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AUTHORIZATIONS AND OTHER AMENDMENTS TO THE CONSUMER PRODUCT SAFETY ACT

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HEARINGS

BEFORE THE

SUBCOMMITTEE ON CONSUMER PROTECTION AND FINANCE

OF THE

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE HOUSE OF REPRESENTATIVES

NINETY-FIFTH CONGRESS

SECOND SESSION

ON

H.R. 10819

BILL TO AMEND THE CONSUMER PRODUCT SAFETY ACT TO EXTEND THE AUTHORIZATION OF APPROPRIATIONS CONTAINED IN SUCH ACT, AND FOR OTHER PURPOSES

AND

H.R. 10637 and S. 2401

BILLS TO AMEND THE CONSUMER PRODUCT SAFETY ACT TO ESTABLISH AN INTERIM CONSUMER PRODUCT SAFETY RULE RELATING TO THE STANDARDS FOR FLAME RESISTANCE AND CORROSIVENESS OF CERTAIN INSULATION, AND FOR OTHER PURPOSES

FEBRUARY 24 AND 28, 1978

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CONTENTS

	Page
Hearings held on—	
February 24, 1978	1
February 28, 1978	177
Text of—	
H.R. 10819	3
H.R. 10637	8
S. 2401	8
Statement of—	
Anderson, Robert W., director of product development, Diversified Insulation, Inc	223
Bales, Irv, Ph. D., Program Manager for Materials Program, Department of Energy	183
Barron, Leslie A., managing director, National Cellulose Insulation Manufacturers Association, Inc	207
Brown, Michael A., Executive Director, Consumer Product Safety Commission	15
Byington, S. John, Chairman, Consumer Product Safety Commission	15
Dach, Leslie, science associate, Environmental Defense Fund	155
Donaldson, Charlie, on behalf of the Housing Research Group	195
Franklin, Barbara Hackman, Vice Chairman, Consumer Product Safety Commission	15
Freeman, Ernest, Specification Manager, Building Materials, General Services Administration	236
Garrish, Theodore, General Counsel, Consumer Product Safety Commission	15
Hogan, Jerry F., legislative director, Consumer Federation of America	165
Locker, Aaron, on behalf of the Chamber of Commerce of the United States	146
Mesigh, Charles D., president, Society of International Cellulose Insulation Manufacturers	210
Miller, John T., Chief, Hardware and Mechanical Branch, Mechanical and Electrical Division, Standards and Quality Control, Federal Supply Service, General Services Administration	236
Moffett, Hon. Anthony Toby, a Representative in Congress from the State of Connecticut	178
Pittle, R. David, Commissioner, Consumer Product Safety Commission	15
Rauch, Robert, staff attorney, Environmental Defense Fund	155
Savitz, Maxine, Ph. D., Director, Division of Building and Community Systems, Department of Energy	183
Stern, Philip S., consulting engineer, Metropolitan Denver District Attorney's Consumer Office	309
Wray, Harry A., consultant, flammability of liquids, Harry A. Wray Associates	169
Additional material submitted for the record by—	
Consumer Product Safety Commission, attachments to Mr. Byington's prepared statement:	
Priorities for Commission Action	25
Summary—Significant enforcement actions	39
Active CPSC petitions	45
Letter dated February 17, 1978, from Chairman Byington to Chairman Staggers re Commission views on S. 2401	47
CPSC petition log	75
Consolidation of acts	140
Diversified Insulation, Inc., Tunnel Operators of North America	228

Page

Additional material submitted for the record by—Continued
General Services Administration, proposed Federal specification:
Insulation thermal (loose fill for pnuematic or poured application): cellulosic or wood fiber 239
Insulation thermal (mineral fiber for pneumatic or poured application) 262
Insulation blankets, thermal (mineral fiber for ambient temperatures) 285
Society of International Cellulose Insulation Manufacturers:
Letter dated June 14, 1977, from Mr. Mesigh, vice president, to Mr. Byington, Chairman, CPSC, re briefing paper on petition CP 77–1 on home insulation 213
Letter dated December 2, 1977, from Mr. Richardville, president to Mr. Freeman, Commodity Standardization Speciaiist re adequacy of definition of qualities of cellulose loose fill insulation 219
Letter dated January 19, 1978, from Mr. Rodin, Society of International Cellulose Manufacturers to Mr. Bucco, managing director, American Home Lighting Institute re warning label recommended 221
Letter dated February 9, 1978, from Mr. Fitzgerald, executive director, to Mr. Bucher, National Cellulose Insulation Manufacturers Association, re specification for loose fill insulation ... 222
Statement submitted for the record by the SAI Corp 316
Letters submitted for the record by—
American Home Economics Association, Beverly Crabtree, president ... 317
Consumer Union/A Nonprofit Organization, publisher of consumer reports, Mark Silbergeld, director 318

AUTHORIZATIONS AND OTHER AMENDMENTS TO THE CONSUMER PRODUCT SAFETY ACT

FRIDAY, FEBRUARY 24, 1978

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

The subcommittee met at 9:20 a.m., pursuant to notice in room 2359, Rayburn Building, Hon. Bob Eckhardt, chairman, presiding.

Mr. ECKHARDT. The Subcommittee on Consumer Protection and Finance will be in session.

Today, the Subcommittee on Consumer Protection and Finance will begin two days of hearings on legislation to amend the Consumer Product Safety Act.

This hearing will focus on H.R. 10819 which would amend the Consumer Product Safety Act to extend the Commission's authorization for fiscal year 1979 and to allow the Commission to coordinate mandatory safety standards development efforts. This legislation is partially the result of our subcommittee's and the Subcommittee on Oversight and Investigation's joint oversight hearings on CPSC last September.

During those hearings, the subcommittees examined the effectiveness of the offeror process as a means of developing mandatory safety standards. We noted that, after 5 years, only two safety standards are presently in effect: Architectural glazing and swimming pool slides. While many of the problems associated with standard-setting procedures could be traced to poor management on the part of the Commission, the subcommittee found that a conflict within the offeror process was a principal cause of the problems.

The conflict stems from the fact that the statute places upon the Commission the ultimate responsibility for the development of safety standards. Yet, the process also requires the Commission to accord great weight to the judgments of the offeror as set out in its recommended standard. The long periods of time which the Commission has required to review an offeror's recommended standard are symptomatic of this conflict.

Instead of reviewing the recommended standard and its supporting technical rationale, the Commission has often found it necessary to rewrite substantially a recommended standard, substituting its judgment on the levels of safety required for those of the offeror. Not only is this time-consuming and expensive, but it also defeats the purpose of the offeror process, that is, to have public participation at an early stage in the rulemaking process.

The resolution of this conflict may be to allow the Commission to coordinate safety standards development efforts under conditions similar to those set out in H.R. 10819. Under the bill, the Commission would be subject to the identical public participation and recordkeeping requirements that are presently applicable to offerors. In addition, the Commission could provide financial assistance to those groups whose contribution is likely to produce a more satisfactory standard.

I believe such a revised procedure would insure effective public participation and eliminate much of the duplication of effort inherent in the present process. H.R. 10819 would require the Commission to work directly with interested parties in the development of a standard. This is surely a more effective form of public participation than under the present procedure where the offeror's judgment is often replaced by the Commission's during its evaluation. Furthermore, such a direct working relationship would eliminate the duplication of effort inherent in having an offeror spend several months developing a recommended standard and then having the Commission spend up to twice as long reviewing and rewriting that standard.

The second day of hearings, which are scheduled for February 28, will focus on H.R. 10637. This legislation establishes an interim mandatory product safety standard for cellulose home insulation. The legislation has been proposed by Congressman Moffett in response to disturbing reports about the flammability and corrosion hazards presented by cellulose insulation.

Although none of the public witnesses today will address the insulation bill, we will have questions for the Commission on it. The hearings on Tuesday will give public witnesses an opportunity to comment on this legislation.

Without objection, at this point, the text of H.R. 10819, H.R. 10637, and S. 2401 will be placed in the record.

[Testimony resumes on p. 15.]

[The text of H.R. 10819, H.R. 10637, and S. 2401 follow:]

95TH CONGRESS
2D SESSION

H. R. 10819

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 7, 1978

Mr. ECKHARDT introduced the following bill; which was referred to the Committee on Interstate and Foreign Commerce

A BILL

To amend the Consumer Product Safety Act to extend the authorization of appropriations contained in such Act, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 32 (a) of the Consumer Product Safety Act (15 U.S.C. 2081 (a)) is amended—

(1) in paragraph (3), by striking out "and" at the end thereof;

(2) in paragraph (4), by striking out the period at the end thereof and inserting in lieu thereof "; and"; and

(3) by adding at the end thereof the following new paragraph:

"(5) $55,000,000 for the fiscal year ending September 30, 1979.".

SEC. 2. (a) Section 7(b) of the Consumer Product Safety Act (15 U.S.C. 2056(b)) is amended—

(1) by inserting "(1)" after "(b)";

(2) by redesignating paragraph (1) through paragraph (4) as subparagraph (A) through subparagraph (D), respectively;

(3) in subparagraph (C) as so redesignated in paragraph (2), by striking out "and" at the end thereof; and

(4) by striking out subparagraph (D), as so redesignated in paragraph (2), and the two sentences following subparagraph (D), and inserting in lieu thereof the following:

"(D) include—

"(i) an invitation for any person (other than the Commission), within thirty days after the date of publication of the notice, to submit to the Commission an existing standard as the consumer product safety standard; and

"(ii) (I) an invitation for any person (other than the Commission), within thirty days after the

date of publication of the notice, to offer to develop the consumer product safety standard; or

"(II) a statement by the Commission that it has determined, in accordance with the provisions of paragraph (2) (A), that it is in the public interest for the Commission to develop the consumer product safety standard and that the Commission intends to develop the standard in accordance with the provisions of paragraph (2) (B); and

"(E) specify the period of time in which the offeror of an accepted offer, or the Commission, is to develop the proposed standard.".

(b) Section 7 (b) of the Consumer Product Safety Act, as amended in subsection (a), is further amended by adding at the end thereof the following new paragraph:

"(2) (A) The Commission may develop a consumer product safety standard without making any invitation specified in paragraph (1) (D) (i) if the Commission finds that such action is in the public interest because of—

"(i) the nature of the risk of injury associated with such product;

"(ii) the expertise of the Commission with respect to such risk of injury;

"(iii) the expertise of the Commission in developing consumer product safety standards; or

"(iv) the necessity to expedite the development of such standard.

"(B) Regulations prescribed by the Commission under subsection (d) (3) (B) and subsection (d) (3) (C) shall apply to any action by the Commission under this paragraph.

"(C) If any person participates with the Commission in the development of a consumer product safety standard under this paragraph, in accordance with regulations prescribed by the Commission under subsection (d) (3) (B), the Commission may agree to contribute to the person's cost with respect to such participation, in any case in which the Commission determines that such contribution is likely to result in a more satisfactory standard than would be developed without such contribution, and that the person is financially responsible. The provisions of subsection (d) (2) shall apply to any contribution made by the Commission under this subparagraph.".

SEC. 3. (a) Section 7 (d) (1) of the Consumer Product Safety Act (15 U.S.C. 2056 (d) (1)) is amended by inserting "subsection (b) (2) and by" after "as provided by".

(b) Section 7 (e) (1) of the Consumer Product Safety Act (15 U.S.C. 2056 (e) (1) is amended by adding at the end thereof the following new sentences: "Regulations prescribed by the Commission under subsection (d) (3) (B) and subsection (d) (3) (C) shall apply to any action by the

Commission under this paragraph resulting from the circumstances specified in subparagraph (A). The provisions of subsection (b) (2) (C) also shall apply to any such action by the Commission.".

(c) Section 7 (f) of the Consumer Product Safety Act (15 U.S.C. 2056 (f)) is amended to read as follows:

"(f) If the Commission publishes a notice pursuant to subsection (b) and the Commission does not publish a proposed consumer product safety standard within forty-five days after the expiration of the period specified in subsection (b) (1) (E), the Commission shall—

"(1) by notice published in the Federal Register, terminate the proceeding begun by such notice published pursuant to subsection (b); or

"(2) publish in the Federal Register the reasons for not publishing the proposed standard and specify the time period within which such standard will be published.".

[H.R. 10637, introduced by Mr. Moffett of Connecticut on January 31, 1978, and S. 2401, passed the Senate January 23, 1978, and referred to the Committee on Interstate and Foreign Commerce,

are identical as follows:]

A BILL

To amend the Consumer Product Safety Act to establish an interim consumer product safety rule relating to the standards for flame resistance and corrosiveness of certain insulation, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Emergency Interim Consumer Product Safety Rule Act of 1978".

FINDINGS AND PURPOSE

SEC. 2. (a) the Congress finds that—

(1) existing Federal, State, and local laws and regulations are insufficient to protect the consumer from improperly manufactured insulation;

(2) an unreasonably large quantity of insulation is being distributed that does not meet minimum safety standards;

(3) an urgent need exists for the expedited setting of interim mandatory Federal standards for the manufacture of cellulose insulation;

(4) such standards are reasonably necessary to eliminate or reduce an unreasonable risk of injury to consumers from flammable and corrosive cellulose insulation; and

(5) the Consumer Product Safety Commission should study all forms of insulation within the jurisdiction of the Commission to determine where appropriate standards should be developed and promulgated by the Commission to reduce the possible health and safety risks.

(b) It is the purpose of Congress in this Act to—

(1) provide an interim mandatory safety standard for cellulose home insulation; and

(2) direct the Consumer Product Safety Commission to study the forms of home insulation commonly used in the United States and to recommend appropriate legislative and administrative action in regard to reducing the possible health and safety risks that may result from the manufacture or use of such insulation.

INTERIM CELLULOSE INSULATION SAFETY STANDARD

SEC. 3. The Consumer Product Safety Act (15 U.S.C. 2051 et seq.) is amended by adding at the end thereof the following:

"INTERIM CELLULOSE INSULATION SAFETY STANDARD

"SEC. 35. (a) On and after the last day of the one-hundred-and-twenty-day period beginning on the date of enactment of this section, the requirements for flame resistance and corrosiveness set forth in the General Services Administration's specification for cellulose insulation, HH–I–515C (as that specification read on December 1, 1977), shall be deemed to be an interim consumer product safety rule which shall have all the authority and effect of any other consumer product safety rule promulgated by the Commission under this Act. During such one-hundred-and-twenty-day period, the Commission may make, and shall publish in the Federal Register, such technical nonsubstantive changes in such requirements as it deems appropriate to make such requirements suitable for promulgation as a consumer product safety rule. At the end of such one-hundred-and-twenty-day period, the Commission shall publish in the Federal Register such interim consumer product safety rule, as altered.

"(b) Judicial review of the interim consumer product safety rule specified in subsection (a) shall be limited solely

to the issue of whether any technical changes made by the Commission are nonsubstantive.

"(c)(1) The interim consumer product safety rule specified in subsection (a) shall be enforced in the same manner and to the same extent as the Commission enforces any other consumer product safety rule until such time as there is in effect a final consumer product safety rule, promulgated by the Commission in accordance with section 553, title 5 of the United States Code, setting health and safety standards for cellulose home insulation. A violation of the interim consumer product safety rule shall be deemed to be a violation of a consumer product safety standard promulgated by the Commission under section 7.

"(2) Until there is in effect such a final consumer product safety rule, the Commission shall incorporate into the interim consumer product safety rule each amendment to such requirements promulgated by the General Services Administration, unless the Commission finds, after consultation with the Secretary of Energy, that—

"(A) such amendment is unnecessary to protect consumers from the unreasonable risk of injury associated with flammable or corrosive cellulose home insulation;

"(B) implementation of such amendment will

create an undue burden upon the cellulose home insulation industry; or

"(C) additional time is required to study the safety or economic consequences of implementation of such amendment.

"(3) (A) At least thirty days before any amendment to such requirements is to become effective, after action by the General Services Administration, the Administrator of the General Services Administration shall notify the Commission of such amendment.

"(B) Any amendment to the interim consumer product safety rule shall be promulgated by the Commission in accordance with section 553, title 5 of the United States Code.".

INSULATION SAFETY STUDY

SEC. 4. (a) In addition to research or other action already in progress, the Consumer Product Safety Commission shall conduct a thorough and complete study of—

(1) the need for safety standards for fiber glass, rockwool, cellulose, urea-formaldehyde, styrene, urethane, vermiculite, perlite, and other forms of commonly used home insulation;

(2) methods of testing the safety of home insulation; and

(3) methods of enforcing home insulation standards.

(b) In conducting the study specified in subsection (a), the Consumer Product Safety Commission shall consult with the Secretary of Energy, the Secretary of Commerce, the Director of the National Bureau of Standards, the Administrator of the National Fire Prevention Control Administration, the Secretary of Housing and Urban Development, the Chairman of the Federal Trade Commission, and the head of any other Federal agency, department, or other entity. The head of each Federal agency, department, or other entity is authorized and directed to cooperate fully with the Consumer Product Safety Commission in its efforts to carry out the purpose of this section. Each such head shall submit to the Consumer Product Safety Commission all documents and information which the Commission requests and such head determines to be reasonable and necessary.

(c) Within one hundred and eighty days after the date of commencement of the study specified in subsection (a), the Consumer Product Safety Commission shall submit to the Congress a preliminary report on the results of such study. Such interim report shall include the Commission's preliminary findings with respect to those issues specified in paragraphs (1), (2), and (3) of subsection (a). As soon as practicable, but not later than three hundred and sixty-five days after commencement of the study, the Com-

31-737 O - 78 - 2

mission shall transmit to the Congress a full and complete report stating the nature, extent, and adequacy of existing home insulation safety standards, safety tests, and research and safety standard enforcement methods. The Commission's final report shall contain recommendations for legislation or rulemaking which should be enacted or promulgated, or changes in existing law or rules which should be made, regarding home insulation, to protect the public health and safety. The Commission's final report shall specifically discuss the adequacy of existing testing facilities and quality control methods for home insulation and the need for technical assistance for manufacturers to insure an adequate supply of safe home insulation.

AUTHORIZATION OF APPROPRIATIONS

SEC. 5. There is authorized to be appropriated, for each fiscal year beginning with the fiscal year ending September 30, 1978, such sums as are necessary to carry out the purposes of this Act.

Mr. ECKHARDT. Now we have as witnesses Chairman Byington, Vice Chairman Barbara Hackman Franklin, Commissioner R. David Pittle, Michael A. Brown, Executive Director, and Theodore Garrish, General Counsel, from the Commission. You may proceed in the manner you see fit, Mr. Byington.

STATEMENTS OF S. JOHN BYINGTON, CHAIRMAN, CONSUMER PRODUCT SAFETY COMMISSION; BARBARA HACKMAN FRANKLIN, VICE CHAIRMAN; AND R. DAVID PITTLE, COMMISSIONER, ACCOMPANIED BY MICHAEL A. BROWN, EXECUTIVE DIRECTOR, AND THEODORE GARRISH, GENERAL COUNSEL

Mr. BYINGTON. We have already submitted our extensive testimony, and we would be pleased to summarize in the interest of time.

Mr. ECKHARDT. Without objection, you may do so.

Mr. BYINGTON. I am proud to be here, Mr. Chairman, at this time, on the basis of our emerging record of regulatory action in the past 12 to 18 months, which we believe lends credibility to CPSC as an independent regulatory agency.

As I indicated, we have submitted our full and extensive testimony on the status of projects, litigation, the reduction of petition backlog, and other items of interest to the committee. So, in the interest of time I would like to confine my remarks as Chairman of this Commission to three primary subjects before the subcommittee at this time—our authorization, the offeror process, and the insulation legislation.

In terms of authorization, we believe at this point in time the agency is at a crossroads. One of the things we really need to do is to come to some agreement with our various committees and other constituencies as to the true role and mission of the Consumer Product Safety Commission. We hope that the Senate will act soon on the nominations of two new Commissioners so we will have a full statutory complement of Commissioners for the first time in 2 years.

Now we need, as I indicated, a consensus on the role and mission of the Consumer Product Safety Commission. We have been discussing possible criteria for evaluating this agency's performance in the last couple of days with our House Appropriations Committee. Personally, I do not believe we should be judged on how many mandatory standards we issue, nor do I believe we should be judged exclusively on injury reduction. I do believe we should be judged on the actions we have taken to protect consumers from unreasonable risk by eliminating specific hazards.

Therefore, we strongly support a 3-year authorization for the Consumer Product Safety Commission at the levels we have recommended—$55 million, $60 million, and $65 million. Personally, Mr. Chairman, I believe we are faced with a major public policy question as we proceed with this authorization, and that is, what is the role of the Consumer Product Safety Commission to be in the area of chronic hazards?

I think an argument could be made that we should have no role at all, and that we ought to defer to the other agencies, particularly the Environmental Protection Agency and its use of the Toxic Substances Control Act. Another argument could be made that the Commission

should continue on the basis on which we presently operate, that is, cooperation, but without the resources to get extensively involved ourselves.

A third argument could be made that because of our interest in consumer products, we ought to have some independent capability to operate in a major way in the whole area of regulating chronic hazards. If that is the decision that Congress makes, an extensive resource commitment will have to be made to this agency. I do not believe we are at all prepared, given our present resources or present responsibilities in the area of acute hazards, to deal in any kind of major way with chronic hazards.

I would suggest, on the basis of staff papers done to date, that the opening bid would probably be in the area of 50 people and $5 million over the next 18 months. This is what it would take for us to be able to do anything of major significance in the chronic hazards area.

