-8035-00B	CF-M			5.4		58	
FFT-8035-00A	CF-M			5.4		58	
FFT-8045-06A	CF-M			5.4		58	
FFT-8045-06F	CF-M			5.4		58	
FFT-8085-00A	CF-M			8.4		73	
FFT-8085-02A	CF-M			8.4		73	
FFT-8085-03A	CF-M			8.4		73	
FFT-8075-06B	CF-M			8.4		73	
FFT-8085-00B	CF-M			8.4		73	
FFT-8085-02B	CF-M			8.4		73	
FFT-8085-03B	CF-M			8.4		73	
FFT-8075-06A	CF-M			8.4		73	
FFT-8075-06C	CF-M			8.4		73	
FFT-8085-00C	CF-M			8.4		73	
FFT-8085-02C	CF-M			8.4		73	
FFT-8085-03C	CF-M			8.4		73	
FFT-8095-06B	CF-M			10.3		75	
FFT-8135-00B	CF-M			10.3		75	
FFT-8135-02B	CF-M			10.3		75	
FFT-8135-03B	CF-M			10.3		75	
FFT-8135-00A	CF-M			10.3		75	
FFT-8135-02A	CF-M			10.3		75	
FFT-8135-03A	CF-M			10.3		75	
FFT-8095-06A	CF-M			10.3		75	
FFT-8135-00C	CF-M			10.3		75	
FFT-8135-02C	CF-M			10.3		75	
FFT-8095-06C	CF-M			10.3		75	
HMG8365-00	CF-M			15.5		122	
HMG8525-00	CF-M			15.5		122	
FFT-8515-00A	CF-M			15.6		104	
FFT-8515-00B	CF-M			15.6		104	
FFT-8555-00A	CF-M			15.6		104	
FFT-8555-00B	CF-M			15.6		104	
FFT-8915-00A	CF-M			20.7		118	
FFT-8915-00B	CF-M			20.7		118	
HMG8935-00	CF-M			20.7		135	
FFT-8915-00C	CF-M			20.7		118	
FFT-8955-00A	CF-M			23.0		122	
FFT-8955-00B	CF-M			23.0		122	
FFT-8995-00A	CF-M			26.0		134	
FFT-8995-00B	CF-M			26.0		134	
TAPPAN							
The Tappan Company							
250 Wayne Street							
Mansfield, Ohio 44902							
Refrigerator							
95-1204-00	SD-M	10.51	1.69	12.2	16.2	59	
95-1204-17	SD-M	10.51	1.69	12.2	16.2	59	
95-1204-26	SD-M	10.51	1.69	12.2	16.2	59	
95-1214-00	SD-M	10.51	1.69	12.2	16.2	59	
95-1214-17	SD-M	10.51	1.69	12.2	16.2	59	
95-1214-26	SD-M	10.51	1.69	12.2	16.2	59	
95-1424-00	TF-P	10.56	3.76	14.3	17.2	120	
95-1424-17	TF-P	10.56	3.76	14.3	17.2	120	
95-1424-26	TF-P	10.56	3.76	14.3	17.2	120	
95-1434-00	TF-P	10.56	3.76	14.3	17.2	120	
95-1434-17	TF-P	10.56	3.76	14.3	17.2	120	

*See explanation and definitions in front of directory.

†Maximum and minimum energy consumption in kWh/month are given for models with an anti-sweat heater switch; single values are given for models without anti-sweat heater switch.