So, I think that is the kind of question we are going to have to face as we move along. Right now, however, we are participating in the IRLG. We are very proud to be part of the interagency regulatory liaison group, which consists of EPA, FDA, OSHA, and the Consumer Product Safety Commission. We are also proceeding with the development of our carcinogen policy which we anticipate will be published in the Federal Register by the end of March.

Second, with regard to the offeror process, Mr. Chairman, I have prepared and submitted to the subcommittee an extensive paper dealing with my position and thoughts on the the offeror process. I prepared this in an effort to put the whole process in perspective, and I ask that that paper be made a part of the record.

Mr. ECKHARDT. Without objection, it will be so ordered [see p. 19].

Mr. BYINGTON. Therefore, I would summarize for only about 1 minute what that lengthy paper says.

First of all, I think we are making a mistake if we only look at section 7 of the Consumer Product Safety Act in terms of regulatory activity. If you look at mandatory standards only and include everything presently being done under section 7 of the Consumer Product Safety Act and section 8 of the Consumer Product Safety Act, which covers the bans, I think you will find that we have eight final mandatory standards: swimming pool slides, matchbooks, architectural glazing, and pacifiers under section 7; unstable refuse bins, extremely flammable contact adhesives, lead in paint, and certain asbestos-containing products under section 8.

Also, we have modified one standard, the children's sleepwear standard, and we have six additional mandatory standards in process under other acts. At the moment, I do not see anyone elsewhere operating more swiftly, efficiently, openly, or less expensively with any other system in setting mandatory standards. As I indicated in my paper, my conclusion is that standards development requires stable and comprehensive guidelines. Operational procedures must allow participation by all necessary parties, industry, private groups, consumers, and Government.

Regardless of what the process is called, or who chairs it, or how it is paid for, or what arbitrary or reasonable timetables are set, some form of decisionmaking mechanism must exist and be subject to appropriate review, if any worthwhile standard is to emerge.

Personally, I believe that Government must adhere to five basic restrictions. First, it should not arbitrarily proceed to develop standards in-house. Undue costs are extracted in the form of demands and accompanying drain on agency budget and resources. Federal agencies operating under current personnel management procedures are incapable of acquiring expertise in a timely manner and on an "as-needed" basis, especially as a regular method of doing business.

Second, I do not think a Government agency should normally chair a standards development process, since the agency must ultimately sit in judgment of the final standard. The staff, ideally, should participate in the review of the standards development without the burden of pride imposed by authorship, as might be the case in a standard developed in-house. The staff should be free to function at any juncture as a separate analytical support unit.

Third, I believe care must be exercised to apply the most effective regulatory strategy, no matter how severe outside competing pressures are.

Fourth, regular technical review of all regulation, completed or developing, must be embodied in normal operating procedures.

Finally, an agency must be inflexible in its determination to undertake regular self-evaluation. Further, it must be prepared to admit its errors when circumstances demand it, and not be penalized in the future for mistakes of the past without regard for significant modifications affecting the present.

The full paper, which you have graciously indicated will be accepted for the record, discusses these points in much greater detail.

The last item to address today is the matter of insulation legislation. Mr. Chairman, I have supported from the beginning the use of legislation as a route to deal with the problem of cellulose insulation flammability. We have provided the committee with extensive general comments and specific comments on various parts of the legislation relating to corrosion, flame spread, and the effect of a metal screen on the standard tunnel, our ability to amend the standard, judicial review, discretion in issuing final standards, and the definition of cellulose insulation versus cellulose home insulation.

All of the specific comments that we have submitted are aimed at improving our ability to implement Congressional intent. Therefore, I would only make a few additional comments.

One, I would look separately at the mandatory standard and the study required by the bills. They are two different issues. If the Congress determines that the study is a proper and appropriate thing to to do at this time, then I believe that the option that was prepared by our staff and submitted to the subcommittee staff outlines a number of possibilities.

The Commission believes that a 1-year study can be done at a cost of approximately 20 people and $2.5 million. If, however, you want a "complete and thorough" study, indicated by the legislation, it would require 3-years with about 40 people and $5 million in the first year, and about $13 million total.

I personally believe, though, that the study is a separate situation from the standard itself and should be addressed separately.

As to the mandatory standard, I think the problem we are faced with together is, what are we really going to have in what kind of

period of time and how much will it cost us to get there? I think it frankly depends, Mr. Chairman, on the route the responsible person or organization is required to take to developing and implement that standard.

If the Consumer Product Safety Commission is required to utilize the procedures and requirements of section 7 and section 9 of the Consumer Product Safety Act, we estimate it will take approximately 1½ to years, and will cost about $2 million to $3 million by the time we would have a standard out there with an effective date. Where in that range we will come out depends on the technical problems we run into, on whether or not we have to use an offeror and so on.

If, however, we have a statutory interim standard, and if we are provided with informal rulemaking capability, the time and costs could be less. We now understand that the GSA procurement specification will be ready in May. This is, of course, about the third time the deadline for this has slipped. I think you are going to have to make some decisions about what you want us to do.

Do you want us only to come out with a reproducible test method and not give any regard at all to the economics or any of the other real-life testing parts of the standards? If our only responsibility is to come up with a reproducible test method, we can do that for no significant cost, and we can do that within 6 months after the time that the GSA has completed their work.

If, however, we are to take a look at the economic implications and the impact of this on small business, on supply, on price, and if we are to look at the real-life aspects of the testing, then, I believe, we are looking at approximately 1 year from the time instead of 6 months when GSA is done, and something under $1 million.

The fact of the matter is, though, that none of that has been looked at yet. GSA, to the best of our knowledge, has given no consideration to the implications of 515(d) for small business, to its effects on supply or price, or to its relationship to real life testing.

In terms of immediate action today, we believe that we have the authority to operate under section 15 or even section 12, imminent hazard, if we find totally untreated cellulose insulation in the marketplace.

I don't think, however, that we can stop there. Once you have treated cellulose insulation, you must then begin to look at whether or not it is adequately treated, how it's been treated, whether it's corrosive, and then you are into a quality control problem, and then you are into standards.

In conclusion, I think there is one other point that needs to be raised here, and that is the question of whether the Consumer Product Safety Commission's jurisdiction over insulation should be transferred to the Department of Energy. I am unalterably opposed to that switch in jurisdiction, for five reasons.

First, I believe the Department of Energy's emphasis and mission is on the basis of energy conservation and production, not in the area of health and safety, as is the responsibility of the Consumer Product Safety Commission.

Second, the possibility that DOE might develop a standard that CPSC would then enforce is not an attractive one. I think we all learned a lesson with the Flammable Fabrics Act. HEW at one time

had the responsibility for the research and development, and the Department of Commerce had the responsibility for actually developing the standard, and the Federal Trade Commission had the responsibility for enforcing it. The fact of the matter is that this system did not work. This committee and other Members of Congress agreed with that, and that is one of the reasons why standards development and enforcement responsibilities were consolidated in this agency. I don't think we need to start down that same track with cellulose insulation.

Third, the Department of Energy simply does not have experience, personnel, and established systems for standards development, and we do.

Fourth, as I said when I started, I don't see anybody doing anything any faster, more efficiently, openly, and less expensively than us, given the same rules. If the Department of Energy could develop a standard using our section 7 or our section 9 faster than we can, then you would save something to compare us against.

On the other hand, if the standard is going to be done under informal rulemaking, then you can give the informal rulemaking authority to the Consumer Product Safety Commission just as easily as you can give it to the Department of Energy.

Lastly, I think it would be a very unfortunate procedent if particular consumer products having particular problems are distributed on a product-by-product basis around the Federal Government. I think that the Consumer Product Safety Commission's emerging record of achievement shows that we can do the job. If you believe we cannot, then you ought to be dealing with us and our problems. You should not, however, start to spread the responsibility for standards for consumer products around the Federal Government.

Thank you very much for the opportunity to express our views, and I look forward to the opportunity of answering any questions you may have.

[Testimony resumes on p. 49.]

[Mr. Byington's prepared statement and attachments follow:]

STATEMENT OF S. JOHN BYINGTON, CHAIRMAN, CONSUMER PRODUCT SAFETY COMMISSION

Mr. Chairman, my fellow Commissioners and I are pleased to appear before the Consumer Protection and Finance Subcommittee to discuss the future of the Consumer Product Safety Commission. For, as you know, we are again at a critical point in the Commission's history. Our authorization expires at the end of this fiscal year, and Congress will again be reexamining the kind and quality of product safety to be afforded the American consumer.

Mr. Chairman, the Commission has received its share of criticism during its five years of existence. Organized consumer groups have criticized what they see as inordinate delays and lack of responsiveness to the needs and concerns of the consumer. Business, too, has been concerned, often accusing the Commission of overreaction, but just as often objecting to delays which increase their uncertainty and make the conduct of business difficult. The Congress and the press have focused both on the internal management problems of the agency as well as on specific products on an *ad hoc* basis. Yet I believe that the controversy has often obscured the real accomplishment of this agency.

We are truly at a crossroads. Soon, we hope, we will have two new members, bringing the Commission to full strength, with some expectation of stability, for the first time in almost two years. And soon, too, we will have a new Chairman.

As we look to the future, I think it is appropriate to briefly review the past. I believe that this agency, understaffed and underfinanced compared to almost any other Federal regulatory agency, has made, by any objective standard, impressive

progress. We have developed an emerging record of responsive regulatory achievements.

The Commission was established to protect the consumer from unreasonable risks of injury associated with consumer products. Congress provided us with many means under five Acts of reaching this goal. Our activities are not limited to mandatory standard development, but may also include seizures, the establishment of bans or special labeling requirements, varying degrees of cooperation with individual firms and voluntary standards groups, information and education programs, recalls and repurchase, and so on. Therefore, I do not believe that the best or only measure of the Commission's effectiveness is a tally of mandatory safety rules issued under the Consumer Product Safety Act.

One of the more significant achievements in the past year has been the establishment of priorities for Commission action. In June, 1977, the Commission selected a set of criteria for determining priorities, after extensive open consideration of possible projects. These priorities are reviewed periodically and adjustments are made by the Commission as the situation dictates.

On September 22, 1977, shortly before our last appearance before this Subcommittee, the Commission published in the Federal Register a listing of 29 high priority products or projects to be addressed by the staff as quickly as possible, and 17 medium priority projects to be worked on as soon as possible after the high priority projects to be worked on as soon as possible after the high priority prejects. A copy of this Federal Register notice is attached at Tab A for your reference. These projects represented the Commission's considered judgment on which of the numerous candidates for Commission attention were most in need of immediate action. An extensive review of these priorities will take place in mid-March. However, a review of our progress on these items at this time may be one of the most meaningful evaluation measures available to the Congress. Therefore, I'd like to summarize our progress on our high priority projects.

1. Asbestos

Final regulations banning artificial emberizing compounds containing respirable free-form asbestos were published on December 15, 1977, and became effective that day. Final regulations banning consumer patching compounds containing respirable free-form asbestos were published December 15, 1977, and became effective January 16, 1978.

2. Power mowers

The Commission staff is analyzing the well over 1,000 pages of comments received in response to the May 5, 1977 proposal on power mowers. The Commission staff expects to brief the Commission in March.

3. Unvented gas-fired space heaters

A proposed regulation banning unvented gas-fired space heaters was published in the Federal Register on February 14, 1978.

4. Communications antennas

The comments received in response to our November 1, 1977 proposal for labeling CB base station radio antennas under section 27(e) of the Consumer Product Safety Act are being analyzed. A Commission decision on a final rule is now scheduled for the spring of this year.

5. Public playground equipment

The Commission has contracted with the National Bureau of Standards to perform additional work on public playground equipment, notably on human factors considerations. A final report is due from NBS in August.

6. Chlorofluorocarbons

CPSC has finalized its 27(e) labeling rule on chlorofluorocarbons, and is continuing to work closely with EPA and FDA on the final ban to be issued in the near future by those agencies of non-essential uses of chlorofluorocarbon propellants. We are also looking to the possible regulation of other, non-propellant uses of chlorofluorocarbons.

7. Architectural glazing materials—certification

A proposed certification regulation for architectural glazing materials was published in the Federal Register on December 16, 1977. The comment period closes in mid-March, and there will be an opportunity for the presentation of oral comments on March 1, 1978.

8. Unstable refuse bins

Our ban on unstable refuse bins becomes effective on June 13, 1978. We have designed a compliance program that will involve inspections of refuse bin manufacturers, to ensure that their newly manufactured products are in compliance, and to refuse bins in use, to ensure that the products actually in use also comply.

9. Lead-in-paint

The ban on paint containing more than .06 percent lead becomes effective on February 28. In the spring of this year, we will collect and analyze about 1,000 paint samples from manufacturers selected to be representative geographically and in terms of size.

10. Pacifiers

A final regulation establishing mandatory safety requirements for pacifiers and banning certain hazardous pacifiers appeared in the Federal Register on June 30, 1977, and becomes effective in February 26, 1978.

11. Sharp points (toys and children's articles)

The Commission issued final technical requirements for sharp points on toys and other children's articles on December 22, 1977. These regulations will become effective on December 22, 1978.

12. First-aid instructions

The Commission staff expects to have a briefing package on first-aid instructions for inducing vomiting to the Commission for consideration this spring. Our Poison Prevention Week campaign during March of this year emphasizes the proper use of syrup of Ipecac, the generally recommended emetic.

13. Upholstered furniture

In September, 1977, the Commission made a preliminary decision that a mandatory flammability standard for upholstered furniture would be necessary. At the same time, they requested the staff to make modifications in the draft standard intended to reduce the economic impact of the regulations, to study various means of implementing the standard, to review the California standard, and to monitor the industry's voluntary efforts. The staff expects to brief the Commission on these activities in the second half of the fiscal year.

14. Sharp edges (toys and children's articles)

The staff expects that the Commission will be able to publish a final regulation on sharp edges in toys and other children's articles this spring. The proposed regulations appeared in the Federal Register on September 1, 1977.

15. Children's sleepwear—definitions

A consumer use survey on children's sleepwear was completed in December, 1977. The staff now expects that the Commission will receive a briefing package regarding definitions of children's sleepwear to be used in enforcing the standards in the fall of 1978.

16. Miniature Christmas tree lights

In November 16, the National Consumers League submitted its recommended standard for miniature Christmas tree lights to the Commission. The staff now expects to have a briefing package on the draft standard to the Commission in March, with publication of a proposed standard scheduled for April.

17. Television receivers

On November 2, the Commission partially withdrew its Notice of Proceeding for television receivers. However, the portion dealing with fire hazards was extended for 18 months. The staff will do a feasibility study on fire containment, and will continue to monitor fire incident data.

18. Aluminum wire

On October 26, 1977, the Commission filed suit in District Court in the District of Columbia, seeking that the court declare old technology aluminum wiring to be an imminent hazard. That suit is on appeal regarding the matter of the agency's jurisdiction.

19. Ranges and ovens

The Commission staff is continuing to monitor the Underwriters Laboratory voluntary standard for electric ranges and ovens, and the American National Standards Institute voluntary standard for gas ranges and ovens.

20. Skateboards

The staff expects to brief the Commission on skateboards during the mid-year review. At that time, the Commission will further consider the need for or desirability of any regulatory action. In addition, the Commission staff has reached agreement with a company on an extensive, national consumer information and education campaign regarding skateboarding.

21. Extension cords and trouble lights

On January 19, the Commission voted to deny a petition seeking a mandatory safety standard for extension cords, and decided to monitor UL's progress in implementing its voluntary standard. The Commission is to reconsider trouble lights separately at its mid-year review.

22. Bicycle regulation—amendments

The Commission, in December, decided to defer action on amending the bicycle regulation pending the development of performance requirements for wet braking by the International Standards Organization.

23. Matchbooks—certification regulation

The staff submitted a matchbook certification regulation to the Commission in January. At this time, the staff is awaiting Commission guidance on desired modifications.

24. Ladders

The Commission staff is working with the ANSI A.14 Committee in its revision of existing voluntary standards for wooden and metal ladders.

25. Energy conservation devices

The Commission contracted for a study of energy conservation devices, including vent dampers, flue heat recovery devices, and intermittent ignition devices such as electronic pilot lights. We have now received a draft report from the contractor and expect the final report in about a month. Staff recommendations on appropriate action will follow review of the final report.

26. Bathtubs and showers

The Commission staff is continuing to monitor the development of the American Society for Testing and Materials' standards for bathtubs and showers. These standards are scheduled for ASTM society letter ballot in March or April.

27. Smoke detectors

The Commission has contracted with Southwest Research Institute to evaluate the adequacy of existing voluntary standards and other standards, such as any existing foreign standards, for smoke detectors. We expect the technical report from the contractor in fall 1978; the staff evaluation is scheduled for completion that winter.

28. Football helmets

The Commission recently considered a petition seeking mandatory safety standards for football helmets. Since additional information would be necessary to come to a decision on that petition, the Commission plans to contract for additional research, especially in the area of the correlation between impact and injury.

29. Small parts (toys and children's articles)

Work on small parts in toys and other children's articles has been largely deferred until the completion of the technical requirements for sharp points and sharp edges. The staff now expects to have a proposal on small parts ready for Commission consideration this June.

These activities, of course, are not the only ones the Commission has been engaged in. For example, since our last appearance before you, the Commission has proposed and finalized amendments to the children's sleepwear standards. We believe that the standards, as amended, will continue to provide children with adequate protection from sleepwear-related burns while the need for treatment with chemical flame-retardants will be significantly reduced. A list of all regulations proposed or finalized since October, 1977, is attached at Tab B.

A significant amount of our resources has been utilized supporting or handling important litigation. An update of all CPSC litigation is attached at Tab C.

I'd like to mention briefly, too, our progress on petitions. As you know, the Consumer Product Safety Act provides that petitions are to be granted or denied

in 120 days. We have now reduced our backlog from more than 60 to only 4 which are over the 120-day limit. Tab D contains an updated listing of the status of petitions before the Commission.

As a small agency with a limited budget, we have devoted much thought to ways in which our resources can be maximized. For example, we have been an active participant in the Interagency Regulatory Liaison Group, so that our efforts in the chronic hazards area can be coordinated with those of EPA, FDA, and OSHA. We are also participating on other interagency task forces on energy, insulation, housing, lead-decorated glasses, and so on. We have significantly expanded our Federal/State relations and commissioned state officials in seven states and Puerto Rico, delegating to them authority to perform investigations and inspections under our acts.

Important as our regulatory acomplishments are, the Commission has also adopted a number of procedural and organizational reforms that are already having an effect. Our recent reorganization, I believe, provides the framework necessary for a productive, efficient agency. Reforms in our decision-making process, especially the increased involvement of the Commissioners in budget and planning decisions and in the establishment of priorities for Commission action, will also contribute to greater accountability on the part of the Commission.

The Commission has recommended authorization levels of $55 million for FY 79 (the figure contained in H.R. 10819), $60 million for FY 80, and $65 million for FY 81. These figures represent the Commission's best estimates of the resources needed to develop and implement its programs. The estimates are based on the resources we will need to continue existing programs and on estimated resources to deal with anticipated problems. For example, our authorization request for FY 79 is higher than our requested budget authority for that year by about $10 million. We anticipate, however, that the Commission might need additional funds to deal with home insulation or other emerging hazards.

Although the Commission has not yet specifically designated its priorities for FY 80 and FY 81, we intend to place continued emphasis on our five existing hazard programs: Chemical and Environmental (Chronic); Chemical and Environmental (Acute); Mechanical; Electrical Shock; and Fire and Thermal Burns. Two areas will undoubtedly required increased efforts and resources: fire and thermal burns because of identified and potential hazards, especially in structural and energy-related areas; and chronic hazards, because of the need for research and action on the numerous, often unsuspected, chemicals being used in consumer products.

Lastly—but very importantly—if the Commission is to adequately and realistically plan and evaluate its efforts, a continuing emphasis and resource commitment must be made in this area. Congressional and OMB concerns over the inadequacies of our past planning and evaluation initiatives are being addressed. Our first effort at developing a long-range plan is nearing completion—with discussions between Commissioners and senior staff scheduled for early March. An initial series of evaluation efforts is also underway. Yet we believe that much still needs to be done.

If the Commission is to plan, develop, implement, and evaluate necessary consumer product safety initiatives, it must be provided with adequate resources. These resources, are, obviously, positions and dollars. But the Commission also needs flexibility—the means to respond to previously unknown hazards. This means not only an adequate level of funding, but multi-year funding within broad hazard categories, which will enable the Commission to plan and adjust to future situations. If this agency is ever to be a vitally active, rather than reactive, entity, it must be able to look ahead. We therefore urge your careful consideration of a three-year authorization as recommended by the Commission.

Besides the reauthorization figure, H.R. 10819 contains language amending section 7 of the Consumer Product Safety Act. At the time the Commission was established, this section represented a truly innovative approach it standards development. The standards development process was to be open with maximum involvement by consumers; the process was also to be expeditious, adhering to a strict timetable. Section 7 has continued to be one of the most controversial provisions of the act. Early experience with its implementation led to suggestions for reform, or even for its abandonment. Since the manner in which the Commission develops mandatory standards is crucial, and since the Commissioners hold differing views on the best approaches to take, each Commissioner has submitted individual views on the provisions of H.R. 10819.

An issue that has attracted much attention recently is home insulation. Insulation sales have increased dramatically as a result of the energy shortage, and we can anticipate a continuing demand for this material. Under the circumstances, it is obvious that the safety of home insulation must be ensured.

As you know, the Metropolitan Denver District Attorney's Consumer Office requested that the Commission act against unreasonable risks of injury associated with cellulose, plastic foam/resin, and fibrous glass home insulation. These risks included risks of injury from fire, risk of respiratory and gastro-intestinal trace cancer, and risk of injury from irritation and poisoning. After reviewing materials collected by the staff and presented by witnesses at a public meeting, the Commission decided to deal first with cellulose insulation flammability. On February 9, 1978, the Commission voted to issue a Notice of Proceeding on cellulose home insulation under section 7 of the Consumer Product Safety Act.

This subcommittee has before it H.R. 10637, the Emergency Interim Consumer Product Safety Rule Act of 1978. This bill has already passed the Senate as S. 2401. Our formal comments on the bill, already transmitted to the Subcommittee, are attached at Tab E, but I'd like to take this opportunity to discuss one aspect of the bill.

We are concerned about the impact that S. 2401, and especially section 4, would have on the workload of the Commission. As you know, section 4 requires the Commission to conduct a thorough and complete study of: (1) the need for safety standards for fiber glass, rockwool, cellulose, urea-formaldehyde, styrene, urethane, vermiculite, perlite, and other forms of commonly used home insulation; (2) methods of testing the safety of home insulation; and (3) methods of enforcing home insulation standards. This study is to be completed within a year, with a preliminary report due in 6 months.

The Commission staff has prepared resource estimates for four options for implementing the special study section of S. 2401. These resource estimates have previously been provided to the Subcommittee. The levels of effort envisioned range from a review of "on the shelf" materials available from other federal agencies, trade associations, and so on to a multi-year research effort costing in the millions of dollars.

Considering the intent expressed in the bill that the special study be completed in a year, we believe that option B as outlined in the staff briefing package is the most reasonable and appropriate level of effort. However, we believe that the work could be accomplished for no more than $2.5 million rather than $2.99 million, and with 20, rather than 22, additional positions. We would, for example, eliminate or refine certain contracts, although the Commission is still in consultation with staff as to which ones would be affected. The Commission will give careful consideration to this question as its discussions on home insulation continue.

I should note here that the levels of effort envisioned in both option B and the Commission's scaled-down version do not constitute, in our staff's opinion, a thorough and complete study. Such an effort, in the staff's view, would require a funding level 4 or 5 times greater.

We are also concerned that any appropriations for expenses and salaries for the implementation of section 4 be provided in multiyear funding. This would allow the Commission flexibility in management of the appropriations without concern for the expiration of the budget authority for appropriations allocated only for FY 78. It should also be noted that any additional appropriations should be made available by March 1978 in order for the Commission to begin its activities under the Act in FY 78. Once resources become available, the Commission will require a reasonable amount of time for initiating contracts and hiring personnel. Of course, all hiring of personnel and contract awards will be done in accordance with existing federal specification and regulations.

Section 4 also provides that the Commission shall submit an interim and final report concerning the insulation safety study within 180 days and 365 days, respectively, from the date the study is begun. Since additional appropriations, contracts and personnel arrangements will be necessary for the Commission to conduct this study, the Commision believes that the Act should specify that the study is to begin after the appropriations have been received and after any necessary contract and personnel arrangements have been made in order to initiate the study.

The Commission has also noted a number of possible ambiguities and issues that may be raised by language in the Act. Several of these ambiguities, discussed fully in the attached bill comment, could lead to interpretations that would increase the resources required to fulfill the Commission's responsibilities under

the Act. We will be pleased to discuss these issues should the Subcommittee so wish.

Mr. Chairman, this concludes my prepared statement. My colleagues and I will be pleased to answer any questions you may have.

CONSUMER PRODUCT SAFETY COMMISSION

PRIORITIES FOR COMMISSION ACTION

General Statement of Policy

AGENCY: Consumer Product Safety Commission.
ACTION: Statement of policy.
SUMMARY: This notice lists priority rankings of consumer products and related projects for Commission actions to reduce or eliminate risks of injury associated with consumer products. In the spring of 1977, High and Medium Priority categories were established: High Priority for 29 projects which are to be worked on as quickly as possible, and Medium Priority for 17 projects to be worked on as soon as possible after the High Priority Projects. These priority rankings provide guidance to the Commission staff; they are subject to review and may change when the Commission believes that revised priority rankings are appropriate or that other projects require Commission priority attention.
EFFECTIVE DATE: Policy now in effect.
FOR FURTHER INFORMATION CONTACT:
James F. Hoebel, Office of Strategic Planning, Consumer Product Safety Commission, Washington, D.C. 20207 (202–634–4350).
SUPPLEMENTARY INFORMATION: On July 8, 1976, the Commission published a policy for establishing priorities for Commission action under the laws administered by the Commission (41 FR 27960, July 8, 1976; 16 CFR 1009.8). In that document, the Commission set forth the following general criteria to be applied to projects for Commission action to reduce or eliminate risks of injury associated with consumer products: frequency and severity of injuries; casuality of injuries; chronic illness and future injuries; costs and benefits of Commission actions; unforeseen nature of the risk of injury; vulnerability of the population at risk; probability of exposure to hazard; and, where appropriate, additional factors known to the staff and believed to warrant Commission attention. During the Commission's recent midyear review in the spring of 1977, the Commission applied these criteria to projected actions and issued the following priority rankings:

HIGH PRIORITY PROJECTS

1. Asbestos—Develop mandatory safety rules covering consumer products containing respirable free-form asbestos. A proposed rule banning consumer patching compounds and artificial embers and ash containing such asbestos was published in the FEDERAL REGISTER for public comment on July 29, 1977 (42 FR 38782).

2. Power mowers—Consider mandatory safety standard proposed for comment in the FEDERAL REGISTER on May 5, 1977 (42 FR 23052).

3. Gas space heaters—Develop a proposed mandatory rule that bans "unvented" gas space heaters.

4. Communication antennas—Develop regulation for labeling of communication antennas and investigate feasibility of mandatory standard.

5. Public playground equipment—Consider mandatory safety standard. A notice of proceeding to develop safety related requirements was published in the FEDERAL REGISTER on March 7, 1975 (40 FR 10706).

6. Chlorofluorocarbons—Complete labeling requirements for aerosol consumer products containing a chlorofluorocarbon propellant and continue cooperation with the Environmental Protection Agency. The Food and Drug Administration, and other Federal agencies in banning certain products. A final rule prescribing labeling requirements was published in the FEDERAL REGISTER on August 24, 1977 (42 FR 42779).

7. Architectural glazing materials—Develop certification regulation to help implement mandatory standard issued in the FEDERAL REGISTER on January 6, 1977 (42 FR 1428).

8. Unstable refuse bins—Implement mandatory banning safety rule issued in the FEDERAL REGISTER on June 13, 1977 (42 FR 30296).
9. Lead in paint—Implement mandatory safety rule that bans paint containing over 0.06 percent of lead, and also bans toys, children's articles, and furniture that bear paint containing over 0.06 percent of lead. The ban was issued in the FEDERAL REGISTER on September 1, 1977 (42 FR 44192).
10. Baby pacifiers—Consider development of mandatory safety standards.
11. Sharp points—Issue final safety regulation that deals with sharp points on children's toys. A proposed regulation was published in the FEDERAL REGISTER on August 4, 1977 (42 FR 39649).
12. First aid instructions for inducing vomiting—Issue final statement of policy on first-aid label instructions for which inducing vomiting is indicated following ingestion. A policy statement was published for comment in the FEDERAL REGISTER on June 23 ,1977 (42 FR 31808).
13. Upholstered furniture—consider development of mandatory safety standard.
14. Sharp edges—Develop safety regulations that deal with sharp edges on children's toys. A proposed regulation was issued in the FEDERAL REGISTER on January 7, 1975 (40 FR 1488).
15. Children's sleepwear enforcement policy—Develop clearer definitions of children's sleepwear for standards issued under the Flammable Fabrics Act.
16. Miniature Christmas tree lights—Monitor mandatory safety standard now under development through offeror process.
17. Television sets—Consider mandatory safety standard developed by an offeror in proceedings begun with a FEDERAL REGISTER notice issued on February 28, 1975 (40 FR 8592).
18. Aluminum wire—Consider mandatory safety standards or voluntary standard.
19. Ranges and ovens—Monitor voluntary standards.
20. Skateboards—Determine the need for and feasibility of any regulatory action. Cooperate with industry effort to develop voluntary standard and educational materials.
21. Extension cords and trouble lights—Consider development of mandatory safety standards.
22. Bicycles—Consider amendment to existing mandatory standard published in the Code of Federal Regulations (16 CFR 1500.18(a)(12), 16 CFR, Part 1512).
23. Matchbooks—Develop certification regulation to implement mandatory standard issued in the FEDERAL REGISTER on May 4, 1977 (42 FR 2256).
24. Ladders—Monitor development of voluntary standards.
25. Energy conservation devices—Consider possible hazards and methods for dealing with them.
26. Bathtubs and showers—Monitor development of voluntary standard.
27. Smoke detectors—Evaluate known standards and consider role in the Commission's fire and thermal burn hazards program.
28. Children's football helmets—Consider possible hazards and methods of dealing with them.
29. Small parts—Develop safety regulations that deal with the hazards of ingesting and choking from small parts in children's toys.

MEDIUM PRIORITY PROJECTS

1. Power saws (portable)—Consider possible hazards and methods of dealing with them.
2. Chain saws—Consider possible hazards and methods of dealing with them.
3. Over-the-counter antihistamines—Examine the need for requiring child-protection packaging for such products.
4. Power drills—Consider possible hazards and methods of dealing with them.
5. Household chemicals/petroleum distillates (cleaning, lubricating and polishing agents)—Examine the need for requiring child-protection packaging for such products.
6. Household chemicals/drain cleaners—Consider a ban of certain drain cleaners containing sulfuric acid.
7. Power saws (nonportable)—Consider possible hazards and methods of dealing with them.
8. Eye irritants—Revise test methods under the Federal Hazardous Substances Act for this product category.
9. Wearing apparel—Determine the need for upgraded flammability regulations and the appropriateness of a general versus a specific garment approach.

10. Household chemicals/rust removers—Consider a ban of those containing hydrofluoric acid.

11. Household chemicals/ammonia—Consider need for developing special cautionary labeling and/or requiring child-protection packaging.

12. Skin irritants—Revise test methods under Federal Hazardous Substances Act for this product category.

13. Window bars—Encourage voluntary action.

14. Skiing equipment—Consider possible hazards and methods of dealing with them.

15. Federal Hazardous Substances Act (FHSA)/flammability—Develop improved test methods for determining flammability under FHSA.

16. Flammable Fabrics Act guaranties—Revise regulations governing guaranties of products subject to regulation under the Flammable Fabrics Act.

17. Drug exemptions—Consider whether to issue a final rule exempting from provisions of the Poison Prevention Packaging Act, four classes of drugs not expected to cause serious illness or injury to children. The proposal was published in the FEDERAL REGISTER on February 11, 1974 (39 FR 5197).

These priority rankings constitute general guidance for the Commission staff in planning and executing their tasks. These lists are subject to continuing review for additions or modifications that may be made necessary by more recent information. The Commission staff will prepare work schedules monitoring the accomplishment of approved projects and periodically report the status of work to the Commission.

An important reason for publishing this information is to advise the public that, given the limited resources available to it, Commission action will be based largely on the rankings discussed in this notice. The Commission believes that this information will enable the public to understand and follow Commission actions more easily. However, these priority rankings should not discourage persons from calling the Commission's attention to other consumer products that may present risks of injury to the public.

Dated: September 16, 1977.

RICHARD E. RAPPS,
Secretary, Consumer Products Safety Commission.

[FR Doc. 77-27646 Filed 9-21-77; 8:45 am]

CONSUMER PRODUCT SAFETY ACT

	Proposed regulations	Final regulations	Effective date	Reference source
FINAL REGULATIONS				
Policy on establishing priorities for Commission action; amendments	NA	Oct. 4, 1977	Oct. 4, 1977	42 FR 53950
Submission of existing standards; offer to develop standards; and the development of standards; revisions	NA	Nov. 9, 1977	Nov. 9, 1977	42 FR 58400
Meetings policy; amendments regarding advance public notice, public attendance, and recordkeeping	NA	do	do	42 FR 58399
Commission involvement in voluntary standards activities	NA	Nov. 10, 1977	Nov. 10, 1977	42 FR 58726
Architectural glazing standard; laminated glass	NA	Dec. 7, 1977	Dec. 7, 1977	42 FR 61859
Consumer patching compounds containing respirable free-form asbestos; ban	July 29, 1977	Dec. 15, 1977	Jan. 16, 1978	42 FR 63354
Artificial emberizing materials containing respirable free-form asbestos; ban	do	do	Dec. 15, 1977	42 FR 63354
Extremely flammable contact adhesives; ban	July 13, 1977	Dec. 19, 1977	Jan. 18, 1978	42 FR 63730
Meetings policy; amendments regarding preposal conferences	NA	Feb. 10, 1978	Feb. 10, 1978	43 FR 5803
PROPOSED REGULATIONS				
Architectural glazing regulations, amendments	Oct. 3, 1977			42 FR 53798
Publications and publicity under sec. 6(b), CPSA	Oct. 5, 1977			42 FR 54304
CB base station antennas, TV antennas, and supporting structures; warning and instruction requirements	Nov. 1, 1977			42 FR 57134
Recordkeeping; consumer product safety complaints	Nov. 3, 1977			42 FR 57642
Architectural glazing; testing program and certification requirements	Dec. 16, 1977			42 FR 63586
Metal furniture; exemption from lead-in-paint regulations	Jan. 12, 1978			43 FR 1804
Unvented gas-fired space heaters; ban	Feb. 14, 1978			43 FR 6235
NOTICE OF PROCEEDING				
Television receivers; partial termination	Nov. 2, 1977			42 FR 57335

FEDERAL HAZARDOUS SUBSTANCES ACT

	Proposed regulations	Final regulations	Effective date	Reference source
FINAL REGULATIONS				
Sharp points (toys and children's articles); technical requirements	Aug. 4, 1977	Dec. 22, 1977	Dec. 22, 1978	42 FR 64288
STATEMENT OF INTERPRETATION				
Tris; withdrawal of interpretation as banned hazardous substance		Dec. 6, 1977	Dec. 6, 1977	42 FR 61593
Tris; statement of policy		do	do	42 FR 61621
PROPOSED REGULATIONS				
Cyanoacrylate-based glues, labeling requirements	Oct. 5, 1977			42 FR 54308
Certain writing instrument cartridges; exemption from labeling requirements	Nov. 14, 1977			42 FR 58959
Baby rattles; ban and establishment of safety requirements	Nov. 18, 1977			42 FR 59511

POISON PREVENTION PACKAGING ACT

	Proposed regulations	Final regulations	Effective date	Reference source
FINAL REGULATIONS				
Certain sodium fluoride solutions; exemption from special packaging	Mar. 5, 1976	Dec. 12, 1977	Jan. 11, 1978	42 FR 62363
PROPOSED REGULATIONS				
Exemption for mebendazole from child-protection packaging requirements	Oct. 20, 1977			42 FR 53901
Certain acetaminophen preparations; special packaging requirements	Feb. 3, 1978			43 FR 4632

FLAMMABLE FABRICS ACT

	Proposed regulations	Final regulations	Effective date	Reference source
FINAL REGULATIONS				
Method for establishment and use of alternate laundering procedures, children's sleepwear	Aug. 19, 1974	Oct. 20, 1977	Oct. 20, 1977	42 FR 55887
Procedures for development of flammability standards; oral presentations		NA	Nov. 7, 1977	Nov. 7, 1977	42 FR 57961
Procedures for investigations, inspections, and inquiries pursuant to the Flammable Fabrics Act	June 8, 1976	Nov. 30, 1977	Nov. 30, 1977	42 FR 61020
Flammability standards for children's sleepwear, amendments	Oct. 26, 1977	Feb. 6, 1978	Feb. 6, 1978	43 FR 4849

Litigation actions in the United States Courts to which the Commission was party during the transition quarter of FY 76 and during FY 1977 and Commission administrative enforcement proceedings are described in this Appendix. Dates shown in the text identify the fiscal period during which actions occurred. Actions instituted by the Commission were under: the Consumer Products Safety Act (15 U.S.C. 2051 et seq.), the Federal Hazardous Substances Act (15 U.S.C. 1261 et seq.), the Flammable Fabrics Act (15 U.S.C. 1191 et seq.), the Poison Prevention Packaging Act (15 U.S.C. 1471 et seq.), the Federal Food, Drug and Cosmetic Act (21 U.S.C. 321 et seq.), and the Federal Trade Commission Act (15 U.S.C. 1191 et seq.).

Actions by the Commission

INJUNCTIONS

The following injunctions were brought by the Commission in FY 77 to enjoin the continued sales of TRIS-treated articles of children's wearing apparel. The injunctions were brought under the Federal Hazardous Substances Act (FHSA).

1. U.S. v. F. W. Woolworth Co. CA. 77 Civ. 2437 (S.D. N.Y.). Order entered May 17, 1977.
2. U.S. v. Ayr-Way Stores, Inc. CA. IP 77-336-C (S.D. Ind.). Order entered June 15, 1977.
3. U.S. v. R. H. Macy & Co. CA. 77 Civ. 4124 (S.D. N.Y.). Order entered August 18, 1977.
4. U.S. v. Zayre Corporation, CA C-77-2532-S (D Mass.). Order entered August 22, 1977.
5. U.S. v. Allied Stores Corp. CA. 77 Civ. 4214 (LWP) (S.D. N.Y.). Order entered August 26, 1977.
6. U.S. v. Lamonts Apparel, Inc. CA. C-77-624-M (W.D. Wash.). Order entered August 30, 1977.
7. U.S. v. Federated Department Stores CA. C-77-497 (S.D. Ohio). Order entered August 31, 1977.
8. U.S. v. E. B. Mott & Co., Inc. CA. 3-77-1194-F (N.D. Tex.).

APPLICATION FOR INJUNCTIONS FILED SEPTEMBER 2, 1977

On April 8, 1977, the Commission issued an interpretive policy statement determining that certain garments treated with TRIS (2,3-dibromopropyl phosphate) constituted "banned hazardous substances" within the meaning of the Federal Hazardous Substances Act. The Commission's action was taken after experts within the Commission staff, as well as at the National Cancer Institute, had determined that TRIS was a carcinogen presenting a human health hazard.

Pursuant to that determination, the Commission obtained injunctions against F. W. Woolworth, Co. in the United States District Court in Manhattan on May 17, 1977, and against Ayr-Way Stores, Inc., in Federal Court in Indianapolis on June 15, 1977. Both of these actions enjoined the further sales of TRIS-treated items.

Following the Commission's action, a fabric manufacturer filed an application for, and obtained, an injunction in the United States District Court for the District of South Carolina to prevent the Commission from taking enforcement action against TRIS-treated garments, on the grounds that the Commission had not compiled with certain hearing procedures contained in the FHSA.

On August 11, 1977, the United States Court of Appeals for the Fourth Circuit denied a stay of the South Carolina District Court's injunction, as sought by the Commission, but ruled that notwithstanding the injunction, the Commission was free to proceed against any individual seller of TRIS-treated articles by seeking the imposition of an injunction under 15 U.S.C. 1267.

Beginning on August 12, 1977, the Commission conducted a nationwide survey of retail establishments selling children's sleepwear. As a result of that survey, the Commission confirmed that retailers had not removed all TRIS-treated items from being offered for sale to consumers.

On August 19, 1977, the Commission obtained a temporary restraining order against R. H. Macy & Co., Inc. in Federal Court in New York City. The order requires the chain of Macy's Department Stores to cease all known selling and offering for sale of children's wearing apparel and related articles and products containing or treated with TRIS.

On August 22, 1977, the Commission filed suit against Zayre Corporation and its top managing officials in the United States District Court in Boston, Massachusetts. The corporation and its corporate officials entered into a stipulation and order which was entered by the Court to temporarily enjoin any further sales of TRIS-treated items.

On August 26, 1977, the Commission obtained a temporary restraining order against Allied Stores Corporation, a holding company which trades under many names, including the Jordan Marsh chain of department stores.

On August 30, 1977, the Commission filed suit against Lamonts Apparel, Inc. in Federal Court in Seattle, Washington and obtained a temporary restraining order, with the company having to post bond with the Court.

On August 31, 1977, an action was filed against Federated Department Stores, Inc., in Cincinnati, Ohio. Federated consented to the entry of a Permanent Injunction against the company's continued sales of TRIS-treated items. Federated trades under various names which include Filene's and Bloomingdale's.

On September 2, 1977, a Federal Court action was filed in Dallas, Texas against E. B. Mott & Co., Inc. and five of its top managing officials. A proposed stipulation of the parties for presentation to the Court is currently being negotiated.

United States v. *Chaffee Heights Professional Pharmacy, Inc., et al,* Civil No. 76–M–395 (D. Colo.). This action for an injunction under the Federal Food, Drug and Cosmetic Act (F, D and C Act) was the Commission's first effort to enjoin violations of the Poison Prevention Packaging Act (PPPA). After Commission investigation of a consumer complaint that this Denver pharmacy had dispensed prescription drugs without child-resistant closures, the United States on behalf of the Commission filed for a permanent injunction against Chaffee. The complaint, alleging several violations of the F, D and C Act and the PPPA, was filed on April 13, 1976. The case was not tried because Chaffee stipulated to the entry of a consent judgment which was entered by the District Court for the District of Colorado on September 13, 1976.