Model	Type and Defrost System*	Refrigerated Volume*			Shelf Area Sq.Ft.	Energy Consumption kWh/month
		Fresh Food Cu.Ft.	Freezer Cu.Ft.	Total Cu.Ft.		
(TAPPAN continued)						
95-1434-26	TF-P	10.56	3.76	14.3	17.2	120
95-1544-00	TF-A	11.34	3.67	15.0	20.5	162
95-1544-05	TF-A	11.34	3.67	15.0	20.5	162
95-1544-17	TF-A	11.34	3.67	15.0	20.5	162
95-1544-26	TF-A	11.34	3.67	15.0	20.5	162
95-1844-00	TF-A	13.18	4.70	17.9	26.5	173
95-1844-05	TF-A	13.18	4.70	17.9	26.5	173
95-1844-17	TF-A	13.18	4.70	17.9	26.5	173
95-1844-26	TF-A	13.18	4.70	17.9	26.5	173
95-1864-00	TF-A	13.26	4.70	18.0	27.0	173
95-1864-05	TF-A	13.26	4.70	18.0	27.0	173
95-1864-17	TF-A	13.26	4.70	18.0	27.0	173
95-1864-26	TF-A	13.26	4.70	18.0	27.0	173
95-2164-00	TF-A	14.84	6.60	21.4	31.9	165
95-2164-05	TF-A	14.84	6.60	21.4	31.9	165
95-2164-17	TF-A	14.84	6.60	21.4	31.9	165
95-2164-26	TF-A	14.84	6.60	21.4	31.9	165
95-2084-00	SS-A	13.51	6.67	20.2	26.0	165
95-2084-05	SS-A	13.51	6.67	20.2	26.0	165
95-2084-17	SS-A	13.51	6.67	20.2	26.0	165
95-2084-26	SS-A	13.51	6.67	20.2	26.0	165
95-2284-00	SS-A	15.16	6.67	21.8	30.2	180
95-2284-05	SS-A	15.16	6.67	21.8	30.2	180
95-2284-17	SS-A	15.16	6.67	21.8	30.2	180
95-2284-26	SS-A	15.16	6.67	21.8	30.2	180
95-2494-00	SS-A	15.15	8.51	23.7	31.7	191
95-2494-05	SS-A	15.15	8.51	23.7	31.7	191
95-2494-17	SS-A	15.15	8.51	23.7	31.7	191
95-2494-26	SS-A	15.15	8.51	23.7	31.7	191
95-2484-00	SS-A	15.15	8.66	23.8	32.0	191
95-2484-05	SS-A	15.15	8.66	23.8	32.0	191
95-2484-17	SS-A	15.15	8.66	23.8	32.0	191
95-2484-26	SS-A	15.15	8.66	23.8	32.0	191
UNICO						
Universal Cooperatives, Inc.						
111 Glamorgan						
Alliance, Ohio 44601						
Freezer						
LLV12-1	UF-M		12.9	13.2	90	
UV17F	UF-A		16.8	15.8	170	
UV17	UF-M		16.9	16.7	140	
LLV16	UF-M		16.0	18.9	106	
LLV18F	UF-A		18.7	22.7	149	
UV21	UF-M		21.1	22.8	153	
LLV19	UF-M		19.2	22.9	101	
LLV21	UF-M		21.1	23.8	106	
LV-30-1	UF-M		31.1	30.1	170	
LLH3	CF-M		5.3		58	
LLH8	CF-M		8.3		73	
#UC10	CF-M		9.9		81	
NH10	CF-M		10.1		75	
#UC15	CF-M		14.8		100	
LLH15	CF-M		15.3		104	
#UC20	CF-M		20.1		117	
LLH20	CF-M		20.3		118	
#UC25	CF-M		24.7		133	
LLH25	CF-M		25.3		134	
UNIVERSAL						
Universal Cooperatives, Inc.						
111 Glamorgan						
Alliance, Ohio 44601						
Freezer						
#VF10	UF-M		10.4	11.6	108	
#AVNF17	UF-A		16.8	15.8	170	
#VF17	UF-M		16.9	16.7	140	
#VF21	UF-M		21.1	22.8	153	
#C6	CF-M		6.1		68	
#C10	CF-M		9.9		81	
#C15	CF-M		14.8		100	
#C20	CF-M		20.1		117	
#C25	CF-M		24.7		133	

VAL-TEST

Val Test Distributing Inc.
400 West Madison St.
Chicago, Illinois 60606

Freezer

Type and Defrost System*	Refrigerated Volume*	Shelf Area Sq.Ft.	Energy Consumption kWh/month
VF10	UF-M	10.4	11.6
VNF17	UF-A	16.8	15.8
VF17	UF-M	16.9	16.7
VF21	UF-M	21.1	22.8
C6	CF-M	6.1	68
C10	CF-M	9.9	81
C15	CF-M	14.8	100
C20	CF-M	20.1	117
C25	CF-M	24.7	133

WESTINGHOUSE

Westinghouse Electric Corp.
300 Phillips Road
Columbus, Ohio 43228

Refrigerator

Type and Defrost System*	Refrigerated Volume*	Shelf Area Sq.Ft.	Energy Consumption kWh/month
RC131R	SD-M	10.77	1.74
RT122R	TF-P	9.12	2.87
RT147R	TF-A	10.28	3.73
RT141R	TF-A	10.28	3.73
RT145R	TF-A	10.28	3.73
RT143R	TF-A	10.28	3.73
RT176R	TF-A	12.46	4.64
RT173R	TF-A	12.46	4.65
RT170R	TF-A	12.45	4.65
RT178R	TF-A	12.40	4.66
RT174R	TF-A	12.50	4.66
RT198R	TF-A	13.88	5.35
RT190R	TF-A	13.96	5.35
RT194R	TF-A	13.96	5.35
RS183R	SS-A	9.93	7.58
RS194R	SS-A	10.82	8.30
RS199R	SS-A	10.88	8.20
RS216R	SS-A	12.86	8.20
RS219R	SS-A	12.85	8.17
RS210R	SS-A	12.84	8.24
RS214R	SS-A	12.84	8.24
RS258R	SS-A	15.91	9.22
RS256R	SS-A	15.98	9.23

Freezers

Type and Defrost System*	Refrigerated Volume*	Shelf Area Sq.Ft.	Energy Consumption kWh/month
FU133R	UF-M	13.2	13.5
FU176R	UF-A	17.4	18.4
FU178R	UF-M	17.4	18.4
FU182R	UF-M	18.0	18.6
FU188R	UF-M	18.0	18.6
FU208R	UF-M	20.1	21.6
FC053T	CF-M	5.3	58
FC053P	CF-M	5.3	58
FC083P	CF-M	8.3	73
FC105T	CF-M	10.1	75
FC158T	CF-M	15.3	104
FC153P	CF-M	15.3	104
FC153T	CF-M	15.3	104
FC158P	CF-M	15.3	104
FC208T	CF-M	20.3	118
FC208P	CF-M	20.3	118
FC258T	CF-M	25.3	134
FC258P	CF-M	25.3	134

WHIRLPOOL

Whirlpool Corp.
Administrative Center
Benton Harbor, Michigan 49022

Refrigerator

Type and Defrost System*	Refrigerated Volume*	Shelf Area Sq.Ft.	Energy Consumption kWh/month
EAL12CT	SD-M	11.17	1.27
EAL12CT1	SD-M	11.12	1.76

*See explanation and definitions in front of directory.