United States v. *Rite Aid Corporation, et al.*, Civil No. 76-3246 (E.D. Pa.). Rite Aid operates 372 pharmacies in 13 states. After an extensive investigation by the Commission, the United States on behalf of the Commission sued for a permanent injunction under the Federal Food, Drug and Cosmetic Act to restrain Rite Aid from dispensing prescription drugs without child-resistant closures in violation of the Poison Prevention Packaging Act. The complaint, alleging numerous violations of the F, D and C Act and the PPPA, was filed on October 19, 1976. There was no trial or adjudication of the issues, as Rite Aid stipulated to the entry of a consent judgment which was entered on September 7, 1977, by the District Court for the Eastern District of Pennsylvania.

United States v. *Morton-Norwich Products, Inc.*, Civil No. CV 77–0174–D (E.D. Ill), doing business at Texize Chemicals Company. Morton-Norwich Company manufactures and sells household cleaners nationwide. On September 23, 1977, the United States, at the request of the Commission, filed a complaint for permanent injunction against Morton-Norwich in which it is alleged that three of its Texize products are misbranded hazardous substances because of labeling deficiencies that violate the Federal Hazardous Substances Act and regulations issued thereunder. A trial date has not been set.

United States v. *Willard Schoenfeld, Inc., et al.* Civil No. C–77–0141 (N.D. Cal.). On January 19, 1977 a complaint for injunction was brought in the United States District Court for the Northern District of California against Willard Schoenfeld, Inc., a corporation, and Willard Schoenfeld, an individual. The complaint alleged three separate labeling violations of the Federal Hazardous Substances Act involving the products "Soda ash", "TSP" and "Tilex". The case was settled on March 7, 1977, upon the entry of judgment of a permanent injunction by consent.

Consumer Product Safety Commission v. *United Paint Manufacturing, Inc., et al,* Civil No. C–77–272 (E.D. Wash.). On September 29, 1977, the Commission filed a case in its own name for the first time under Section 27(b)(7) of the Consumer Product Safety Act. The complaint for an injunction alleged several violations of the Federal Hazardous Substances Act. The alleged violations included failure to state signal words such as "DANGER", and cautionary statements, such as "Harmful or Fatal if Swallowed", on labels for products containing hazardous substances and also, packing print containing more than 0.5% lead by weight. There was no trial or adjudication of the issues and defendants admitted no violations; they stipulated for the entry of a consent judgment which was subsequently entered on September 30, 1977.

CRIMINAL PROSECUTIONS

United States v. *Glenn Paint Company and Glenn A. Godsey,* Criminal No. CR76–0113L (W.D. Ky.). This action involved a two-count criminal information brought in Louisville, Kentucky against Glenn Paint Company, a partnership, and Glenn A. Godsey, the managing partner, for repackaging mineral spirits (a "hazardous substance") without the required hazard labeling on the containers, in violation of Section 4(b) of the Federal Hazardous Substances Act. Both defendants entered pleas of guilty to each count on August 5, 1976, and were placed on unsupervised probation for one year after imposition of sentence was suspended.

United States v. *Gable-Tite Products Co., Inc.*, Criminal No. 76–399–Cr–NCR (S.D. Fla.). This case involved a three count criminal information brought in Miami, Florida against Gable-Tite Products Co., Inc. for misbranding acetone and mineral spirits while held for sale after receipt in interstate commerce, in violation of the Federal Hazardous Substances Act. On October 15, 1976, the defendant pled guilty to one account and was fined $200. The remaining two counts were dismissed.

United States v. *Fitzgerald Enterprises, Inc. and Michael E. Fitzgerald,* Criminal No. 3–76–1806–M–G (N.D. Cal.). Fitzgerald involved a one-count information

brought in San Francisco, California against Fitzgerald and Michael E. Fitzgerald, its principal officer, for failing to place appropriate warning statements of the principal hazard on the main panel label of the containers of a product containing toluene in violation of the Federal Hazardous Substances Act. Michael E. Fitzgerald pled guilty and was sentenced, on December 1, 1976 to pay a fine of $300 and placed on probation for a period of 6 months.

United States v. L. R. Van Allen Company, Inc., Criminal No. G–77–121 Cr. (W.D. Mich.). This case involved an 11-count criminal information brought in Grand Rapids, Michigan, against L. R. Van Allen Company, Inc. and its president, for selling wood bleach and masonry cleaners, containing toxic and corrosive ingredients, which were misbranded hazardous substances because they do not meet the labeling and child-resistant closure (special packaging) requirements of the Federal Hazardous Substances Act and the Poison Prevention Packaging Act. On August 1, 1977, both defendants entered please of *nolo contendere* to counts 1–6. Each defendant was fined $250 on count 1. Execution of sentence was suspended as to counts 2–6. Counts 7–11 were dismissed.

CIVIL PENALTY ACTIONS

CPSC Docket No. 77–4: Corning Glass Works, Inc., Corning, New York. In one of the first civil penalty actions brought by the Commission pursuant to Section 20 of the Consumer Product Safety Act for a violation of Section 19(a)(4), it was alleged that Corning Glass Works, Inc., Corning, New York, failed to inform the Commission immediately of certain information it had which reasonably supported the conclusion that a product contained a defect which could create a substantial product hazard, as required by Section 15(b) of the Consumer Product Safety Act (CPSA). After the Commission staff conducted an investigational hearing on January 26 and 27, 1977, the Commission issued its Notice of Violation on March 24, 1977, alleging the failure to report immediately the required information. The Commission's Notice of Violation assessed respondent a civil penalty of $400,000.

At that time, respondent offered to settle the alleged violation for a civil penalty of $325,000. On July 14, 1977, the Commission accepted the civil penalty of $325,000 in full and final settlement of the case.

CPSC Docket No. 77–2: Wham-o Manufacturing Company, San Gabriel, California. This was a civil penalty case brought by the Commission pursuant to Section 20 of the Consumer Product Safety Act. It was alleged that Wham-o Manufacturing Company (Wham-o) knowingly violated Section 19(a)(4) of the CPSA by failing to immediately inform the Commission, upon obtaining information which reasonably supported the conclusion, that certain models of the firm's crossbows contained a defect which could create a substantial product hazard, as required by Section 15(b) of the CPSA.

After the Commission staff conducted an investigational hearing on January 12, 13, and 14, 1977, the Commission issued its Notice of Violation and Assessment of Civil Penalty against Wham-o in the amount of $125,000. Since no payment was made nor a settlement agreement reached, the Commission commenced an adjudicative proceeding against Wham-o by issuing a Show Cause Order on April 27, 1977, requiring Wham-o to show cause why the firm should not be required to pay a civil penalty in the amount of $125,000.

Wham-o served its answer in the administrative proceeding on May 13, 1977. On May 19, 1977, Wham-o filed an action against the Commission in the United States District Court for the Central District of California, Civil Action No. 77 1818 HP, seeking to enjoin the Commission from proceeding with the administrative proceeding. At the same time Wham-o filed its motion for a preliminary injunction and brief in support thereof. The Commission staff's brief in opposition to Wham-o's motion was filed on July 1, 1977.

In addition to the activity in the federal court action, various pre-hearing activities took place in the administrative action. Settlement negotiations also took place, and a civil penalty of $40,000 was accepted by the Commission in full and final settlement of the case on October 28, 1977.

CPSC Docket No. 77-3: North American Systems, Inc., Bedford, Heights, Ohio. On May 5, 1977, the Commission voted to accept provisionally a $25,000 settlement offer made by North American Systems, Inc. The company made this offer to settle any allegation that it knowingly violated Section 19(a)(4) of the Consumer Product Safety Act (CPSA) by failing to inform the Commission immediately and adequately that its electric coffeemakers might be defective within the meaning of Section 15 of the CPSA. Simultaneously, the Commission issued its Notice of Vio-

lations alleging the failure to immediately report the required information. The Commission indicated at that time that it would not assess a civil penalty in excess of $25,000. On June 16, 1977, the Commission accepted the civil penalty of $25,000 in full and final settlement of the case.

Civil Action No. 76 Civ. 3885 (S.D. N.Y.): United States v. *Christian Dior New York, Inc.* On December 28, 1976, a consent judgment was entered in this civil penalty case involving alleged violation of a 1971 cease and desist order issued under the Flammable Fabrics Act (FFA). The Government's complaint alleged importation of fabric which did not meet the flammability standard of the FFA, and the sale of dresses made from such fabric. Dior agreed to pay $15,000 in settlement. There was no trial or adjudication of the issues and Dior admitted no liability.

Civil Action No. C77–87R: The Celotex Corporation, et al. On July 8, 1977, this action was filed in the U.S. District Court for the Northern District of Georgia by the United States on behalf of the Commission. It seeks civil penalties in the aggregate amount of $510,000 for alleged violations of a cease and desist order issued by the Federal Trade Commission under the Flammable Fabrics Act. The alleged violations pertain to the manufacturing for sale, offering for sale and the sale of carpet that failed to conform to the Standard for Surface Flammability of Carpets and Rugs (FF 1–70) (16 CFR 1630). The case is in litigation.

Civil Action No. C–76–1334WHO: United States v. *Colonial Carpet Mills, Inc., et al.* On August 27, 1976, this action was filed in the U.S. District Court for the Northern District of California. It seeks civil penalties in the aggregate amount of $90,000 for alleged violations of two cease and desist orders issued by the Federal Trade Commission under the Flammable Fabrics Act. On October 20, 1977, during a pretrial conference, the parties entered into a consent agreemnt that contains, among other items, a mandatory injunction. The consent agreement also provides that the amount of the penalty will be assessed by the court pursuant to a hearing. The case is still pending for this final determination.

SEIZURES

The fiscal year, product, location and Act under which consumer products were seized are set forth below:

FY	Product	Location	Act
1977	Carpet	Illinois	FFA
1977	Carpet	Georgia	FFA
1977	Carpet	Colorado	FFA
1977	Carpet	Maryland	FFA
1977	Carpet	Wisconsin	FFA
1977	Casting Plastic	Pennsylvania	FHSA
1977	Furniture Polish	Puerto Rico	FHSA
1977	Fireworks	Texas	FHSA
1976	Trouble Light	New Jersey	CPSA
1976	Carpet	Georgia	FFA
1975	Carpet	Georgia	FFA
1973	Carpet	New York	FFA
1973	Carpet	Rhode Island	FFA

The seizures listed were accomplished in FY 77 or were still pending during FY 77.

IMMINENT HAZARD ACTIONS

Consumer Product Safety Commission v. *Advance Machine Company, Inc., et al,* Civil Action No. 77–1323 (D.D.C.). The Commission brought this imminent hazard action pursuant to Section 12 of the Consumer Product Safety Act against the manufacturers and distributors of an automatic pitching machine on July 24, 1977. The machine has a rotary pitching arm which rotates in a clockwise direction until sufficient mechanical energy is built-up to propel the arm forward rapidly, permitting it to pitch a baseball. If the machine is shut-off when the pitching arm is in the ready-to-pitch position, the arm retains stored mechanical energy, and if a person imparted a slight virbration to the machine, it could go off even though it was disconnected from its power source.

The Commission filed suit against the manufacturers and distributors of the machine to compel them to halt further sales and distribution of the machine, to order them to send a safety notice to the purchasers and known possessors of the machine, and to require them to repair, replace or refund the purchase price of the machines. The matter came before the United States District Court on the Commission's application for a temporary restraining order. Upon the judge's urging, defendants entered into a consent agreement and stipulation agreeing to halt further sales of the machines and to mail safety notices to their customers in lieu of being subject to a temporary restraining order.

The Commission is continuing to prosecute its court case to compel the defendants to repair or replace the machines or to refund their purchase price. This relief will be determined in a full trial on the merits which will be scheduled at the Court's convenience.

Consumer Product Safety Commission v. *Chance Manufacturing Company Inc., et al,* Civil Action No. 77 581 (D.D.C.). *The Commission brought this action pursuant to* Section 12 of the Consumer Product Safety Act, in the Federal District Court for the District of Columbia requesting the Court to declare Zipper amusement rides to be imminently hazardous consumer products and to grant other necessary relief. Zipper rides have individual cars in which the consumer rides. If a car door should open while the Zipper ride is in operation, the consumer could fall and die or suffer personal injury. The Commission has reports of four fatalities and two severe personal injuries resulting from the door of the Zipper ride car opening while the ride was in operation.

The Commission filed suit on September 15, 1977, against the manufacturer and a class consisting of all distributors and retailers (owners and operators) of the Zipper rides to compel them to halt further manufacture, distribution (including rental), sale, and operation of the ride, and to order them to repair the rides in a manner approved by plaintiff or to cease permanently the distribution (including rental), sale, and operation of the rides. Subsequently, the Commission filed a motion for immediate relief or, in the alternative, for a temporary restraining order and preliminary injunction. That motion has not been heard by the Court.

The Commission is continuing to prosecute its court case to compel defendants to repair the rides or to cease operation permanently. The relief will be determined in a full trial on the merits which will be scheduled at the Court's convenience.

ADMINISTRATIVE ENFORCEMENT ACTIONS

CPSC Docket No. 75–16: Francis Alonso d/b/a Mylar Star Kites Burbank and Encino, California. An Initial Decision issued by the Administrative Law Judge on June 18, 1976, held that the aluminized kites involved in this proceeding present a substantial product hazard within the meaning of Section 15 of the Consumer Product Safety Act. Respondents were ordered to notify the public of the hazard and to recall and replace or refund the purchase price of the kites less an allowance of 50% for kites in use for more than one year.

Following an appeal of the Initial Decision to the Commission by respondents, a Decision and Order was announced by the Commission September 16, 1977, in which the Notice of Enforcement issued in this proceeding was dismissed. While affirming the findings of fact contained in the Initial Decision as to the hazardous nature of the aluminized kites, the Commission set aside the proposed order of the Administrative Law Judge on jurisdictional grounds, holding that the subject kites were toys or articles intended for use by children ; thus, the kites were found to fall within the scope of the Federal Hazardous Substances Act and, in the majority's view, the Commission was obligated to act within the FHSA rather than the CPSA.

CPSC Docket No. 75–4: F&D Associates, Inc., New York, New York. On January 19, 1976, a Notice of Enforcement issued charging F&D Associates, Inc., with a violation of the FFA and the Standard for the Flammability of Mattresses (16 CFR 1632). The Notice of Enforcement charges that respondents manufactured and sold mattresses during the first 6 months of the effective date of the standard without the required labels disclaiming compliance with the mattress standard. The staff attorneys and counsel representing F&D Associates, Inc. negotiated a consent agreement.

On October 29, 1976, the Commission approved an agreement providing that recall offering refund or replacement is mandatory where a presumption of flammability has arisen (when the manufacturer fails to premarket test), unless respondent produces evidence that demonstrates to the Commission's satisfaction

that the product does not present an unreasonable risk of the occurrence of fire and injury.

CPSC Docket No. 76–9: National Mattress Co., et al. An administrative adjudicative proceeding was commenced on December 8, 1976, in which respondents were charged with violating the Flammable Fabrics Act by failing to conform to the Standard for the Flammability of Mattresses, 16 CFR Part 1632). Respondents did not conduct all required prototype tests and did not randomly select mattresses for production testing. On August 26, 1977, following a full trial on the merits, the Aministrative Law Judge concluded that respondents had violated Section 3 of the Flammable Fabrics Act and accordingly issued a cease and desist order to enjoin respondents from any further violation of the Act. A notice of intent to appeal to the Commission has been filed by respondents.

CPSC Docket No. 76–5: Ups 'n Downs, Inc., et al. An administrative adjudicative proceeding was commenced on May 10, 1976, in which respondents were charged with violation of the Flammable Fabrics Act in the sale of garments which did not meet the criteria of the Standard for the Flammability of Clothing Textiles (16 CFR 1610). The staff used statistical projections as evidence of the violations. However, after a full hearing on the merits, the Administrative Law Judge, on June 20, 1977, dismissed the Notice of Enforcement for insufficiency of evidence. Commission staff has appealed this matter to the Commission.

CPSC Docket No. 77–1: Central Textiles, Inc. This action was commenced on March 8, 1977, to determine whether children's sleepwear manufactured by the respondent was in violation of the Flammable Fabrics Act and the Standard for Flammability of Children's Sleepwear (16 CFR 1615). A settlement agreement is pending with the Commission.

CPSC Docket No. 75–21: Westland Carpet Mills, Inc., Garden Grove, California. A Notice of Enforcement was served on Westland Carpet Mills, Inc., Westland Carpets of Nevada, Inc., and Ervin Preuss, President of both corporations, on November 24, 1975, for violating the Flammable Fabrics Act by the manufacture for sale and/or sale of carpet which failed to conform to the Standard for the Surface Flammability of Carpets and Rugs (16 CFR 1630). The Commission staff is seeking a Cease and Desist order against respondents which requires recall of five lines of carpet to the level of the ultimate consumer. A hearing was held before the Administrative Law Judge in Los Angeles on March 24, 1976. An initial decision was rendered by the Administrative Law Judge on September 7, 1976, from which Commission staff has filed an appeal to the Commission. Appeal briefs have been submitted and a Commission decision is pending.

CPSC Docket No. 75–5: Barrett Carpet Mills, Inc., Dalton, Georgia. This action was commenced under provisions of the Flammable Fabrics Act and the Federal Trade Commission Act to determine whether a certain carpet style manufactured by the respondents was in violation of the carpet standard and whether such carpet should be recalled from the homes of consumers. After a hearing, the Administrative Law Judge issued a decision on July 8, 1976, which included a Cease and Desist Order against the company and its president. The Cease and Desist Order relates specifically to the carpet style in question and includes recall of carpets still in commerce.

On August 5, 1976 the Commission issued an order *sua sponte* undertaking review of the case and setitng forth the issues to be considered. On August 11, 1976, respondents filed a "Motion for Clarification of Order or Enlargement of Issues to be Briefed." Such motion was treated by the Commission as a late filed notice of intention to appeal. After the filing of briefs, oral argument was heard before the Commission on March 14, 1977. The matter is pending before the Commission.

CPSC Docket No. 76–6: Northwick Mills, Inc. d/b/a Enduro Mills and Fred W. Rosen, Dalton, Georgia. On June 8, 1976, the Commission staff filed a Notice of Enforcement alleging that respondents violated the Standard for the Surface Flammability of Carpets and Rugs by the manufacture and sale of Style 9562 carpeting, and seeking a cease and desist order against respondents which requires recall of the carpeting to the level of the ultimate consumer. After a prehearing conference, respondents filed a motion for pretrial summary judgment on grounds that the Commission lacks statutory authority under the Flammable Fabrics Act to order the recall of installed noncomplying carpeting. The Administrative Law Judge granted Respondent's motion. The Commission staff filed a petition for Commission review. Oral argument was held before the Commission on March 14, 1977. The matter is pending before the Commission.

CPSC Docket No. 76–8: McEntire Brothers, Inc., Topeka, Kansas. An administrative action was filed against the named respondent on December 8, 1976. This

proceeding was brought under the provisions of the Flammable Fabrics Act and the Federal Trade Commission Act to determine whether certain mattresses manufactured by the proposed respondent failed to conform to the Standard for the Flammability of Mattresses. Enforcement counsel is currently involved in consent negotiations in an attempt to settle the matter.

CSPC Docket No. 76–10: Craftmaster Products, Inc., Houston, Texas. An administrative action was filed against the named respondent on December 8, 1976. This proceeding was brought under the provisions of the Flammable Fabrics Act and the Federal Trade Commission Act to determine whether certain mattresses manfactured by the proposed respondent failed to conform to the Standard for the Flammability of Mattresses. Enforcement counsel is currently involved in consent negotiations in an attempt to settle the matter.

CPSC Docket No. 76–11: A. Brandt Company, Inc., et al, Fort Worth, Texas. An administrative action was filed against the named respondent on December 22, 1976. This proceeding was brought under the provisions of the Flammable Fabrics Act and the Federal Trade Commission Act to determine whether certain mattresses manufactured by the proposed respondent failed to conform to the Standard for the Flammability of Mattresses. Enforcement counsel is currently involved in consent negotiations in an attempt to settle the matter.

CONSENT AGREEMENTS ACCEPTED BY THE COMMISSION

Final orders:
Galaxy Carpet Mills, Inc., July 7, 1976.
Greensboro Mfg. Co. (Genesco, Inc.), July 7, 1976.
Vincent Castelli & Co., Inc., July 19, 1976.
Garb-Age, Inc., August 2, 1976.
G. Fox Co. (May Dept. Stores Co.), August 2, 1976.
Jerolds Men's Shops, Inc. (Adam & Eve), August 2, 1976.
Variety Frocks (Irving Edelman), August 24, 1976.
Tri-Foam Sleep Products, Inc., August 31, 1976.
Genuine Carpet & Rug, Inc., October 6, 1976.
Guild Industries Corp., October 6, 1976.
Foam-Tex Co., Inc., October 19, 1976.
AAA Mattress Co., Inc., November 2, 1976.
Atlas Bedding Mfrs. Corp., November 4, 1976.
Warren Wells, January 6, 1977.
Shaw Industries, Inc., January 27, 1977.
Sahara Carpet Mills, Inc., January 27, 1977.
Royal Bedding Company, January 27, 1977.
Mastercraft, Inc., February 16, 1977.
Denison Mattress Factory, March 14, 1977.
Dreamland Sleep, Inc., March 14, 1977.
General Bedding, Inc., March 14, 1977.
Grapevine Mattress Co., March 14, 1977.
Justice Bedding Co., March 14, 1977.
King Rest Mattress Co., March 14, 1977.
Michael Bedding Co., March 16, 1977.
Sleepmasters Mattress Co., March 15, 1977.
Southwest Bedding Co., March 15, 1977.
Whilhite Mattress Co., March 15, 1977.
Home Comfort Products, Inc., March 15, 1977.
United States Bedding Co., March 15, 1977.
San Rafael Mattress Co., March 15, 1977.
O & H Mfg. Co., Inc., March 15, 1977.
Kinder Mfg. Co., March 15, 1977.
Julius Berger & Co., Inc., May 16, 1977.
Weivoda Salvage Corp., May 23, 1977.
Bailey Bedding Co., et al., May 27, 1977.

ENFORCEMENT OF COMMISSION ORDERS

United States v. *The Anaconda Company, et al.*, Mis. No. 77–0024 (D.D.C., Memorandum Opinion, June 15, 1977. Order June 30, 1977) *appeal docketed*, No. 77–1628 (D.C. Cir., July 18, 1977). The Commission on November 14, 1976, issued 59 subpoenas to various manufacturers of aluminum wire and electrical devices. Nineteen manufacturers refused to comply. The Commission sought and obtained enforcement of the subpoenas against these nineteen manufacturers in the D.C.

District Court. The Court's order requiring production of the subpoenaed documents is in effect following a brief temporary stay and respondents (except Kaiser Aluminum and Chemical Corp.) have produced the subpoenaed documents. The Court held that the Commission was collaterally estopped from proceeding against Kaiser, because of the decision in *Kaiser Aluminum and Chemical Corp.* v. *Consumer Product Safety Commission*, 414 F. Supp. 1047 (D. Del. 1976), 428 F. Supp. 177 (D. Del. 1977), *appeal docketed*, No. 77–1874 (Third Cir. July 7, 1977). The Commission has appealed this ruling.

Consumer Product Safety Commission v. *O. N. Jonas Company, Inc.*, Civil Action No. 75–114R (N.D. Ga.). This is the Commission's first application pursuant to Section 9 of the Federal Trade Commission Act, applicable through the Flammable Fabrics Act, for enforcement of an "Order Requiring Access." The relief was sought by the Commission's own attorneys upon the refusal of Jonas, a carpet manufacturer, to permit access to its books, records, and papers relating to "noncomplying" carpet. The Court initially ordered Jonas to grant access to these documents, including customer data. This order was stayed pending reconsideration. Subsequently, Jonas successfully challenged the Commission's capacity to bring this application by its own attorneys. However, in ruling on this question, the Court acknowledged the Commission attorneys could bring an application to enforce a subpoena issued by the Commission under the Flammable Fabrics Act. A motion to amend the application to substitute the United States of America as plaintiff to cure this technical deficiency was granted. On April 8, 1977, judgment for the plaintiff was granted, and Jonas was directed to permit the Commission access to its business records and documents, including customer data.

United States v. *Berven Carpets Corporation and Berven Rug Mills, Inc.*, Civil No. F76–129 (E.D. Cal.). This was an action by the United States on behalf of the Commission under the Flammable Fabrics Act and the Federal Trade Commission Act for enforcement of an Order Requiring Access to distribution records and customer data relating to a style of carpet manufactured by Berven. The action was filed June 29, 1976, and the Court ordered enforcement on September 7, 1976. Berven appealed but later complied with the District Court's order after the Court of Appeals denied a stay. The appeal was dismissed in the Ninth Circuit on August 25, 1977.

United States v. *Aladdin Carpet Mills, Inc.*, Civil Action No. C76–30R (N.D. Ga.). On March 9, 1976, the Commission, by its own attorneys, applied to the District Court for the Northern District of Georgia for enforcement of the Commission's Order Requiring Access for inspection of Aladdin's carpet plant under the Flammable Fabrics Act. The application was later amended to substitute the United States as plaintiff. After disposing of other motions, the Court on July 13, 1977, ordered respondents to permit Commission access to examine documentary evidence and denied access to collect samples and to inspect laboratory facilities until the Commission finds there is reason to believe that Aladdin's products violate flammability standards. The United States moved to amend the Court's restriction on the disclosure of information obtained through its order. That motion is pending before the Court.

ACTIONS AGAINST THE COMMISSION

American Apparel Manufacturers Association v. *Consumer Product Safety Commission*, No. 77–682 (D.D.C.) and U.S. App. No. 77–1407 (D.C. Cir.). This action was filed to expand the scope of the ban on TRIS treated children's clothing to include components. The District Court issued a preliminary injunction on May 3, 1977. The Court of Appeals vacated the District Court order on May 19, 1977 after the Commission decided to modify the ban.

Aqua Slide 'N' Dive Corporation v. *Consumer Product Safety Commission*, U.S. App. No. 76–1713 (5th Cir.). A petition for review challenging the Commission's swimming pool slide standard issued under the CPSA was filed on March 19, 1976. It contends that, inter alia, the standard is arbitrary and capricious and is not supported by substantial evidence on the record. Briefs were filed and the oral argument was held on February 2, 1977. A decision is pending.

ASG Industries Incorporated et al. v. *Consumer Product Safety Commission*, U.S. App. No. 77–1216 (D.C. Cir.). Case consolidated with *Flat Glass Association of Japan et al.* v. *Consumer Product Safety Commission*. This is a petition for review of the Standard for Architectural Glazing Materials as it applies to wire glass. The petition was filed on March 1, 1977. The petitioner challenges the standard on the grounds that the standard, as applied to wire glass, is not supported by substantial evidence. The petitioner's motion for a stay of the effective date of the

standard as it applies to unpolished wire glass was granted pending review of the standard. All briefs have been filed. The case is pending oral argument.

D. D. Bean and Sons v. *Consumer Product Safety Commission*, U.S. App. No. 77–1265 (1st Cir.). In this matter, a petition was filed on June 2, 1977 for review of the Matchbook Standard. Briefs are being filed. The same issue has been raised in two additional cases being considered with *Bean* v. *Consumer Product Safety Commission*. They are: *Giglio* v. *Consumer Product Safety Commission*, U.S. App. No. 77–1249 (1st Cir.) and *Ohio Match* v. *Consumer Product Safety Commission*, U.S. App. No. 77–1357 (1st Cir.).

Chance Manufacturing Company v. *Consumer Product Safety Commission*, No. 77–1836 (E.D.N.Y.). This action was filed on September 14, 1977 to declare that an amusement park ride is not a consumer product and to enjoin the Commission from taking any action or making any public statements with respect to it. The District Court denied the application for a temporary restraining order and transferred the case to the District of Columbia where Commission action under section 12 of the CPSA is pending.

Chemical Specialties Manufacturers Association v. *Consumer Product Safety Commission et al.*, No. 75–1722 (D.D.C.). This is an injunction and declaration that the Commission is without authority to obtain chemical formulas by means of a special order issued under Section 27(b)(1) of the CPSA. The plaintiff's motion for a preliminary injunction was denied. Cross motions for summary judgment were filed in October 1976. A decision is pending.

Congoleum Industries v. *Consumer Product Safety Commission*, U.S. App. No. 75–3112 (9th Cir.). A petition for review was filed on September 22, 1975 challenging the application of the Standard for the Surface Flammability of Carpets and Rugs, and the authority of the Commission under the FFA to order a recall. The case is pending oral argument.

Consumers Union v. *Consumer Product Safety Commission et al.*, U.S. App. No. 75–2059 (D.C. Cir.). The plaintiff sued under the Freedom of Information Act to obtain the disclosure of television accident data which the Commission is willing to provide, but is prohibited from doing so by an order of the District Court of Delaware. The District Court for the District of Columbia found that no case or controversy exists and dismissed the action. The dismissal was appealed to the Court of Appeals for the District of Columbia Circuit, which on July 5, 1977, remanded the case to the District Court to decide whether the accident data is confidential.

Environment Defense Fund & Robert H. Harris v. *Consumer Product Safety Commission*, No. 77–517 (D.D.C.). An action was filed on April 8, 1977 to compel the Commission to ban all TRIS treated clothing under the FHSA. The case was dismissed after settlement.

Flat Glass Association of Japan et al. v. *Consumer Product Safety Commission*, U.S. App. No. 77–1238 (D.C. Cir.). A petition for review of the Standard for Architectural Glazing Materials was filed on March 7, 1977. The petition challenges the standard on grounds that (1) architectural glass is not a consumer product, (2) the standard is arbitrary and capricious, and (3) the standard is not supported by substantial evidence. The petitioner's motion for a stay of the effective date of the standard as it applies to polished wired glass was granted pending review of the standard. The case was consolidated with *ASG Industries* v. *Consumer Product Safety Commission*. All briefs have been filed. The case is pending oral argument.

John Forester et al v. *Consumer Product Safety Commission*, U.S. App. No. 75–1292 (D.C. Cir.). Numerous petitions for review were filed challenging the bicycle safety regulations issued by the Commission. The petitions challenged (1) the jurisdiction of the Commission to regulate bicycles under the FHSA, (2) the procedures by which the regulations were promulgated, and (3) the substantive requirements of the regulations in that they were alleged to be arbitrary and capricious. Most of the petitions were withdrawn and the remaining two were transferred to the United States Court of Appeals for the District of Columbia. On June 1, 1977 the Court found for the Commission on the jurisdictional and procedural issues. The Court approved all of the substantive requirements except for four that were remanded to the Commission and are awaiting consideration.

GTE Sylvania Incorporated et al v. *Consumer Product Safety Commission*, No. 75–104 (D. Del.). Television manufacturers brought this action seeking to enjoin the Commission from releasing television accident data in response to a request under the Freedom of Information Act. The complaint contends that Section 6(b)(1) of the CPSA bars such disclosure. The Court issued a prelim-

inary injunction on October 23, 1975. Cross motions for summary judgment on the section 6(b)(1) issue have been filed and are awaiting oral argument.

Kaiser Aluminum and Chemical Corporation v. *Consumer Product Safety Commission*, U.S. App. No. 77–1874 (3rd Cir.) This case is on Commission appeal from the U.S. District Court for Delaware. Plaintiff sought a mandatory injunction under section 6(b)(1) of the CPSA to compel the Commission to retract allegedly inaccurate and misleading statements concerning aluminum wire. The District Court held that aluminum wire was not a consumer product and directed the Commission to recall 3 documents on aluminum wire and refrain from issuing future statements. An appellate brief was filed by the Commission on October 15, 1977.

Laminators Safety Glass Association v. *Consumer Product Safety Commission*, U.S. App. No. 77–1216 (D.C. Cir.). A petition for review of the final order of the Commission regarding the Standard for Architectural Glazing Materials was filed on September 23, 1977. Petitioners challenge the standard, as applied to laminated glass, on the grounds that it is not supported by substantial evidence. The petition is pending.

Lorch v. *Consumer Product Safety Commission*, No. 76–174 (W.D. Cal.). This is a complaint under section 10(e) of the CPSA requesting the District Court to compel the Commission to initiate a rulemaking proceeding to ban incandescent Christmas tree lights and require a light-emitting-diode light system. The complaint alleges that the failure of the Commission to initiate the rulemaking proceeding unreasonably exposes Lorch and other consumers to an unreasonable risk of injury associated with incandescent Christmas tree lights. The complaint also claimed that incandescent Christmas tree lights present an unreasonable risk of injury. The case was voluntarily dismissed on May 3, 1977.

Marlin Toy Products, Incorporated, Cong. Ref. 2–74 (U.S. Court of Claims). This is a petition for money damages allegedly caused by the Commission's inaccurate description of petitioner's toys in the Commissioner's Banned Product List. The petition was filed on November 2, 1974. After a trial, the Court will forward its findings in liability and damages to Congress.

National Society for the Prevention of Blindness, et al v. *Consumer Product Safety Commission*, No. 76–1495, U.S. Court of Appeals for D.C. Consolidated with *Oklahoma Pyrotechnics Association* v. *Consumer Product Safety Commission* and *Mikes, Fireworks and Toys, Incorporated* v. *Consumer Product Safety Commission*. The petitions for review were filed challenging the Commission's final order (June 2, 1976) promulgating regulations for firecrackers and other fireworks devices under the Federal Hazardous Substances Act. On June 23, 1977, the Court remanded in part to the Commission finding that the original 2–2 vote was inadequate. The Commission majority affirmed the original decision. On October 5, 1977, the Court denied the petitions and upheld the regulations.

Pactra Industries, Incorporated, et al. v. *Consumer Product Safety Commission*, U.S. App. Nos. 74–2902 and 74–3168 (9th Cir.). This is a petition for review of the vinyl chloride regulations issued by the Commission under the FHSA. These regulations ban self-pressurized products intended or suitable for use in the household that contain vinyl chloride monomer as an ingredient or in the propellant. The petitions challenge denial of hearing on objections under 21 U.S.C. 371(e). On May 2, 1977, the Court set aside the regulations finding that the Commission failed to conduct the required hearing.

Pierce and Stevens Chemical Corporation v. *Consumer Product Safety Commission*, No. 75–410 (W.D.N.Y.) An action was filed on October 2, 1975 by a manufacturer to enjoin the Commission from disclosing under the Freedom of Information Act establishment inspection reports because the reports are allegedly inaccurate and misleading under section 6(b)(1) of the CPSA. The case is pending.

Spring Mills, Incorporated v. *Consumer Product Safety Commission*, No. 77–891 (D.S.C.) and U.S. App. No.'s 77–1969 and 77–1970 (4th Cir.). This is an action to set aside the Commission's interpretation on TRIS treated children's clothing as being arbitrary and capricious and unconstitutional. The District Court issued an injunction on June 23, 1977 and a final judgment on August 16, 1977, enjoining the Commission from enforcing the interpretation as a regulation. The Commission has appealed to the Court of Appeals. The appeal is pending.

Stained Glass Association et al. v. *Consumer Product Safety Commission*, U.S. App. No. 77–1234 (D.C. Cir.). This is a petition for review of the Standard for Architectural Glazing Materials as it applies to stained glass. The petitioner challenged the standard on the grounds that the standard, as applied to stained glass is not supported by substantial evidence. This case was remanded in September, 1977 to the Commission by stipulation of the parties for further proceedings.

Summary—Significant Enforcement Actions

(Fiscal year 1977 and 1978)

INJUNCTIONS

The following injunctions have been brought by the Commission to enjoin the continued sales of TRIS-treated articles of children's wearing apparel. The injunctions were brought under the Federal Hazardous Substances Act (FHSA):

1. U.S. v. F.W. Woolworth Co., C.A. 77 Civ. 2437 (S.D. N.Y) Order entered May 17, 1977.
2. U.S. v. Ayr-Way Stores, Inc., C.A. IP 77-336-C (S.D. Ind.). Order entered June 15, 1977.
3. U.S. v. R.H. Macy Co., C.A. 77 Civ. 4124 (S.D. N.Y.). Order entered August 18, 1977.
4. U.S. v. Zayre Corporation, C.A. C-77-2532-S (D. Mass.). Order entered August 22, 1977.
5. U.S. v. Allied Stores Corp., C.A. 77 Civ. 4214 (LWP) (S.D. N.Y.). Order entered August 26, 1977.
6. U.S. v. Lamonts Apparel, Inc., C.A. C-77-624-M (W.D. Wash.). Order entered August 30, 1977.
7. U.S. v. Federated Department Stores, C.A. C-77-497 (S.D. Ohio). Order entered August 31, 1977.
8. U.S. v. E. B. Mott & Co., Inc., C.A. 3-77-1194-F (N.D. Tex.). Complaint for injunction filed September 2, 1977, and pending.
9. U.S. v. Montgomery Ward and Company, Inc., C.A. No. CV 77-3843-RJK (C.D. Cal.). Complaint for injunction filed on October 14, 1977; motion for temporary restraining order denied; pending ruling on motion for preliminary injunction.

On April 8, 1977, the Commission issued an interpretive policy statement determining that certain garments treated with TRIS (2,3-dibromopropyl phosphate) constituted "banned hazardous substances" within the meaning of the Federal Hazardous Substances Act. The Commission's action was taken after experts within the Commission staff, as well as at the National Cancer Institute, had determined that TRIS was a carcinogen presenting a human health hazard.

Pursuant to that determination, the Commission obtained injunctions against F. W. Woolworth, Co. in the United States District Court in Manhattan on May 17, 1977, and against Ayr-Way Stores, Inc. in Federal Court in Indianapolis on June 15, 1977. Both of these actions enjoined the further sales of TRIS-treated items.

Following the Commission's action, a fabric manufacturer filed an application for, and obtained, an injunction in the United States District Court for the District of South Carolina to prevent the Commission from taking enforcement action against TRIS-treated garments, on the grounds that the Commission had not complied with certain hearing procedures contained in the FHSA.

On August 11, 1977, the United States Court of Appeals for the Fourth Circuit denied a stay of the South Carolina District Court's injunction, as sought by the Commission, but ruled that notwithstanding the injunction, the Commission was free to proceed against any individual seller of TRIS-treated articles by seeking the imposition of an injunction under 15 U.S.C. 1267.

Beginning on August 12, 1977, the Commission conducted a nationwide survey of retail establishments selling children's sleepwear. As a result of that survey, the Commission confirmed that retailers had not removed all TRIS-treated items from being offered for sale to consumers.

On August 19, 1977, the Commission obtained a temporary restraining order against R. H. Macy & Co., Inc. in Federal Court in New York City. The order requires the chain of Macy's Department Stores to cease all known selling and offering for sale of children's wearing apparel and related articles and products containing or treated with TRIS.

On August 22, 1977, the Commission filed suit against Zayre Corporation and its top managing officials in the United States District Court in Boston, Massachusetts. The corporation and its corporate officials entered into a stipulation and order which was entered by the Court to temporarily enjoin any further sales of TRIS-treated items.

On August 26, 1977, the Commission obtained a temporary restraining order against Allied Stores Corporation, a holding company which trades under many names, including the Jordan Marsh chain of department stores.

On August 30, 1977, the Commission filed suit against Lamonts Apparel, Inc. in Federal Court in Seattle, Washington and obtained a temporary restraining order, with the company having to post bond with the Court.

On August 31, 1977, an action was filed against Federated Department Stores, Inc., in Cincinnati, Ohio. Federated consented to the entry of a Permanent Injunction against the company's continued sales of TRIS-treated items Federated trades under various names which includes Filene's and Bloomingdale's.

On September 2, 1977, a Federal Court action was filed in Dallas, Texas against E. B. Mott & Co., Inc. and five of its top managing officials. A proposed stipulation of the parties for presentation to the Court is currently being negotiated.

On October 14, 1977, an action was filed against Montgomery Ward & Co., Inc. to enjoin it from selling TRIS-treated children's wearing apparel. A temporary restraining order was denied; motion for a preliminary injunction has also been denied. Case pending hearing on the merits.

United States v. *Burlington Industries et al.* On February 1, 1978, an action to declare TRIS-treated children's wearing apparel to be banned hazardous substances under the Federal Hazardous Substances Act and to compel the repurchase of these garments under that Act was filed in the Southern District of New York against the following fabric manufacturers: Burlington Industries, Collins & Aikman Corporation, Cone Mills Corporation, Dan River, Inc., J. P. Stevens Co., Inc. and M. Lowenstein & Sons, Inc. The action is pending.

United States v. *Chaffee Heights Professional Pharmacy, Inc., et al.*, Civil No. 76–M–395 (D. Colo.). This action for an injunction under the Federal Food, Drug and Cosmetic Act (F, D and C Act) was the Commission's first effort to enjoin violations of the Poison Prevention Packaging Act (PPPA). After Commission investigation of a consumer complaint that this Denver pharmacy had dispensed prescription drugs without child-resistant closures, the United States on behalf of the Commission filed for a permanent injunction against Chaffee. The complaint, alleging several violations of the F, D and C Act and the PPPA, was filed on April 13, 1976. The case was not tried because Chaffee stipulated to the entry of a consent judgment which was entered by the District Court for the District of Colorado on September 13, 1976.

United States v. *Rite Aid Corporation, et al.*, Civil No. 76–3246 (E.D. Pa.). Rite Aid operates 372 pharmacies in 13 states. After an extensive investigation by the Commission, the United States on behalf of the Commission sued for a permanent injunction under the Federal Food, Drug and Cosmetic Act to restrain Rite Aid from dispensing prescription drugs without child-resistant closures in violation of the Poison Prevention Packaging Act. The complaint, alleging numerous violations of the F, D and C Acts and the PPPA, was filed on October 19, 1976. There was no trial or adjudication of the issues, as Rite Aid stipulated to the entry of a consent judgment which was entered on September 7, 1977, by the District Court for the Eastern District of Pennsylvania.

United States v. *Morton-Norwich Products, Inc.*, Civil No. CV 77–0174–D (E.D. Ill.), doing business as Texize Chemicals Company Morton-Norwich Company manufactures and sells household cleaners nationwide. On September 23, 1977, the United States, at the request of the Commission, filed a complaint for permanent injunction against Morton-Norwich in which it is alleged that three of its Texize products are misbranded hazardous substances because of labeling deficiencies that violate the Federal Hazardous Substances Act and regulations issued thereunder. A trial date has not been set.