†Maximum and minimum energy consumption in kWh/month are given for models with an anti-sweat heater switch; single values are given for models without anti-sweat heater switch.

#Voluntary change of previously certified data.

ΔCorrection of previous listing.

Model	Type and Defrost System*	Refrigerated Volume*				Shelf Area Sq.Ft.	Energy Consumption kWh/mo†
		Fresh Food	Freezer	Total			
		Cu.Ft.	Cu.Ft.	Cu.Ft.	Sq.Ft.		
(WHIRLPOOL continued)							
EAL14CT	SD-M	11.73	2.26	14.0	19.2	73	
EAT12DT2	TF-P	9.20	2.75	12.0	14.2	90	
EAT12DT	TF-A	9.21	2.74	12.0	14.2	90	
EAT13JT	TF-A	9.59	3.51	13.1	17.4	153	169
EAT13DT	TF-P	9.45	3.74	13.2	16.3	109	
EAT14DT	TF-P	11.01	3.10	14.1	19.3	120	
EAT14ST	TF-A	11.20	2.98	14.2	16.9	159	
EAT15PK	TF-A	10.86	4.19	15.1	20.0	152	167
EAT15JT	TF-A	10.91	4.19	15.1	20.9	152	167
EAT15JT4	TF-A	10.91	4.19	15.1	20.9	152	167
EAT15SM	TF-A	10.91	4.19	15.1	22.4	152	167
EAT15JM	TF-A	10.91	4.19	15.1	22.5	152	167
EAT15JM4	TF-A	10.91	4.19	15.1	22.5	152	167
ECT17GK	TF-A	12.25	4.72	17.0	16.1	157	172
EAT17NK	TF-A	12.31	4.75	17.1	23.7	167	182
EAT17SK	TF-A	12.31	4.75	17.1	26.0	167	182
EAT171HK	TF-A	12.31	4.75	17.1	27.0	104	116
EAT17PM	TF-A	12.46	4.75	17.2	25.3	167	182
EAT17VK	TF-A	12.48	4.75	17.2	25.6	167	182
EAT17PT	TF-A	12.46	4.75	17.2	26.2	167	182
EAT19NK	TF-A	13.58	5.70	19.3	28.9	175	189
EAT19PM	TF-A	13.73	5.70	19.4	27.2	175	189
EAT19PT	TF-A	13.72	5.70	19.4	28.1	175	189
EAT19VK	TF-A	13.81	5.70	19.5	28.8	175	189
EAT22PK	TF-A	14.60	7.48	22.1	31.8	135	146
EAT22NK	TF-A	14.66	7.63	22.3	31.7	135	146
EAD19PM	SS-A	12.70	6.34	19.0	24.5	177	188
EAD19VM	SS-A	12.70	6.34	19.0	24.6	177	188
EAD19XM	SS-A	12.70	6.34	19.0	24.7	177	188
EAD19VK	SS-A	12.70	6.34	19.0	25.5	177	188
EAD19PT	SS-A	12.70	6.34	19.0	25.5	177	188
EAD19ZK	SS-A	12.70	6.34	19.0	25.7	177	188
EAD19GK	SS-A	12.74	6.37	19.1	19.9	177	188
EAD19SK	SS-A	12.76	6.34	19.1	22.9	177	188
EAD22PM	SS-A	14.73	7.46	22.2	28.5	170	180
EAD22XM	SS-A	14.73	7.46	22.2	28.8	170	180
EAD22PK	SS-A	14.73	7.46	22.2	29.6	170	180
EAD22NK	SS-A	14.77	7.50	22.3	28.6	170	180
EAD25PM	SS-A	15.81	9.24	25.1	31.4	214	242
Freezer							
EAV12D	UF-M	12.0	12.3		102		
EAV15P	UF-A	15.3	14.0		198		
EAV16X	UF-M	15.8	15.3		136		
EAV16B	UF-M	15.8	15.4		136		
EAV20M	UF-A	19.6	21.5		164	187	
EAV20F	UF-M	20.0	23.3		127		
EAH06CW	CF-M	6.0			84		
EAH09CW	CF-M	9.0			77		
EAH12CW	CF-M	12.0			96		
EAH15CW	CF-M	15.1			170		
EAH15BW	CF-M	15.1			170		
EAH17FW	CF-M	17.3			130		
EAH22XW	CF-M	22.3			164		
EAH22FW	CF-M	22.3			164		
EAH27FW	CF-M	26.9			209		