Consumer Product Safety Commission v. *United Paint Manufacturing, Inc., et al*, Civil No. C–77–272 (E.D. Wash.). On September 29, 1977, the Commission filed a case in its own name for the first time under Section 27(b)(7) of the Consumer Product Safety Act. The complaint for an injunction alleged several violations of the Federal Hazardous Substances Act. The alleged violations included failure to state signal words such as "DANGER", and cautionary statements, such as "Harmful or Fatal if Swallowed", on labels for products containing hazardous substances and also, packaging print containing more than 0.5% lead by weight. There was no trial or adjudication of the issues and defendants admitted no violations; they stipulated for the entry of a consent judgment which was subsequently entered on September 30, 1977.

Consumer Product Safety Commission v. *Dyna-Mist Chemical Co. et al.*, CA No. 77–3531 (E.D. Pa. filed 10/17/77). A complaint for injunctive relief was filed by the Commission in its own name on October 17, 1977 against Dyna-Mist Chemical Co., a corporation in Chatham, Pennsylvania, as well as against Frances A. Popejoy, who is Vice President/Secretary/Treasurer of the corpora-

tion. The complaint alleges violations of the Federal Hazardous Substances Act in the manufacture and sale of "Dyna-Mist Quik Drain Snake," "Dyna-Mist Muriatic Acid," and "Dyna-Mist Drain Cleaner" for the reason that the labeling of the three products failed to comply with the provisions of the FHSA and the regulations promulgated pursuant thereto. The case is pending before the Court on a motion to dismiss filed by the defendants.

United States v. *Towne Drug of Brookline, Inc.*, C.A. No. 78–228–G (D. Mass.). On January 24, 1978, a complaint was filed pursuant to the Federal Food, Drug, and Cosmetic Act to enjoin Towne Drug of Brookline, Inc. from dispensing the prescription drugs Dilantin (an anti-convulsant drug) and Pyribenzamine Elixir (an antihistamine) in packing which does not contain the child-resistant closures required by regulations issued under the Poison Prevention Packaging Act. A temporary restraining order was issued on January 26, 1978.

CRIMINAL PROSECUTIONS

United States v. *Glenn Paint Company and Glenn A. Godsey*, Criminal No. CR76–0113L (W.D. Ky.). This action involved a two-count criminal information brought in Louisville, Kentucky against Glenn Paint Company, a partnership, and Glenn A. Godsey, the managing partner, for repackaging mineral spirits (a "hazardous substance") without the required hazard labeling on the containers, in violation of Section 4(b) of the Federal Hazardous Substances Act. Both defendants entered pleas of guilty to each count on August 5, 1976, and were placed on unsupervised probation for one year after imposition of sentence was suspended.

United States v. *Gable-Tite Products Co., Inc.*, Criminal No. 76–399–Cr–NCR (So.D. Fla.). This case involved a three-count criminal information brought in Miami, Florida against Gable-Tite Products Co., Inc. for misbranding acetone and mineral spirits while held for sale after receipt in interstate commerce, in violation of the Federal Hazardous Substances Act. On October 15, 1976, the defendant pled guilty to one count and was fined $200. The remaining two counts were dismissed.

United States v. *Fitzgerald Enterprises, Inc. and Michael E. Fitzgerald*, Criminal No. 3–76–1806–M–G (N.D. Cal.). Fitzgerald involved a one-count information brought in San Francisco, California against Fitzgerald and Michael E. Fitzgerald, its principal officer, for failing to place appropriate warning statements of the principal hazard on the main panel label of the containers of a product containing toluene in violation of the Federal Hazardous Substances Act. Michael E. Fitzgerald pled guilty and was sentenced, on December 1, 1976, to pay a fine of $300 and placed on probation for a period of 6 months.

United States v. *L. R. Van Allen Company, Inc.*, Criminal No. G–77–121 Cr. (W.D. Mich.). This case involved an 11-count criminal information brought in Grand Rapids, Michigan, against L. R. Van Allen Company, Inc. and its president, for selling wood bleach and masonry cleaner, containing toxic and corrosive ingredients, which were misbranded hazardous substances because they do not meet the labeling and child-resistant closure (special packaging) requirements of the Federal Hazardous Substances Act and the Poison Prevention Packaging Act. On August 1, 1977, both defendants entered pleas of *nolo contendere* to counts 1–6. Each defendant was fined $250 on count 1. Execution of sentence was suspended as to counts 2–6. Counts 7–11 were dismissed.

United States v. *Kelly Technical Coatings, Inc. et al.*, involved a three-count criminal information against Kelly Technical Coatings, Inc. and certain of its corporate officials, charging that these defendants sold paint which was a banned hazardous substance under the Federal Hazardous Substances Act because of its excessive lead content. On December 2, 1977, the defendants pled guilty to all counts. The corporate defendant was fined $500 per count, and the individual defendants were fined $100 per count. Imposition of sentence was suspended as to two counts for both the corporate and individual defendants. The corporate defendant was placed on probation for two years and the individual defendants were placed on probation for 1 year.

CIVIL PENALTY ACTIONS

CPSC Docket No. 77–4: Corning Glass Works, Inc., Corning, New York. In the first civil penalty actions brought by the Commission pursuant to Section 20 of the Consumer Product Safety Act for a violation of Section 19(a)(4), it was alleged that Corning Glass Works, Inc., Corning, New York, failed to inform the

Commission immediately of certain information it had which reasonably supported the conclusion that a product contained a defect which could create a substantial product hazard, as required by Section 15(b) of the Consumer Product Safety Act (CPSA). After the Commission staff conducted an investigational hearing on January 26 and 27, 1977, the Commission issued its Notice of Violation on March 24, 1977, alleging the failure to report immediately the required information. The Commission's Notice of Violation assessed respondent a civil penalty of $400,000.

At that time, respondent offered to settle the alleged violation for a civil penalty of $325,000. On July 14, 1977, the Commission accepted the civil penalty of $325,000 in full and final settlement of the case.

CPSC Docket No. 77–2: Wham-o Manufacturing Company, San Gabriel, California. This was one of the first civil penalty cases brought by the Commission pursuant to Section 20 of the Consumer Product Safety Act. It was alleged that Wham-o Manufacturing Company (Wham-o) knowingly violated Section 19(a)(4) of the CPSA by failing to immediate inform the Commission, upon obtaining information which reasonably supported the conclusion, that certain models of the firm's crossbows contained a defect which could create a substantial product hazard, as required by Section 15(b) of the CPSA.

After the Commission staff conducted an investigational hearing on January 12, 13, and 14, 1977, the Commission issued its Notice of Violation and Assessment of Civil Penalty against Wham-o in the amount of $125,000. Since no payment was made nor a settlement agreement reached, the Commission commenced an adjudicative proceeding against Wham-o by issuing a Show Cause Order on April 27, 1977, requiring Wham-o to show cause why the firm should not be required to pay a civil penalty in the amount of $125,000.

Wham-o served its answer in the administrative proceeding on May 13, 1977. On May 19, 1977, Wham-o filed an action against the Commission in the United States District Court for the Central District of California, Civil Action No. 77 1818 HP, seeking to enjoin the Commission from proceeding with the administrative proceeding. At the same time Wham-o filed its motion for a preliminary injunction and brief in support thereof. The Commission staff's brief in opposition to Wham-o's motion was filed on July 1, 1977.

In addition to the activity in the federal court action, various pre-hearing activities took place in the administrative action. Setlement negotiations also took place, and a civil penalty of $40,000 was accepted by the Commission in full and final settlement of the case on October 28, 1977.

CPSC Docket No. 77–3: North American Systems, Inc., Bedford Heights, Ohio. On May 5, 1977, the Commission voted to accept provisionally a $25,000 settlement offer made by North American Systems, Inc. The company made this offer to settle any allegation that it knowingly violated Section 19(a)(4) of the Consumer Product Safety Act (CSPA) by failing to inform the Commission immediately and adequately that its electric coffeemakers might be defective within the meaning of Section 15 of the CPSA. Simultaneously, the Commission issued its Notice of Violation alleging the failure to immediately report the required information. The Commission indicated at that time that it would not assess a civil penalty in excess of $25,000. On June 16, 1977, the Commission accepted the civil penalty of $25,000 in full and final settlement of the case.

Civil Action No. 76 Civ. 3885 (S.D. N.Y.): United States v. *Christian Dior New York, Inc.* On December 28, 1976, a consent judgment was entered in this civil penalty case involving alleged violation of a 1971 cease and desist order issued under the Flammable Fabrics Act (FFA). The Government's complaint alleged importation of fabric which did not meet the flammability standard of the FFA, and the sale of dresses made from such fabric. Dior agreed to pay $15,000 in settlement. There was no trial or adjudication of the issues and Dior admitted no liability.

Civil Action No. C77–87R: The Celotex Corporation, et al. On July 8, 1977, this action was filed in the U.S. District Court for the Northern District of Georgia by the United States on behalf of the Commission. It seeks civil penalties in the aggregate amount of $510,000 for alleged violations of a cease and desist order issued by the Federal Trade Commission under the Flammable Fabrics Act. The alleged violations pertain to the manufacturing for sale, offering for sale and the sale of carpet that failed to conform to the Standard for Surface Flammability of Carpets and Rugs (FF 1–70) (16 CFR 1630). The case is in litigation.

Civil Action No. C–76–1334WHO: United States v. *Colonial Carpet Mills, Inc., et al.* On August 27, 1976, this action was filed in the U.S. District Court for the Northern District of California. It sought civil penalties in the aggregate amount

of $90,000 for alleged violations of two cease and desist orders issued by the Federal Trade Commission under the Flammable Fabrics Act. On October 20, 1977, during a pretrial conference, the parties entered into a consent agreement that contains, among other items, a mandatory injunction. The consent agreement provided that the amount of the penalty would be assessed by the court. After a hearing the court assessed penalties of $30,000.

United States of America v. *Danube Carpet Mills, Inc., and Carl D. Hagaman,* Civ. No. 1–77–300; filed November 25, 1977 Eastern District of Tennessee. On November 25, 1977, this action was filed in the U.S. District Court for the Eastern District of Tennessee. The seven count complaint charges violations of a final cease and desist order issued by the Federal Trade Commission on June 22, 1972. The Commission seeks $70,000 in civil penalties. Defendants are charged with having manufactured and sold in interstate commerce on at least seven separate occasions, carpet which failed to meet the acceptance criterion of the Standard for Surface Flammability of Carpets and Rugs (FF 1–70). Civil penalties are sought under the 1975 amendment to Section 5(1) of the Federal Trade Commission Act (15 U.S.C. 45(1)).

SEIZURES

United States v. *Articles of Hazardous Substances (TRIS-treated Children's Wearing Apparel).* On January 18, 1978, in Greensboro, North Carolina, in excess of 117,000 units of TRIS-treated children's sleepwear were seized from a retailer which was conducting a distress sale of these garments. The Commission contends these garments are banned hazardous substances under the Federal Hazardous Substances Act. TRIS (2,3 dibromopropyl) phosphate is a flame retardant used in children's sleepwear which the Commission has concluded, on the basis of data supplied by the National Cancer Institute, is a potential carcinogen in humans. The warrant of seizure was quashed upon motion of the claimant. An appeal of this determination is pending and the order quashing the warrant of seizure has been stayed pending appeal.

IMMINENT HAZARD ACTIONS

Consumer Product Safety Commission v. *The Anaconda Company, et al.* Misc. No. 77–1843. On October 26, 1977, the Commission filed a Complaint against 26 manufacturers of aluminum wire and electrical devices capable of use with aluminum wire to have "old technology" aluminum wiring systems (manufactured and installed from 1965–1973) declared imminently hazardous consumer products pursuant to Section 12 of the Consumer Product Safety Act (15 U.S.C. 2061). The action seeks temporary relief in the form of public notice of the hazard and permanent relief in the form of repair of residences with such wiring systems.

On December 13, 1977, the Court denied motions to dismiss by several manufacturers and concluded that aluminum wiring systems are consumer products within the Commission's jurisdiction. The Court did, however, grant the motion to dismiss of Kaiser Aluminum & Chemical Corp. (Kaiser) because of the collateral estoppel effect of the decision in *Kaiser Aluminum & Chemical Corp.* v. *Consumer Product Safety Commission,* (428 F. Supp. 177 (D.Del. 1977), *appeal pending,* No. 77–1874 (3rd Cir. July 7, 1977)). The Court also granted the request of several of the manufacturers other than Kaiser to certify the questions decided by him to the Court of Appeals, pursuant to 28 U.S.C. 1292(b) and stayed all further proceedings.

The Court of Appeals has not yet decided whether or not to hear the appeal. The Commission has opposed any stay of the proceedings leading to public notice. The Court of Appeals also has before it the Commission's appeal and motion for summary reversal of the ruling dismissing Kaiser from the law suit. (No. 78–1054) A ruling by the Court of Appeals is expected shortly.

Consumer Product Safety Commission v. *Advance Machine Company, Inc., et al,* Civil Action No. 77–1323 (D.D.C.). The Commission brought this imminent hazard action pursuant to Section 12 of the Consumer Product Safety Act against the manufacturers and distributors of an automatic pitching machine one July 24, 1977. The machine has a rotary pitching arm which rotates in a clockwise direction until sufficient mechanical energy is built-up to propel the arm forward rapidly, permitting it to pitch a baseball. If the machine is shut-off when the pitching arm is in the ready-to-pitch position, the arm retains stored mechanical energy, and if a person imparted a slight vibration to the machine, it could go off even though it was disconnected from its power source.

The Commission filed suit against the manufacturers and distributors of the machine to compel them to halt further sales and distribution of the machine, to order them to send a safety notice to the purchasers and known possessors of the machine, and to require them to repair, replace or refund the purchase price of the machines. The matter came before the United States District Court on the Commission's application for a temporary restraining order. Upon the judge's urging, defendants entered into a consent agreement and stipulation agreeing to halt further sales of the machines and to mail safety notices to their customers in lieu of being subject to a temporary restraining order.

Three of the defendants have asked the Court to determine that the Commission has no claim against them. The Commission has countered by asking the court to find that they are proper parties in this action. In addition, the Commission has filed a motion for partial summary judgment asking the Court to find that as a matter of law the pitching machines are imminently hazardous consumer products.

The Commission is continuing to prosecute its court case to compel the defendants to repair or replace the machines or to refund their purchase price. This relief will be determined in a full trial on the merits which will be scheduled at the Court's convenience.

Consumer Product Safety Commission v. *Chance Manufacturing Company Inc., et al,* Civil Action No. 77–1581 (D.D.C.) The Commission brought this action pursuant to Section 12 of the Consumer Product Safety Act, in the Federal District Court for the District of Columbia requesting the Court to declare Zipper amusement rides to be imminently hazardous consumer products and to grant other necessary relief. Zipper rides have individual cars in which the consumer rides. If a car door should open while the Zipper ride is in operation, the consumer or consumers inside could fall and die or suffer personal injury. The Commission has reports of four fatalities and two severe personal injuries resulting from the door of the Zipper ride car opening while the ride was in operation.

The Commission filed suit on September 15, 1977, against the manufacturer and a class consisting of all distributors and retailers (owners and operators) of the Zipper rides to compel them to halt further manufacture, distribution (including rental), sale, and operation of the ride; and to order them to repair the rides in a manner approved by plaintiff or to cease permanently the distribution (including rental), sale, and operation of the rides. Subsequently, the Commission filed a motion for immediate relief or, in the alternative, for a temporary restraining order and preliminary injunction. That motion has not been heard by the Court.

The Court has granted a motion by the Commission for partial summary judgment declaring that the Zipper rides are consumer products. In addition, the Court has rejected the contention of some defendants that owners and operators of the Zipper rides are not parties subject to the jurisdiction of the Court.

The Commission is continuing to prosecute its court case to compel defendants to repair the rides or to cease operation permanently. The relief will be determined in a full trial on the merits which will be scheduled at the Court's convenience.

ADMINISTRATIVE ENFORCEMENT ACTIONS

CPSC Docket No. 75–16: Francis Alonso d/b/a Mylar Star Kites, Burbank and Encino, California. An Initial Decision issued by the Administrative Law Judge on June 18, 1976, held that the aluminized kites involved in this proceeding present a substantial product hazard within the meaning of Section 15 of the Consumer Product Safety Act. Respondents were ordered to notify the public of the hazard and to recall and replace or refund the purchase price of the kites less an allowance of 50% for kites in use for more than one year.

Following an appeal of the Initial Decision to the Commission by respondents, a Decision and Order was announced by the Commission on September 16, 1977, in which the Notice of Enforcement issued in this proceeding was dismissed. While affirming the findings of fact contained in the Initial Decision as to the hazardous nature of the aluminized kites, the Commission set aside the proposed order of the Administrative Law Judge on jurisdictional grounds, holding that the subject kites were toys or articles intended for use by children; thus, the kites were found to fall within the scope of the Federal Hazardous Substances Act and, in the majority's view, the Commission was obligated to act within the FHSA rather than the CPSA.

In The Matter of Ambory Corp., et al. Docket No. 77–5. On October 26, 1977, the Commission issued a complaint against The Ambory Corp., Hazel Park,

Michigan (Docket No. 77–5) for the manufacture and sale of several models of portable immersion electric water heaters which, because of their design, pose a substantial shock hazard. One of the heaters was allegedly involved in the electrocution of a young girl in Minnesota. A prehearing conference was held on January 10, 1978 in which respondent offered to settle the case completely. Settlement negotiations are presently in progress.

ENFORCEMENT OF COMMISSION ORDERS

United States v. *The Anaconda Company, et al.*, Mis. No. 77–0024 (D.D.C., Memorandum Opinion, June 15, 1977, Order June 30, 1977) *appeal pending*, No. 77–1628 (D.C. Cir., July 18, 1977). The Commission on November 14, 1976, issued 59 subpoenas to various manufacturers of aluminum wire and electrical devices. Nineteen manufacturers refused to comply. The Commission sought and obtained enforcement of the subpoenas against eighteen of these manufacturers in the D.C. District Court. The Court held that the Commission was collaterly estopped from subpoenaing documents from Kaiser Aluminum & Chemical Corp., because of the decision in *Kaiser Aluminum and Chemical Corp.* v. *Consumer Product Safety Commission*, 414 F.Supp. 1047 (D.Del. 1976), 428 F.Supp. 177 (D. Del. 1977)), *appeal pending*, No. 77–1874 (Third Cir. July 7, 1977).

An appeal of the Court's order enforcing the subpoenas was filed in the U.S. Court of Appeals for the District of Columbia Circuit, No. 77–1628 on August 24, 1977. The Appellate Court denied a stay pending appeal. Thereafter the manufacturer turned over the requested data to the Commission. The appeal is still pending.

United States v. *Aladdin Carpet Mills, Inc.*, Civil Action No. C76–30R (N.D. Ga.). On March 9, 1976, the Commission, by its own attorneys, applied to the District Court for the Northern District of Georgia for enforcement of the Commission's Order Requiring Access for inspection of Alladin's carpet plant under the Flammable Fabrics Act. The application was later amended to substitute the United States as plaintiff. After disposing of other motions, the Court on July 13, 1977, ordered respondents to permit Commission access to examine domumentary evidence and denied access to collect samples and to inspect laboratory facilities until the Commission finds there is reason to believe that Aladdin's products violate flammability standards. The United States moved to amend the Court's restriction on the disclosure of information obtained through its order. The Court granted the motion and on October 14, 1977, amended its judgment by deleting the July 13, 1977 restriction on disclosure of information by the Commission.

ACTIVE CPSC PETITIONS

CONSUMER PRODUCT SAFETY ACT—DATE OF REVISION, JAN. 31, 1978

Petitions No.	Petitions description	Status
CP 75–11	Requests safety standard for fire extinguishers	To OS: Jan. 10, 1978.
CP 75–13	Requests regulatory action re: cellular plastic home furnishings	Pending.
CP 75–26 [HP 75–21]	Requests standard or ban for projectile toys	CDSA Jan. 12, 1978.
CP 77–1	Requests standard for home insulation	CDSA Nov. 10, 1977.
CP 77–7	Requests safety standard for football helmets and shoes	CDSA: helmets Denied: shoes Jan. 19, 1978.
CP 77–10	Requests safety standard for chain saws	CDSA: Dec. 8, 1977.
CP 77–12	Requests amendment to architectural glazing standard re: decorative glass	To OS: Dec. 5, 1977.
CP 78–2	Requests amendment to architectural glazing standard re: plastics after application of accelerated weathering tests.	Pending.
CP 78–3	Requests safety standard for beer dispensing systems	Do.
CP 78–4	Requests amendment to architectural glazing standard to clarify treatment of windows.	Do.
CP 78–5	Requests amendment to architectural glazing standard to replace test procedures in 1201.4 and 5 with test procedures in ANSI Z97.1–1975.	Do.
C 78–7	Requests consumer product safety standard for gas and electric power lawn edgers re: thrown object hazard.	Do.
CP 78–8	Requests consumer product safety rule for electrical service drop wires	Do.

Note: CDSA represents Commission-directed staff activity based on Commission's latest review of petiition.