WICKES

Wickes Corporation
515 North Washington
Saginaw, Michigan 48605

Freezer

Model	Type and Defrost System*	Refrigerated Volume*	Shelf Area	Energy Consumption
		Fresh Food Cu.Ft.	Freezer Cu.Ft.	Total Cu.Ft. Sq.Ft. kWh/mo†
#C6	CF-M		6.1	68
#C10	CF-M		9.9	81
#C15	CF-M		14.8	100
#C20	CF-M		20.1	117
#C25	CF-M		24.7	133

WIZARD

Western Auto Supply Co.
2107 Grand Avenue
Kansas City, Missouri 64108

Refrigerator

MDW1903A57	SD-M	10.51	1.69	12.2	16.2	59
MDW1905A57	TF-P	9.69	2.53	12.2	15.0	101
MDW1414B57	TF-A	11.34	3.67	15.0	21.5	162
MDW3414B57	TF-A	11.34	3.67	15.0	21.5	162
MDW5414BK7	TF-A	11.34	3.67	15.0	21.5	162
MDW7414B57	TF-A	11.34	3.67	15.0	21.5	162
MDW1415B57	TF-A	11.34	3.67	15.0	21.5	162
MDW3415B57	TF-A	11.34	3.67	15.0	21.5	162
MDW7415B57	TF-A	11.34	3.67	15.0	21.5	162
3WC1918B57	TF-A	12.40	4.60	17.0	25.7	136
3WC3918B57	TF-A	12.40	4.60	17.0	25.7	136
3WC7918B57	TF-A	12.40	4.60	17.0	25.7	136
3WC1918A57	TF-A	12.40	4.60	17.0	25.7	136
3WC3918A57	TF-A	12.40	4.60	17.0	25.7	136
3WC7918A57	TF-A	12.40	4.60	17.0	25.7	136
3WC1921A57	TF-A	14.20	6.80	21.0	29.9	147
3WC3921A57	TF-A	14.20	6.80	21.0	29.9	147
3WC5921A57	TF-A	14.20	6.80	21.0	29.9	147
3WC7921A57	TF-A	14.20	6.80	21.0	29.9	147
MDW1933A57	SS-A	13.36	6.51	19.9	22.9	150
MDW3933A57	SS-A	13.36	6.51	19.9	22.9	150
MDW5933A57	SS-A	13.36	6.51	19.9	22.9	150
MDW7933A57	SS-A	13.36	6.51	19.9	22.9	150
MDW1937A57	SS-A	15.17	6.69	21.9	28.0	180
MDW3937A57	SS-A	15.17	6.69	21.9	28.0	180
MDW5937A57	SS-A	15.17	6.69	21.9	28.0	180
MDW7937A57	SS-A	15.17	6.69	21.9	28.0	180

Freezer

MDW3911A57	UF-M	10.1	10.4	92
U3-3910	UF-M	10.4	11.6	108
MDW3913A57	UF-M	13.2	15.0	127
MDW4916A57	UF-A	15.8	16.9	162
MDW6916A57	UF-A	15.8	16.9	162
MDW3916A57	UF-M	15.8	18.0	135
U3-3916	UF-M	16.9	16.7	140
MDW3918A57	UF-M	18.0	20.8	135
MDW3821A57	UF-M	20.2	21.1	138
U3-3921	UF-M	21.1	22.8	153
#RE11606	CF-M	6.1		68
#RE11610	CF-M	9.9		81
MDW1515A57	CF-M	15.3		122
GRG1715A57	CF-M	15.3		104
MDW1520A57	CF-M	20.3		135
MDW1525A57	CF-M	25.4		173

*See explanation and definitions in front of directory.

†Maximum and minimum energy consumption in kWh/month are given for models with an anti-sweat heater switch; single values are given for models without anti-sweat heater switch.

Voluntary change of previously certified data.

AMERICAN COUNCIL OF
INDEPENDENT LABORATORIES, INC.,
New York, N.Y., December 16, 1975.

HON. FRANK E. MOSS,
Chairman, Subcommittee on Consumers,
Senate Commerce Committee,
Washington, D.C.

DEAR MR. CHAIRMAN: This letter is to submit the comments of the American Council of Independent Laboratories (ACIL) on S. 643, the proposed Consumer Product Testing Act of 1975. ACIL supports the objective of the bill to improve the product information available to a prospective purchaser. This information would relate to quality and performance characteristics and would be based on objective test data.

The ACIL, established in 1937, is a professional association of independent scientific laboratories. Its membership includes 180 of the leading testing, research, development and inspection firms in the United States. An independent laboratory is a non-tax favored proprietorship, or corporation, unaffiliated with any academic or governmental institution or with any outside independent company or trade group in any manner which might affect its capability to conduct investigations, render reports or give professional counsel objectively and without bias. Each laboratory has special fields of interest and activity. These include: sampling, inspection, physical or nondestructive testing and chemical analyses of raw, intermediate, and finished materials and products; research and development; the improvement of products or processes; the quality control of composition and performance; and professional consultation in various fields of scientific technology.

While ACIL recognizes that the subject of the safety of consumer products has been addressed by the passage of the Consumer Product Safety Act, no mechanism exists for product parameters of performance and maintenance, efficiency, economy of operation and durability. Throughout the voluntary standards system, hundreds of good protocols now exist but the application of them has been voluntary and uneven. The problem of presenting meaningful information to the consumer, based on these test results, and in a form that is understandable to him is a complicated one.