FEDERAL HAZARDOUS SUBSTANCES ACT—DATE OF REVISION, JAN. 31, 1978

Petition No.	Petitions description	Status
HP 74-5	Request to ban certain toys and set mechanical safety regulation for roys	Granted in part and denied in part, week of Jan. 26. 1978; CDSA re: projectiles.
HP 75-11	Requests ban or flammability regulations for Christmas decorations	To Commission: Jan. 12, 1978.
HP 75-21 [CP 75-26]	Projectile toys	CDSA: Jan. 12, 1978.
HP 76-15	Requests standard for home playground equipment	Pending.
HP 77-8	Requests ban of Tris and label re: flame retardants	Ban—granted Apr. 7, 1977 CDSA re: Labeling.
HP 77-9	Requests ban of spackling compounds tremolitic talc and other products containing dry form tremolitic talc.	Granted Apr. 28, 1977 re: spackling compounds "Other products" CDSA.
HP 77-12	Requests ban of benzene in consumer products.	CDSA.
HP 78-1	Requests ban of H_2SO_4 drain cleaners intended for use in households	Pending.
HP 78-2	Requests labeling for rust removers and other products containing hydrofluoric acids.	Do.
HP 78-3	Requests exemption from electric toy regulations	Do.

ADMINISTRATIVE PROCEDURES ACT—DATE OF REVISION, JAN. 31, 1978

Petitions No.	Petitions description	Status
AP 77-2	Requests labeling for coal and wood burning stoves and appliances	To Commssion: Dec. 30, 1977.
AP 78-1	Requests labeling requirements for flame retardants	Pending.
AP 78-2	Requests exemption from labeling requirements for chlorofluorocarbons	Do

FLAMMABLE FABRICS ACT—DATE OF REVISION, JAN. 31, 1978

Petitions No.	Petitions description	Status
FP 73-5	Requests exemption for small carpets and rugs from laundering requirements of FF 2-70.	CDSA: Jan. 5, 1978.
FP 77-2	Request to adopt California standard for upholstered furniture	CDSA: Sept. 15, 1978.
FP 78-2	Requests amendment to mattress standard re: mattresses for use in institutions	Pending.

POISON PREVENTION PACKAGING ACT—DATE OF REVISION, JAN. 31, 1978

Petitions No.	Petitions description	Status
PP 78-1	Requests special packaging exemption for "K-Lyte" double strength tablets	Pending.
PP 78-2	Requests special packaging exemption for erythromycin ethylsuccinate chewable tablets.	Do.
PP 78-3	Requests special packaging exemption for Medrol Dosepak	Do.

PROCESSED PETITIONS, JUNE 1, 1977 TO JAN. 31, 1978

Petition	Description	Disposition
AP 77-1	To require prepaid recall/warranty cards	Denied Sept. 15, 1977.
AP 77-3	Request to amend CPSC meetings policy	Denied Jan. 5, 1978.
AP 77-4	Requests amendment to architectural glazing standard to exempt material contracted for prior to effective date.	Denied Oct. 6, 1977.
CP 75-15	Request new regulation for lead paint	Granted Aug. 19, 1977.
CP 75-23	Requests safety standard for grocery carts	Denied Oct. 6, 1977.
CP 75-25	Requests standard for hand-held hairdryers	Denied Jan. 5, 1978.
CP 75-26 [HP 75-21]	Requests standards for or ban of certain projectile toys	CDSA Jan. 12, 1978.
CP 76-2	Requests standard for minihairdryers	Denied Jan. 5, 1978.
CP 76-9	Requests safety standard for snowmobiles	Denied July 28, 1977.
CP 76-18	Requests standard for off-road motorized vehicles	Denied Jan. 12, 1978.
CP 77-1	Requests standards for home insulation	CDSA Nov. 10, 1977.

PROCESSED PETITIONS, JUNE 1, 1977 TO JAN. 31, 1978—Continued

Petition	Description	Disposition
CP 77-2	Requests standards for belt-driven grinders	Denied July 21, 1977.
CP 77-3	Requests labeling of ventilation cooking fans	Denied July 28, 1977.
CP 77-4	Requests standard to address hazard of misdirection of aerosol sprays	Denied Aug. 25, 1977.
CP 77-5	Requests an amendment to architectural glazing material standard	Denied Sept. 21, 1977.
CP 77-6	Requests rule for use of commercial refrigerants	Denied Oct. 13, 1977.
CP 77-7	Requests safety standard for football helmets and shoes	CDSA: Helmets Denied; Shoes Jan. 19, 1977.
CP 77-8	Requests amendment to architectural glazing material standard re: door openings.	Denied Sept. 21, 1977.
CP 77-9	Requests labeling for gas furnaces	Denied Jan. 5, 1978.
CP 77-10	Requests safety standard for chain saws	CDSA Dec. 8, 1977.
CP 77-11	Requests amendment to architectural glazing standard re: weathering	Granted Sept. 21, 1977.
CP 77-13	Requests withdrawal of matchbook standard	Denied June 2, 1977.
CP 77-14	Requests amendment to architectural glazing standard re: door openings	Denied Sept. 21, 1977.
CP 77-15	Requests amendment to architectural glazing standard re: wood stile and rail doors.	Do.
CP 77-16	Requests amendment to architectural glazing standard re: laminated glass	Withdrawn Oct. 28, 1977.
CP 78-1	Requests exemption from lead paint ban for metal furniture	Granted Jan. 5, 1978.
CP 78-6	Requests amendment to architectural glazing standard re: existing inventories of laminated glass.	Granted Dec. 1, 1977.
CP 78-9	Requests ban or standard for Bounce Fabric softener re: flammability hazard	Denied week of Jan. 26, 1977.
FP 73-5	Requests exemption for small carpets and rugs from laundering required by FF 2-70.	CDSA Jan. 5, 1978.
FP 74-4	Requests alternate laundering procedures for FF 4-71	Granted Sept. 15, 1977.
FP 74-12	do	Do.
FP 75-7	Requests exemption from FFA requirements for acetate fabrics	Withdrawn July 18, 1977.
FP 76-3	Requests exemption for one-of-a-kind mattress	Denied July 21, 1977.
FP 77-2	Requests CPSC to adopt California upholstered furniture flammability regulations.	CDSA Sept. 15, 1978.
HP 74-5	Request to ban certain toys and set mechanical safety regulation for toys	Granted in part and denied in part week of Jan. 26, 1978: CDSA re: projectile.
HP 74-10	Request to consider administration procedures for banning toys	Withdrawn Sept. 2, 1977.
HP 74-16	Requests exemption from FHSA combustibility labeling requirements	Denied Oct. 6, 1977.
HP 75-7	Requests amendment to electric toy regulations re: date code	Granted Aug. 17, 1977.
HP 75-8	Requests amendments to electric toy regulations re: letter height	Denied Sept. 21, 1977.
HP 75-14	Requests to establish new regulations for lead paint	Granted Aug. 17, 1977.
HP 75-20	Requests ban of household substances containing nitro- and dinitrobenzene	Denied Oct. 6, 1977.
HP 75-21	Requests regulation on ban of certain projectile toys	CDSA Jan. 12, 1978.
HP 76-2	Request to ban "pop-zit" toys	Denied July 28, 1977.
HP 76-7	Requests exemption from labeling requirements for cyanoacrylate glue in 2-oz tubes.	Granted.
HP 76-8	Requests cautionary labeling re: CO poisoning from certain paint strippers	Granted Jan. 5, 1978.
HP 76-11	Requests exemption from lead paint ban for paint on radio controlled model aircraft.	Granted Aug. 17, 1977.
HP 76-12	Requests regulation prohibiting sale of hunting arrowheads to minors	Denied July 21, 1977.
HP 76-14	Requests regulation prohibiting sale of paint thinners to minors	Denied Nov. 1, 1977.
HP 76-16	Requests amendment to bicycle regulations re: reflectors	Denied July 28, 1977.
HP 77-2	Requests all-weather braking requirements for bicycles	Denied Jan. 5, 1978.
HP 77-3	Requests labeling of products containing agents on NIOSH toxic substances list	Denied Oct. 6, 1977.
HP 77-4	Requests exemption for inks used in certain porous tip pens	Granted Nov. 8, 1977.
HP 77-5	Requests ban of formaldehyde in particleboard	Denied Jan. 5, 1978.
HP 77-6	Requests regulation for children's umbrellas	Denied Sept. 21, 1977.
HP 77-7	Requests exemption from FHSA regulations for large porous tip marking devices.	Closed Nov. 16, 1977.
HP 77-10	Request for amendment to bicycle regulations to require assembly by qualified persons.	Denied.
HP 77-12	Request to ban benzene from household products	CDSA.
PP 76-7	Requests PPPA exemption for sodium fluoride	Closed July 6, 1977.
PP 76-8	do	Granted Dec. 8, 1977.
PP 76-9	Requests that special packaging be required for acetaminophen products	Granted Jan. 26, 1978.
PP 76-10	Requests PPPA exemption for mycostatin	Closed Aug. 8, 1977.
PP 77-1	Requests PPPA exemption for erythromycin ethylsuccinate	Closed Oct. 27, 1977.
PP 77-2	Requests PPPA exemption for mebindazole	Granted Oct. 13, 1977.
PP 77-3	Requests PPPA exemption for K-Lyte double strength tablets	Closed Oct. 22, 1977.

U.S. CONSUMER PRODUCT SAFETY COMMISSION,
Washington, D.C., February 17, 1978.

HON. HARLEY O. STAGGERS,
Chairman, Committee on Interstate and Foreign Commerce, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This letter transmits the views of the Commission on S. 2401 as passed by the Senate on January 23, 1978. The Act, cited as the "Emergency Interim Consumer Product Safety Rule Act of 1978," would establish an interim consumer product safety rule for the flame resistance and corrosiveness of cellulose home insulation.

At the Commission meeting on February 9, the Commission voted to initiate a section 7 proceeding to address the risk of injury from fires associated with cellulose home insulation. A notice initiating a standard development proceeding will appear in the *Federal Register* shortly.

Section 3 of the Act provides that, within 120 days after the enactment of the section, the requirements for flame resistance and corrosiveness set out in the General Services Administration's (GSA) Specification for Cellulose Insulation, HH–I–515C (as of December 1, 1977) are deemed to be an interim consumer product safety rule.

The Act also requires the Commission to conduct a thorough and complete study of:

1. The need for safety standards for fiber glass, rockwool, cellulose, urea-formaldehyde, styrene, urethane, vermiculite, perlite, and other forms of commonly used home insulation;
2. methods of testing the safety of home insulation; and
3. methods of enforcing home insulation standards.

In this letter the Commission includes an analysis of some potential issues raised by language in the Act.

If S. 2401 becomes law in its present form, it would impact substantially on the workload of the Consumer Product Safety Commission. The Commission is preparing an estimate of the resources necessary to meet the requirements of S. 2401. As soon as these estimates are complete, the Commission will submit them to the committee.

Any appropriations for expenses and salaries should be provided in multi-year funding. This would allow the Commission flexibility in management of the appropriations without concern for the expiration of the budget authority for appropriations allocated only for fiscal year 1978.

It should also be noted that any additional appropriations should be made available by March 1978 in order for the Commission to begin its activities under the Act in fiscal year 1978. Once resources become available, the Commission will require a reasonable amount of time for initiating contracts and hiring personnel. Of course, all hiring of personnel and contract awards will be done in accordance with existing federal specifications and regulations.

The Act, at section 4, provides that the Commission shall conduct an insulation safety study and shall submit an interim and final report concerning the study within 180 days and 365 days, respectively, from the date when the study is begun. Since additional appropriations, contracts and personnel arrangements will be necessary for the Commission to conduct this study, the Commission believes that the Act should specify that the study is to begin after the appropriations have been received and after any necessary contract and personnel arrangements have been made in order to initiate the study.

The Commission believes that the Committee should be made aware of a number of possible ambiguities and issues that may be raised by language in the Act. Several of these ambiguities could lead to interpretations that would increase the resources required to fulfill the Commission's responsibilities under the Act.

First, the Act at section 35(a) provides that the requirements for flame resistance and corrosiveness of the existing GSA specification (HH–I–515C) are to be incorporated in the interim consumer product safety rule. The Commission's regulatory emphasis to date has been on the possible flammability hazards associated with cellulose home insulation. Since the Commission has not fully gathered or considered information concerning corrosion problems, the Commission takes no position with respect to the adequacy of the corrosiveness requirements of HH–I–515C.

Second, the Act at section 35(a) provides that during the 120-day period following enactment, the Commission may make technical nonsubstantive changes in the requirements of HH–I–515C to make the requirements suitable for issuance as a consumer product safety rule. The existing GSA specification, HH–I–515C, provides two flame spread classifications for materials, 0–25 and 26–50. Insulation with a flame spread classification of 0–25 has higher flame spread resistance than insulation with a flame spread classification of 26–50. The existing GSA specification, HH–I–515C, at section 6.5, recommends that class 25 loose fill thermal insulation be used when applications are made requiring higher flame spread resistance. However, in order to be suitable for issuance as a mandatory standard, the existing GSA specification would have to be changed so that it specifies the appropriate flame spread classification. The Commission believes that a flame spread classification of 0–25 may provide a great measure of safety to consumers.

Third, the Commission notes that the provisions of HH–I–515C do not correct for the fact that the metal screen used in the Steiner Tunnel Test absorbs heat and thus retards flame spread. According to some experts, this phenomenon may make a difference of up to 40 percent in the determination of the flame spread rating of cellulose home insulation. The Commission suggests that, to correct for this phenomenon, S. 2401 should incorporate procedures currently used by Underwriters Laboratory in its testing of cellulose home insulation. The Commission is willing to draft appropriate statutory language should the Committee agree to address this matter.

Fourth, the Act provides at section 35(c)(2) that the Commission must incorporate into the interim consumer product safety rule each amendment to the requirements issued by the GSA unless the Commission finds (1) that the amendment is unnecessary to protect consumers from the unreasonable risk of injury associated with flammable or corrosive cellulose home insulation, or (2) that implementation of the amendment will create an undue burden on the cellulose home insulation industry, or (3) that additional time is required to study the safety or economic questions of implementation of such amendment. This section of the Act should be clarified to specify that the Commission may, on its initiative, amend the interim standard in accordance with Section 553, Title 5 of the United States Code even though an amendment has not been issued by GSA. If the Commission, after issuing the interim rule as required by the Act, later determines that the interim rule is not adequately protecting the public and that a different standard would better protect the public, the Commission should be given the discretion to amend the interim rule, regardless of whether GSA has amended its specification for cellulose insulation. The Act should also specify the findings that must be made before the Commission can issue its amendment to the interim standard.

In addition, the judicial review provisions, at section 35(b) of the Act, provide that judicial review of the interim rule is limited solely to the issue of whether any technical changes the Commission makes are nonsubstantive. This section provides a standard for judicial review of the interim rule before any amendments have been incorporated. The Act is silent on the standard for judicial review after amendments have been incorporated into the interim standard. The Commission believes that the Act should be clarified to provide whether the judicial review of amendments to the interim standard is the judicial review provided in section 11 of the CPSA (15 U.S.C. 2060) or the standard for judicial review specified under the Administrative Procedure Act for informal rulemaking, 5 U.S.C. 706(2)(A).

Fifth, the Act, at section 35(c)(1), provides that the interim rule shall be enforced until there is in effect a final consumer product safety rule issued in accordance with 5 U.S.C. Section 553. The Commission believes that this section is ambiguous as to whether the Commission is required to issue a final rule. Section 35(c)(1) and (2) includes the language "until there is in effect a final consumer product safety rule". Although this language could be interpreted to require at some time the issuance of a final rule in place of the interim rule, the issuance of a final rule through a separate rulemaking proceeding may be unnecessary if the interim rule adequately protects the public. The Commission believes that this section should be clarified to provide the Commission with the discretion to issue a final rule.

Sixth, the Act refers to cellulose insulation in section 2 and to cellulose home insulation in section 3. The Commission believes that the Act should specify whether it is confined to insulation that is produced or distributed for installation in households or residences or whether it also includes cellulose insulation that is produced or distributed for non-residential installation. The Commission has limited its section 7 proceeding solely to cellulose home insulation.

Sincerely,

S. JOHN BYINGTON,
Chairman.

Mr. ECKHARDT. I understand that the other Commissioners wish to express their views on the offer or process. But, before hearing from them, I wonder if there are any questions on other items here.

Mr. BROYHILL. Mr. Chairman, I think perhaps I would like to hear the other members. It might clear up questions which might be in my mind.

Mr. ECKHARDT. There is one point I would like to raise now, because I think it may be forgotten later, and that is the question of the Commission's requested authorization as compared to its budget request.

Mr. Chairman, why is it that you have asked for about $10 million more in the authorization than in your budget request?

Mr. BYINGTON. We have been discussing that for the last 2 days with the House Appropriations Committee. Our $44 million budget request does not include any of the people or money that would be required to do what we anticipate might need to be done under the insulation legislation. Second, the budget request does not include the people or money we believe will have to come to this agency if we are to play any kind of major role in the area of chronic hazards. Those two total up to approximately $10 million.

Mr. ECKHARDT. Are you saying, then, that your authorization request in effect amends your budget request?

Mr. BYINGTON. We didn't say that. We did discuss with our Appropriations Committee the fact that the question of what role we are going to play in chronic hazards is still an open one. We also do not know whether or not the insulation bill is going to pass the Congress, and in what form. The requirements that the bill will impose on us are still unknown. So, in the authorization, we anticipated the possibility of a congressional mandate in both areas.

Both of these questions have come up in a concrete way, and been more extensively discussed, since the time of our budget preparation, which was September with the OMB, and January with the Congress.

Mr. ECKHARDT. You specifically refer to insulation, and you also say "emerging hazards" in your statement.

Mr. BYINGTON. Yes, sir.

Mr. ECKHARDT. Could you specify what those would be?

Mr. BYINGTON. I was talking about the chronic hazards area.

Mr. ECKHARDT. Well, we have very much urged you to move in that area. I think you have told us that you intend to take some action with respect to carcinogens by March.

Mr. BYINGTON. Yes; we intend to publish at least a draft carcinogen policy for public comment before the end of March.

Mr. ECKHARDT. Thank you, sir.

Ms. Franklin?

Ms. FRANKLIN. Thank you, Mr. Chairman.

STATEMENT OF BARBARA HACKMAN FRANKLIN

Ms. FRANKLIN. Thank you, Mr. Chairman.

I have submitted to your committee a fairly lengthy statement that covers what I think this Commission has accomplished, my views on the offeror process, and also my views on the home insulation situation.

I ask that this statement be made a part of the record, and would be delighted to summarize my views on the offeror process.

Mr. ECKHARDT. Without objection, it will be made a part of the record, and you may proceed.

Ms. FRANKLIN. Mr. Chairman, I want to underscore again my long-standing support for better and more timely mandatory safety standards. This is an area for which the Commission has been criticized in the past. Clearly, we must do better in the future.

In other testimony before the Congress, I have voiced my strong support for the offeror process. I think it was a unique and good idea when the Congress conceived it, and, with major changes the Commission has made in implementing it, it still is.

Today, however, I also support the concept of greater flexibility for the Commission to develop, under certain circumstances, mandatory safety standards outside the offeror process.

This represents some shift in my thinking—in essence, a recognition that flexibility for the Commission is needed. As I see it, however, the major thrust of the bill before the committee, H.R. 10819, goes way beyond mere flexibility. If passed, this particular bill could gut the offeror process altogether, a result which, in my judgment, would be most unfortunate.

At issue here is whether the Government should write mandatory standards or even sit at the head of the table in developing them. For years, there has been contention over the answer to this question, a fact which probably has its roots in differing philosophies of the proper role of our Government.

As I testified before this subcommittee last fall, the strength of the Commission's offeror process is that it places the burden for standards develoment outside Government. It assures that industry and consumers will not only have a role but a major responsibility. The process requires leadership and meaningful participation from the public, the point where involvement from the public really counts.

The process, in other words, pointedly acknowledges that neither the Government nor anyone else knows more about the marketplace than the marketplace itself—the industry that makes and sells a product and the consumers who buy and use it.

Next and most importantly, I strongly believe that now, as this legislation is being considered by this subcommittee, the process itself is on the verge of meeting congressional and Commission expectations for better standards developed in a timely way and at a reasonable cost.

As I also testified last fall, this is due primarly to notable improvements the Commission has made in the process. We will assess the impact of the changes for the very first time when the Commission considers proposing a standard for miniature Christmas tree lights in April.

Early indications are that the improvements have contributed substantially to the operation of the offeror group and to the quality of their work. Thus, it seems premature to make sweeping changes in the use of this process at the very time that greater success with it may be at hand.

Something I do want to underscore; the minature Christmas tree light proceeding may not be the perfect model when all is said and done. But it is, I think, the best example we have so far to draw from and build upon.

Another point: despite problems with the Commission's management of the process and the criticism about how slowly it works, on the whole, I see no concrete evidence that it has produced standards any more slowly than other agencies or, for that matter, than other bodies outside the Government.

I simply am not aware that the Federal Government could do the job any quicker or better. There is evidence, in fact, that other agen-

cies who develop standards on their own have difficulties, too. I could cite many examples. FDA's Bureau of Foods estimates 1 to 3 years required to write its standards. The Bureau of Radiological Health estimates anywhere between 1 and 4 years, depending upon the complexity and nature of the problem. EPA is said to average 2 years. OSHA has a variety of instances where many years have gone into the development of standards.

What this means to me is that setting standards is not an easy or an overnight matter, no matter how it is done or by whom.