Although the ACIL takes no position on the ultimate need for the proposed bill, we would like to comment on some of its provisions. The bill provides that the Federal Trade Commission would establish the ground rules for implementation of the Act. We feel quite strongly that the private sector, including product manufacturers, consumers, and testing laboratories must play important roles in the establishment of the protocols, and the subsequent testing to assure conformance. We are hoping what will not happen is further expansion of Government laboratories to perform routine testing which can readily be performed by independent testing laboratories, the product manufacturer, and in some instances, the retailer. While we recognize the need for a Federal presence in the establishment of the test protocols, the actual testing of the consumer products should be left to the private sector. It has long been established national policy that the Federal Government in acquiring needed services will rely on the private sector to the maximum extent possible. This policy is now embodied in OMB Circular A-76. Because this policy has often been ignored by Federal agencies, we believe that it is important for Congress to emphasize that proposed consumer product testing programs are to rely on qualified private testing organizations whenever possible.

The importance and role of the independent testing laboratory should not be underestimated in meeting the objectives of S. 643. It is interesting to note that when Senator Magnuson introduced S. 3377 in 1974 he stated:

"The legislation which I am introducing today would provide consumers with a simple but meaningful source of information which would objectively compare competing products. Under the scheme outlined in this bill, the Federal Trade Commission, utilizing the resources of the National Bureau of Standards, would develop, propose, and promulgate objective product testing protocols for classes of consumer products. The testing protocols would be designed to measure the performance characteristics of the product and translate that performance in easily comparable terms. The characteristics would include ratings on materials, durability, operating costs, and effectuation of purpose. Utilizing an independent testing lab certified by the Commission, the manufacturer of every consumer

product subject to the testing protocol would subject his product to the test procedure and make the results available at point of sale. No product would "flunk" the tests; the results would simply be available to consumers to make a more informed judgment as to which of competing products best fits his needs."

The importance of an independent testing organization to provide testing services should be noted. Charles S. Morgan, President of the National Fire Protection Association, stated the important role of independent testing organizations in these words on December 11, 1973:

"State and local safety authorities have been educated over a long period of years to accept safety certifications of products issued by independent, third-party testing agencies of recognized competence. This is an important measure of protection for the general public. Any departure from this policy would not, we believe, be in the public interest and would tend to undermine the genuine progress that has been made in this area over a long period of years."

While the pending bill, S. 643, does not mandate the use of independent testing laboratories, it should be made clear in the bill or its legislative history that Congress expects adherence with the reliance on private enterprise policy and understands the important role independent laboratories should play.

Section 8, relating to compliance testing, in paragraph (a) provides contractual authority to the Federal Trade Commission to have compliance testing conducted under contracts or agreements with Government and private organizations, including independent testing laboratories. While flexible authority is desirable, the Committee should make clear that government organizations will be used only where no capability exists in this private sector.

Section 5 of the bill authorizes use by the FTC of an offeror procedure, similar to that employed by the Consumer Product Safety Commission. The National Bureau of Standards should serve as a "court of last resort," probably only to be utilized if no satisfactory test protocol is developed, or is already in existence. Any role created for NBS should, however, not duplicate capabilities in the private sector. This problem did not receive adequate attention in the legislation authorizing CPSC to utilize NBS which has had the effect of encouraging CPSC to perform activities in-house at NBS when CPSC should be relying on qualified private firms whenever possible. One technical suggestion in regard to Section 5(a)(4): we recommend that the 180 days commence from the acceptance of the offer to develop a test protocol, rather than the publication of the notice of invitation.

We appreciate this opportunity to present the views of the American Council of Independent Laboratories on S. 643.

Very truly yours,

ERSKINE B. MAYO, Jr.

LITTON MICROWAVE COOKING,
Minneapolis, Minn., December 18, 1975.

HON. FRANK E. MOSS,
U.S. Senate,
Washington, D.C.

DEAR SENATOR MOSS: I have been briefed on the S. 643 designed "to regulate commerce by establishing uniform testing protocols for consumer products and other purposes." This legislation presumes that the business community has no conscience nor concern for the consumer and that it cannot regulate itself.

In 1962 President Kennedy issued the Consumer Bill of Rights. In review, the bill asserted these inalienable privileges: the right to choose, the right to safety, the right to information and the right to be heard. I believe this bill of rights to have begun the trend to "consumer conscience" in industry.

A move for government to totally alter the free enterprise system would be destructive to both business and our national economic system. This is a country based on free choice, and this bill would restrict that basic freedom.

We have a number of governmental branches and independent agencies that are now regulating many activities in business. They help protect many of the rights of consumers:

The right to safety.
Consumer Product Safety Commission,
Underwriter's Laboratories,
Dept. of Health, Education, and Welfare,
The right to choose.

This is the whole basis of this country's unique structure of the business of supply and demand. The theory of good competition supports a healthy business spirit, the basis of a stable economic system.

The right to information.

Accurate information is offered by industry through advertising and already monitored by the F.T.C.

The right to be heard.

The Consumer Affairs Professionals of the country have established their doctrine to deal effectively with this topic. Great strides have been made in the last few years. Most companies offer a vehicle for consumer feedback. The strongest voice, however, is in the form of a consumer purchase or lack of purchase.

We at Litton Microwave Cooking Products perform a comprehensive battery of quality assurance and safety tests in the manufacture of microwave ovens and ranges. These tests cover almost all of the procedures suggested by the Federal Trade Commission proposal.

A. *Effectuation of purpose.*—Any appliance manufacturer has a product goal which must be achieved as a part of the development process. The product plan clearly states what the product should do, what consumer problems it overcomes, and how the product will function to reach the goal.

B. *Durability.*—Our normal process of product development simulates the normal life cycle use of the product. This system includes life testing, transportation testing and performance testing.

C. *Average annual cost of operation.*—We have run energy consumption tests on our products both in our own testing laboratories as well as through outside independent sources. We pride ourself in offering consumers a better alternative to conventional cooking with our energy-saving microwave ovens.

D. *Frequency and nature of repair.*—Our warranty claims are all analyzed through our computer, enabling us to pinpoint areas of recurring maintenance. This valuable feedback allows us to make product feature improvements and upgrade the performance of our appliances. We also offer consumers a direct communications pipeline to inform us immediately of their experience with and questions about microwave cooking appliances through our incoming toll-free WATS telephone line.

E. *Environmental impact in the manufacture, use and disposal of such products.*—We conduct environmental testing as a normal part of our product cycle.

In review, in industry we do not favor passing of this bill but wish to see total rejection of the proposal by the Consumer Subcommittee.

Litton Microwave Cooking Products, Division of Litton Industries, opposes this legislation and urges legislators to vote against it in the interest of preserving the free enterprise system and avoid over-regulation where the effect would exceed the reasonable need for consumer protection.

Sincerely,

VERNA M. LUDVIGSON,
Director, Consumer Affairs.

NATIONAL FOREST PRODUCTS ASSOCIATION,
Washington, D.C., December 22, 1975.

HON. FRANK E. MOSS,
Chairman, Senate Commerce Subcommittee on Consumers,
U.S. Senate, Washington, D.C.

DEAR SENATOR MOSS: National Forest Products Association presents the following views and comments on S. 643, the proposed Consumer Products Testing Act of 1975, for consideration by the Senate Commerce Subcommittee on Consumers. We would appreciate your inserting this letter in the record of the hearings on that bill.

In our readings of S. 643, it appears that the intent of the bill is focused on consumer products having various components, such as household appliances, with the end product varying in quality and/or price from manufacturer to manufacturer. However, the definition of "consumer product" contained in the bill is sufficiently broad to cover building materials used in construction and for "personal use or enjoyment," such as do-it-yourself projects and hobby wood-working.

Lumber and plywood are traded in the marketplace as basic commodities. Thus, orderly commerce has required development of a comprehensive set of standards for all types of wood products. The wood products industry has a

lengthy history of involvement with standards writing through the American Lumber standards Committee of the Department of Commerce, the American Society for Testing and Materials, the American National Standards Institute, and the National Bureau of Standards.

Enactment of the proposed legislation would cause unnecessary duplication of effort for many segments of the building products industry which would be costly for the government as well as for construction products manufacturers. In our own case, it would serve as a further hindrance to productivity at a time when the forest products industry is already depressed by the slump in its major market homebuilding, and by a shrinking supply of Federal timber caused by Federal policies and court cases.

We are in sympathy with the intent of the Subcommittee to create a situation wherein manufacturers supply the best product possible at reasonable prices for consumers, and we feel that our industry is in compliance with this intent. Therefore, we certainly urge that the bill be modified to take into account the points we mention herein. As currently written, we would have no choice except to oppose its passage. Its broad implications, unless modified, would otherwise place an unwarranted and unnecessary burden on forest products manufacturers.

If you or your staff have further questions about this position, please don't hesitate to contact us.

Sincerely,

JOSEPH B. McGRATH.

AMERICAN PLYWOOD ASSOCIATION,
January 21, 1976.

Hon. FRANK E. MOSS,
Chairman, Committee on Commerce, Subcommittee on Consumer,
Washington, D.C.

DEAR SENATOR MOSS: The American Plywood Association has carefully reviewed S. 643, the "Consumer Product Testing Act of 1975," and requests that these comments be included in the transcript of the hearings held by the Senate Commerce Consumer Subcommittee with regard to the proposed legislation.

The American Plywood Association is a national trade association headquartered in Tacoma, Washington, and represents 87 softwood plywood producers which operate over 150 plants located in 18 states. These plants produce approximately 80% of the total plywood manufactured in the United States.

As part of our activity, the American Plywood Association is deeply involved in standards development, performance testing and consumer awareness as related to the manufacture and use of plywood products. This has been a major factor in our industry's growth, which since the end of World War II has been increasing at a compounded annual rate of nearly 10%.

Our activity in the standards development and performance testing fields extends over a period of more than 40 years, and has involved work with all leading organizations and agencies concerned with testing and standards development including the National Bureau of Standards, the American Society for Testing and Materials, and the American National Standards Institute.

This experience has made us strong proponents of voluntary standardization and performance testing. However, it has also made us acutely aware of the practical limitations of mandatory standards and testing. Consequently, we favor a voluntary approach in which all affected parties are permitted but not forced to participate.

S. 643 is in our judgment undesirable and unnecessary for a number of reasons:

(1) The mandatory nature of the bill is contrary to a free market where consumers decide the performance characteristics which are important to them, and is unwarranted where matters of health and safety are not involved.

(2) The existing voluntary standardization and testing organizations in the United States are capable of accomplishing, and are in fact accomplishing the consumer protection and information purposes of S. 643 where cost-benefit relationships are in balance or weigh in favor of establishing uniform test protocols. This has been demonstrated in the plywood industry. Imposition of mandatory requirements will, in our view, escalate costs without producing corresponding benefits.

(3) Standardization and performance test development is highly complex and specialized, and requires expertise and understanding in the relevant product area. Thus, it is unlikely that a federal agency geared to antitrust enforcement is better suited to the task of developing such criteria than industry groups act-

ing in cooperation with agencies like the Commerce Department that are regularly engaged in standards making. While industry expertise may be recognized to some degree by the bill, the recognition appears to us to be inadequate. Moreover, we are concerned that S. 643 will inevitably lead to more bureaucracy and higher costs for the American producer and consumer, and will have a depressing effect on the free enterprise system.

(4) In many instances, measurable performance tests, while theoretically desirable, are not technically practical or available. The development of such tests almost without exception requires extensive research and evaluation if meaningful information is to result. In that regard, the time limits contained in the proposed legislation which would require promulgation of a standard within 60 days are unrealistic. If they can be met at all, it can only be at enormous cost, and even then at the risk of reaching questionable conclusions. Test method development is not an exact science and requires much trial and error laboratory testing. Accordingly, it is often essential that data resulting from such work be further evaluated under actual use conditions on a scale that can produce statistically significant results, both technically and economically. All of this requires time and evolution that is seriously restricted by S. 643.

Taken in total, we do not believe that the American public would benefit from this legislative proposal. Industry should have incentives to develop better products, not the threat of criminal penalties. Such incentives should be directly related to consumer-producer benefits, and could include tax credits so that development costs need not be passed on to the consumer. Given such incentives, voluntary efforts in a free market environment will accomplish the objective of developing more durable, safer, and environmentally sounder products.

Very truly yours,

THOMAS R. FLINT,
Director, Technical Services Division.

MARCH 22, 1976.

Hon. FRANK E. MOSS,
*Dirksen Office Bldg.,
Washington, D.C.*

DEAR SIR: Thank you for taking the time to write your letter of February 6, 1976, regarding S. 643, the Consumer Product Testing Act.

You asked for alternative suggestions for revision of the bill. Unfortunately I am in no position to make suggestions for revision of the bill inasmuch as I believe the bill is totally unnecessary and should not be passed in any form. As I mentioned in my original letter I think an interested consumer has plenty of sources of information available to him right now—consumer reports published by Consumers Union of the United States Inc. of Mt. Vernon, New York, and Consumers Research Magazine published by Consumers Research Inc. of Washington, New Jersey, are two publications that give quite a bit of information and there may be others. These publications are generally available at public libraries so that an individual doesn't even need to subscribe to them. If a consumer isn't sufficiently interested to check out these publications he isn't going to be served by any information put out by the federal government. Besides that I do not believe that the consumer in this country is so stupid he needs to have his hand held by "big brother" whenever he goes shopping. Furthermore I am not convinced that any government bureaucracy is going to satisfactorily analyze and rate all of the various consumer items that are in the marketplace.

I strongly advocate consideration being given to fewer regulatory agencies instead of more. We don't need any more agencies and God only knows we can't afford them.

I appreciate the opportunity to comment.

Yours very truly,

EDMONDS LOVE.

NATIONAL FENCE MANUFACTURING Co., INC.,
Bladensburg, Md., April 22, 1976.

Hon. WARREN G. MAGNUSON,
*Chairman, Senate Commerce Committee,
Washington, D.C.*

DEAR CHAIRMAN: National Fence Manufacturing Co., Inc. would like to comment on S. 643, the Consumer Product Testing Act.

Our company is a manufacturer of galvanized and vinyl-covered chain link fence fabric, welded concrete reinforcing mesh, galvanized fence pipe and related products. National is also a distributor of fence fittings. Our products are sold to customers throughout the New England, Middle Atlantic, Southern and Mid-western states for security, highway, construction, recreational and home improvement applications.

With regard to the proposed legislation, you stated that "consumers who have access to information regarding the relative merits of competing products are essential to a properly functioning marketplace." While our employees agree with this, we do not believe that it is the proper function of the Federal government to provide this information through proposals contained in this bill.

Intrusion of the Federal government into this segment of our free market economy will result in less competition, and a standardization of those product lines for which Federal test protocols are required. S. 643 would distort the functions of our free market system by substituting the credibility of Federal government for industry testing.

National Fence believes that testing by industry should be encouraged. Such testing has been conducted for many years by professional testing societies such as American Society for Testing and Materials (ASTM), and the American National Standards Institute. The Chain Link Fence Manufacturers Institute, of which National Fence is a member, has cooperated with ASTM in establishing a comprehensive set of specifications for our industry.

In conclusion, National Fence believes that the goals of S. 643 can be achieved without the total involvement of the Federal government in business decision-making. We strongly maintain that this legislation will have an injurious effect on the competitive nature of American industry by discouraging market competition.

Thank you for your consideration.

Sincerely,

DON WOODRUFF, *President.*

MERCHANTS METALS, INC.,
Birmingham, Ala., April 26, 1976.

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

DEAR SENATOR MAGNUSON: Merchants Metals, Inc. would like to comment on S. 643, the Consumer Product Testing Act.

We are a Company having locations in Massachusetts, Texas and Alabama and employing approximately 1000 people. We are engaged in the manufacturing and distribution of chain link fence, pipe, tubing and related fittings.

With regard to the proposed legislation, you stated that "consumers who have access to information regarding the relative merits of competing products are essential to a properly functioning marketplace." While Merchants Metals, Inc. agrees with this, we do not believe that it is the proper function of the Federal government to provide this information through proposals contained in this bill.

Intrusion of the Federal government into this segment of our free market economy will result in less competition, and a standardization of those product lines for which Federal test protocols are required. S. 643 would distort the functions of our free market system by substituting the credibility of Federal government for industry testing.

Merchants Metals, Inc. believes that testing by industry should be encouraged. Such testing has been conducted for many years by professional testing societies such as American Society for Testing and Materials (ASTM), and the American National Standards Institute. The Chain Link Fence Manufacturers Institute, of which Merchants Metals, Inc. is a member, has cooperated with ASTM in establishing a comprehensive set of specifications for our industry.

In conclusion, Merchants Metals, Inc. believes that the goals of S. 643 can be achieved without the total involvement of the Federal government in business decision making. We strongly maintain that this legislation will have an injurious effect on the competitive nature of American Industry by discouraging market competition.

Thank you for your consideration.

Sincerely,

THOMAS J. PRUITT, *President.*

AMERICAN CHAIN LINK FENCE CO.,
MEDFORD, MASS., April 30, 1976.

HON. WARREN G. MAGNUSON,
U.S. Senate,
Washington, D.C.

DEAR SENATOR MAGNUSON: On behalf of American Chain Link Fence Co. and myself, I would like to comment on S. 643, the Consumer Product Testing Act. It is my understanding that the Consumer Subcommittee of the Senate Committee on Commerce is now having additional hearings on this Act.

American Chain Link Fence Co. is a fully integrated mill whose end product is various types of chain link fencing. We wholesale all types of fencing products throughout New England and the Buffalo area of upper New York State. We have been in operation for over 80 years as an independent in the fence manufacturing business.

There are two major objections that we have to this particular bill:

I. It is becoming more difficult for a small business to operate within the confines of expanding government controls. This particular control could conceivably restrict competition as well as to add unnecessary costs to a product. We presently are members of trade organizations that try to upgrade our product, such as The ASTM and The American National Institute.

II. To test all consumer products, such as this bill suggests, would require an additional government working force and equipment, with all of its ensuing pensions, changing equipment etc. that would mean an additional tax burden. It's time to start weighing the costs against the results as far as all of the protective measures are concerned.

In conclusion, American Chain Link Fence Co. feels that the aims of S. 643 can be reached without the Federal Government being involved totally in business decision making. We feel legislation such as this would be a detriment to the competitive nature of American Industry.

Thank you.

EDWARD A. CADY, *Assistant General Manager.*

FEDERAL PAPER BOARD CO., INC.,
COLUMBUS, OHIO, May 25, 1976.

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

DEAR SENATOR MAGNUSON: As Senior Vice President of the Federal Glass Division, I would like to give you our position on S. 643, the Consumer Product Testing Act. We are a division of the Federal Paper Board Company and make a full line of consumer table glassware, including beverage ware, tableware, food preparation ware and decorative ware.

As a manufacturer serving consumer markets, we are extremely interested in properly informing the consumer regarding the quality and performance characteristics of our glass products. For this reason, we carefully test our products to ensure that they are serviceable for the purpose intended, and we also try to inform the consumer as to the proper care and use of our products. In fact, we have been instrumental through our Association in establishing a special committee which will investigate ways that we as an industry can better inform the consumer regarding our glassware products. Therefore, while we agree with the Act's purpose of providing the consumer with more information concerning glassware products, we do not believe that this can be best achieved through the proposals contained in this bill.

Federal Glass has always supported product testing programs. Such testing has been conducted for many years by professional testing societies such as American Society for Testing and Materials (ASTM), and the American National Standards Institute. The American Glassware Association of which Federal Glass is a member, is cooperating with ASTM in behalf of our industry.

In conclusion, Federal Glass believes that the goals of S. 643 can, and should, be achieved without this involvement of the Federal Government. The technical complexities of meeting this goal through the Act would place an added burden on industry which we do not think will be in the consumers' interest.

Sincerely,

HAROLD C. MALLETT, *Senior Vice President.*