Finally, in one way or another, I have absolutely no doubt that if the Commission is to take upon itself even more burden for developing standards, we will need more resources, staff, and dollars to handle it. Already the Commission has spent nearly $7 million in the development of eight safety standards, and those are dollars spent to date only.

The total bill, in other words, is not in, and even then, it won't include what the private sector spent. So, I can only assume that if the agency develops more and more standards in-house, we will have no choice but to hire additional staff either to actively manage the process or to handle the many other activities of the Commission which otherwise could get the short shrift.

Now, having voiced my major concerns about the bill, I would like to respectfully urge consideration of certain steps that I believe would facilitate flexibility yet assure that the offeror process remains a viable option.

First, I recognize there are occasions, perhaps one being the proposed section 7 notice of proceeding for cellulose home insulation, where there may exist a need to move on a particular hazard at a greatly accelerated pace. If the Commission determines that time truly is of the essence, that consumers need effective protection quickly, and that CPSC possesses the necessary expertise and resources to provide it, then there may be reason for the Commission to draft its own standards, so long as the public is fully involved.

Another area where flexibility is warranted lies in this agency's ability to modify and adopt an existing voluntary standard. We can adopt such a standard now if the Commission determines that it adequately addresses the risks of injury. However, there is no express authority to make technical or substantive changes to tighten and improve the standard in any way.

This flexibility is presently not provided for in the legislation, and I bring the matter to your attention not only because I think it could be a significant way to improve consumer protection, but because it also could help the agency make much more efficient use of its scarce resources.

More specifically, therefore, I suggest that the bill before you be changed to state that the public interest requires the Commission to find all of the criteria set forth in section 2(a) of H.R. 10819 are met, and further, that preparing a safety standard in this way is in keeping with the Commission's budget and priorities. I believe in this strongly. In fact, if this bill is not passed, I will urge my colleagues to join me in developing a new set of procedures for the offeror process which would allow it to handle emergency situations more effectively.

In addition, section 7(c) of the act should be amended to expressly permit the Commission to modify as well as adopt an existing voluntary standard.

These two things, in my judgment, would increase the Commission's flexibility in important ways and yet not gut the offeror process altogether.

Regardless of the shape of any final legislation, I would urge the Commission to increase its own expertise in the management, coordination, writing, and evaluation of mandatory safety standards. In the past, it often has been the lack of this expertise and insufficient staff that have contributed to many problems which have plagued our handling of the offeror process.

Clearly, we must deal with these problems and deal with them directly. One way to accomplish this might be to establish an Office of Mandatory Standards. Another possibility would be to infuse additional resources into the existing Office of Program Management.

Another clear need is to determine how many and what kinds of additional technical personnel may be necessary.

In conclusion, Mr. Chairman, I do support enhanced flexibility for the Commission in terms of modifying and mandate existing voluntary standards, and, as I have explained, in allowing the Commission to go forward with standards development on its own in certain emergency situations. But I would continue to hope that the offeror process would remain a viable option. Thank you.

[Ms. Franklin's prepared statement follows:]

STATEMENT OF BARBARA HACKMAN FRANKLIN, VICE CHAIRMAN, CONSUMER PRODUCT SAFETY COMMISSION

Mr. Chairman and Members of this Subcommittee. This week, two extremely important House hearings on the future of CPSC are being held—the session on our Fiscal Year '79 budget request and today's discussion of authorization levels for our agency over the next three years.

The outcome of both hearings is critical—especially in closing the gap between our broad mandate to protect consumers and our present ability to fully do the job.

Few would doubt that there is room for more improvement in managing those resources we have. But there is no doubt in my mind, after five years' experience as a Commissioner, that increased staff and funding are an essential part of any plan to speed up and sharpen the performance of the agency and make it more responsive to consumer safety and marketplace realities.

We are, as I told Chairman Boland's Subcommitee Wednesday, a small agency with a small staff but nonetheless, a very large and important mission. Frankly, I do not see that additional funds will address all of our problems. Nor do I want the Commission to mushroom into a massive bureaucracy.

What I do hope for—at a point not too far off in the future—are a number of initiatives and procedural reforms by the Commission as well as funding and staffing levels more in line with the accomplishments Congress and the American people expect and deserve.

Make no mistake: Despite the loud and vocal cries of some, our record demonstrates significant progress on a number of fronts using our full range of regulatory tools, as the Chairman's opening statement indicates. Many of these steps forward are particularly encouraging and all of them portend even greater progress in the days and months ahead.

For example, I believe our activities have contributed to safer products and an increased safety awareness among consumers and industry.

We're approaching the truly complex issues surrounding government regulation in the health and safety area with far more precision. I believe industry and consumers both will benefit, and those regulations we do write will be more workable and legally sustainable.

In the first five years of the agency's existence, over 7 million units of potentially unsafe products have been repaired, replaced or recalled at little or no cost to consumers. Most were reported by the companies themselves as required by our law. Many were voluntarily corrected without need for direct regulatory in-

tervention. And prospects are, in light of the Commission's proposed Section 15 regulations, that even better results will emerge in the future.

This fall, the Commission adopted a voluntary standards policy, long overdue recognition that neither the government nor the private sector alone can solve the product safety problem.

We are setting product-specific priorities for the first time in our history and have adopted a policy which lays out, so that all can see, the criteria was used in the process.

We are wrestling with tough resource and organizational questions surrounding our work in chronic hazards, an area where I have had a long-time interest, and are on the brink of proposing an important policy on carcinogens.

Efforts to coordinate our work with other agencies and to avoid duplication have made impressive gains—especially with the creation last summer of the Interagency Regulatory Liaison Group, composed of representatives of the Commission, FDA, EPA and OSHA.

We have proposed forward-looking regulations governing compensation for public participation and are renewing efforts to create our own Office of Public Participation.

Our record of advocacy on behalf of children, the nation's most vulnerable consumers, is backed by a solid record of achievement. Over the last year alone, we have finalized a mandatory standard for pacifiers, technical requirements for toys with sharp points and amendments to our electrical toy regulations. We also proposed a standard for rattles and technical requirements for toys with sharp edges.

Finally, we have redirected our compliance efforts. At the Commission, the era of making big issues out of little cases is over. Today, we are pursuing major violators more agressively—one clear signal that we mean what we say about product safety.

The list of accomplishments is much longer, but I want to turn now to two issues of particular concern to this Subcommittee and to the Commission.

At the top of the agenda is the offeror process, the unique method by which mandatory safety standards are developed under the Consumer Product Safety Act. My position on this matter and, in particular H.R. 10819 which would amend it significantly, reflects my support for the process and incorporates some of my new thinking.

Mr. Chairman, I believe you are aware of my long-standing support for better and more timely mandatory safety standards and also my strong support of the offeror process. It was a good idea when Congress conceived it, and I think that with major changes the Commission had made in its implementation, it still is.

I also support the concept of greater flexibility for the Commission to develop, under certain circumstances which I will describe shortly, mandatory safety standards outside the offeror process.

As I see it, however, the major thrust of the bill before this Committee—H.R. 10819—goes way beyond mere flexibility. If passed, the bill could gut the offeror proces altogether, a result which, in my judgment, would be most unfortunate.

What is at issue here is whether government should write mandatory standards or even sit at the head of the table in developing them. There has been contention over the answer to the question for years, a fact which probably has its roots in different philosophies of the proper role of government.

As I testified before this Subcommittee last fall, the strength of the Commission's offeror process is that it places the burden for standards development outside the government. It assures that industry and consumers will have not only a role, but a major responsibility. The process requires leadership and meaningful participation from the public where it really counts—in the shaping of a proposal. The process, in other words, pointedly acknowledges that neither the government nor anyone else knows more about the marketplace than the marketplace itself—the industry that makes and sells a product and the consumers who buy and use it.

Next and most important, I strongly believe that now as this legislation is being considered, the process itself is on the verge of meeting Congressional and Commission expectations for better standards developed in a timely way and at a reasonable cost.

As I also testified before this Subcommittee last fall, this is due primarily to notable improvements the Commission has made in the process. We will assess the impact of the changes, for the very first time, when the Commission considers proposing a standard for miniature Christmas tree lights in April. Early indica-

tions are that these improvements have contributed substantially to the operation of the offeror group and the quality of the work. Thus, it seems premature to make sweeping changes in the use of this process at the very time greater success with it may be at hand.

I want to underscore this: The miniature Christmas tree light proceeding may not be the perfect model when all is said and done. But it is the best example we can draw from and build upon.

Another point: Despite problems with the Commission's management of the process and the criticism about how slowly it works, on the whole I see no concrete evidence that it has produced standards much more slowly than other agencies.

I simply am not aware that the Federal government could do the job quicker or better. There is evidence, in fact, that other government agencies who develop standards on their own encounter difficulties too.

FDA's Bureau of Foods estimates that one to three years may be required to write its standards. The Bureau of Radiological Health estimates anywhere between one and four years may be needed, depending on the complexity of the product and the nature of the problem. The Environmental Protection Agency is said to average 2 years to produce its standards. And, OSHA, as another example, has been working on a standard on noise levels for 6 years.

What all this means to me is that setting standards is not an easy or overnight matter no matter how it is done or by whom.

Finally, in one way or another I have absolutely no doubt that if the Commission is to take upon itself even more of the burden for developing standards, we will need more resources—staff and dollars—to handle it.

Already, the Commission spent nearly $7 million to develop 8 safety standards—the total bill for work on these has yet to be tallied and won't include private sector resources which have been applied. I can only assume, if the agency develops more and more standards in-house, we will have no choice but to hire additional staff—either to actively manage the processes or to handle other important activities of the Commission which may get the short shrift.

Having voiced my major concerns about the proposed legislation, I would like to respectfully urge consideration of certain steps that I believe would facilitate flexibility yet assure that the offeror process remains a viable option.

First, I recognize there are occasions, perhaps one being the proposed Section 7 notice of proceeding for cellulose home insulation, when there exists a need to move on a particular hazard at a greatly accelerated pace. If the Commission determines that time truly is "of the essence"—that consumers need effective protection quickly and that CPSC possesses the necessary expertise and resources to provide it—then there may be reason for the Commission to draft its own standards so long as the public is fully involved.

Another area where flexibility is warranted lies in the agency's ability to modify and adopt an existing voluntary standard. We can adopt such a standard now if the Commission determines that it adequately addresses the risks of injury. However, there is no express authority to make technical and substantive changes to tighten and improve the standard in any way. This flexibility is not presently provided for in the legislation, and I bring the matter to your attention—not only because it could be a significant way to improve consumer protection, but also because it could help the agency make more efficient use of its scarce resources.

More specifically, therefore, I suggest that the bill be changed to state that the public interest requires the Commission to find that all of the criteria set forth in Section 2(A)(i)—(iv) of H.R. 10819 are met and further that preparing a safety standard in this way is in keeping with the Commission's budget and priorities. I believe in this strongly. In fact, if this bill is not passed, I will urge my colleagues to join me in developing a new set of procedures for the offeror process which would allow it to handle emergency situations more effectively.

In addition, Section 7(c) of the Act should be amended to expressly permit the Commission to modify as well as adopt an existing voluntary standard.

Secondly, regardless of the shape of any final legislation, I urge the Commission to increase its own expertise in the management, coordination, writing and evaluation of mandatory safety standards. In the past, it has often been lack of agency expertise and sufficient staff that has contributed to many problems plaguing the offeror process. Clearly, we must deal with this and deal with it directly.

One way to accomplish this might be to establish an Office of Mandatory Standards. Another possibility would be an infusion of additional resources in

the existing Office of Program Management. Another clear need is to determine how many and what kinds of additional technical personnel may be necessary.

Turning now to home insulation, the focus of my concern as a Commissioner is to assure that consumers are not exposed to unreasonable risks of injury in trying to lower the cost of their utility bills by insulating their homes. My concern, as a public official, is that government address energy conservation, including its safety aspects, in an intelligent, coordinated and timely manner.

The Commission already has taken steps in both fronts. Very recently we voted to invite outside parties to develop a standard to address injuries from fires associated with cellulose home insulation. Further, our staff has been working with the Federal Trade Commission to improve the labeling for all forms of home insulation. We also are working with the Department of Energy on matters such as the safety of energy-saving devices and the efficacy of tests for flammability of insulation. Finally, our agency has initiated information and education efforts, including a radio-TV campaign beginning early next month which stresses the importance of proper installation of the material.

FTC, DOE and other agencies, Federal, State and local, are actively pursuing a number of related issues.

But much more must be done—and done soon.

Demand for insulation has risen dramatically and very quickly—for new housing units and especially for older homes. Manufacturers are increasing their capacity, but demand continues to outstrip supplies. Ironically, there are predictions the situation could worsen, in light of President Carter's proposed tax rebates for consumers and his call for 90 percent of our homes and all new buildings to meet minimum energy standards by 1985.

The situation, in my view, is such that the highest order of government leadership is needed. The objective must be to permit industry to make and sell sufficient quantities of home insulation which is effective, safe and reasonably priced for consumers. What this means to me is that we cannot afford to approach the problems on a piecemeal basis. Nor can we afford solutions which do not anticipate the cumulative impact of everything we do.

As only one example, no single test exists which approximates the conditions found in areas where cellulose insulation is used, or which satisfactorily measures its burning properties in that setting.

The bill now before the House, H.R. 10637, would mandate the use of one possibility, the Steiner Tunnel Test, and would allow the Commission to amend the test in keeping with changes made by the General Services Administration.

One advantage of the bill is that it puts into place a standard based on already established procedures relatively fast—critical since as many as 8 million additional homes may be insulated this year with materials whose safety is being gravely questioned. In addition, the bill requires that the Commission deal with growing concerns over corrosion on a faster basis.

One disadvantage of the bill is that the strength provisions governing corrosiveness coupled with the scarcity of boric acid—a critical ingredient used to make cellulosics flame retardant—could make it ever more difficult for consumers to obtain enough cellulose insulation at a reasonable price.

Another especially worrisome problem for CPSC is that we don't know what hazard patterns the Steiner Tunnel Test is capable of measuring so that at the moment we are unable to say with confidence that it will be fully effective in reducing the risks of fire associated with cellulose insulation. The possibility may arise, as a result, that the Commission could find itself enforcing a test which really does not adequately address safety concerns, and which may soon be abandoned by GSA, the Federal agency whose experience with it is considerable.

Currently, Congress has before it major legislation which, if enacted, will shape the course of energy conservation in this country. I don't envy this job. It's a tough one with no simple solutions. The importance of it, however, is undeniably clear—in terms of the economy and the quality of life in this country. The way Congress addresses home insulation, which is but one piece of the energy puzzle, pointedly underscores how important it is to meet the nation's energy goals in a way that does not jeopardize the basic economic health of our nation or the safety and wellbeing of its citizens.

Each of the many agencies having some responsibility for energy matters also must redouble efforts to work together. The Federal government must speak with one voice to consumers and industry alike.

Finally, I support a uniform safety standard for cellulose insulation. The Commission is moving forward to develop it.

We must insist on better quality, safer insulation, yet we must avoid regulation which needlessly cut into already short supplies.

We must do everything to assure a better product, yet we cannot overlook the significance of how the insulation is installed.

We must address fire hazards. They are real. But we must not lose sight of other problems which may exist.

We must provide adequate protection for consumers, but we cannot divert their attention from many other energy-saving devices, such as storm windows, weather stripping and exterior caulking.

My concern is and has been that CPSC—and the government as a whole—proceed in a timely manner but also in a way that is responsible and consistent. We must be certain that the direction in which we are moving is sound and that our strategy to deal with the full range of issues surrounding home insulation penalizes neither industry nor consumers unfairly.

Mr. ECKHARDT. Commissioner Franklin, I am a little confused. You state that you see a need for more flexibility than is provided in the offeror process. Yet you see this bill, which seems to me to provide that flexibility, as a menace to the offeror process. Now, on page 3 of the bill, it says that the Commission may develop consumer product safety standards if: (1) the nature of risk of injury associated with such product; (2) the expertise of the Commission with respect to such risk; (3) the expertise of the Commission in developing consumer product safety standards; or (4) the necessity to expedite the development of a standard, calls for this approach. That seems to afford just the flexibility you are calling for. Moreover, I don't see anything in this bill that in any way prevents you from utilizing the offeror process when the Commission so desires.

It seems to me that the question of the extent to which you use other means such as proposed here, and when the offeror process would be better, depends upon the good judgment of the Commission. We certainly grant authority to follow either route.

In what way do you think we mandate a movement away from the offeror standard?

Ms. FRANKLIN. Mr. Chairman, you are very persuasive. However, the way I read your bill is that there are the four criteria under section 2(a). Now, as I understand it, the Commission could simply find, under any one of those criteria, that we should go forward and develop the standard.

I really believe that if this language were adopted, the Commission simply could decide to go on our own by making only one of these findings. I think this would be a relatively easy thing to do.

Mr. ECKHARDT. As a matter of fact, the fourth criteria is the easiest of all, that is, to expedite the process. That merely says, you make a choice, use either one procedure or the other. However, this is one of the first times I have heard a Commission complain about its statutory language being too permissive.

Ms. FRANKLIN. My feeling, though, is that the offeror process is a basically good idea, a unique idea, and that it can work. I think the Commission has improved our management of it, and with still other improvements that can be made, I think we should give it a chance.

What this bill does, in the name of greater flexibility, is to provide so much flexibility that it could gut the offeror process. I think you are giving us too much flexibility. That may seem to be an odd position for a Commissioner to take, but that indeed is my feeling. My proposal is that instead this bill should require the Commission to find that all four of your conditions are present before making a decision. In addi-

tion, we must analyze each case and determine that going ahead with the mandatory standard on our own will not wipe us out in terms of resources.

Mr. ECKHARDT. It will not eliminate the offeror process unless you decide to eliminate it yourself out by always utilizing this new procedure. In the development of the matchbook standard, the next to the last bar on the chart there, it took the offeror 100 days to write the standard, and then it took the Commission 524 days to review it.

Now, I may be rather simplistic on this subject, but I would think that once you have identified a risk, you could put any person in a room all by himself or herself to look at a matchbox or a match folder and he or she would ultimately come to the conclusion, even without the advice of the offeror, that to strike the match on the front side is more dangerous than to strike it on the back side where the match faces do not exist.

Yet, why does it take so long to reach these obvious conclusions?

Ms. FRANKLIN. In this case, I would agree with you, but that was one of our earliest proceedings. The Commission had decided that, in addition to the simpler things that you are talking about, it wanted the whole issue of time-burn addressed in order to determine if a match went out in a certain number of seconds. The Commission also decided to investigate the issue of child-resistant matchbook covers, although I didn't think that should have been done.

Most of the Commission's time wasn't spent analyzing where the striker plate should be, but rather in trying to evaluate what to do about the time-burn situation, and in trying to develop a child-resistant cover for matchbooks.

Mr. ECKHARDT. Then why do you use an offeror? Maybe you ought to simply look at the problem yourself. I think that anyone would quickly conclude that it is not practical to put a zipper around the matchbook to make it child-proof.

Ms. FRANKLIN. That was something I don't think was considered. Maybe it is just as well. Personally, I did not support going forward to develop a child-resistant matchbook. The majority, however, originally felt that it was necessary, later changing their minds on the matter. I think that was a proceeding that cannot be held up as any kind of an example. That was one process that I learned from. It simply didn't work very well. As I look at your chart, there are a number of other early proceedings which also have had difficulties—television sets and others. To me, the basic problem has been the way we were implementing the process. Today, this has been markedly changed—with far more front-end research, having the Commission's staff actively participate and monitor paying consumer salaries.

I really think the process now has a shot at working a lot better. Therefore, let us not do something that will make it too easy for the Commission to circumvent that process, when it's on the verge of showing some success.

Mr. BROYHILL. What you are saying is that if you change the process and you don't have the offeror step in there, that the Commission presumably could take that amount of time anyhow.

Ms. FRANKLIN. Yes—or even more time.

Mr. BROYHILL. Or more.

Ms. FRANKLIN. Frankly, Mr. Broyhill, I have a real concern about our resources. I have mentioned this at various times in my statement.

Virtually the same amount of work would have to be done somewhere, by someone, no matter how you slice it. The offeror process does give us more leverage with resources from the private sector. Without that leverage, we are going to have to come up with additional resources, whether it be expertise in management, more engineers, more contract funds, or whatever.

Mr. BYINGTON. Mr. Chairman, may I have one comment?

Mr. ECKHARDT. Let Commissioner Pittle proceed.

Mr. BROYHILL. Yes; if Commissioner Pittle has a different idea here we could get you arguing with each other.

Mr. BYINGTON. We have many times in the past.

STATEMENT OF R. DAVID PITTLE

Mr. PITTLE. Thank you, Mr. Chairman. I have also submitted to the committee staff a statement longer than the one I would like to present to you now.

Mr. ECKHARDT. Without objection, it will be entered into the record. You may proceed.

Mr. PITTLE. I hope we have a chance to get back to some of the things we have just discussed, because I would like to provide some balance to some of those points. However, I should go through this first.

When I think about the offeror process these days, I am reminded of the story about the fellow who removed all of his clothes and then jumped into a beautiful bed of red roses. Later's as the doctor removed the thorns from the fellow's bruised torso, he was asked why the man had done such a thing. The anguished response was, "Well, Doctor, at the time it seemed like a damn good idea."

I have reluctantly concluded that the same set of words applies to the offeror process. When the Commission was established, the offeror process seemed to promise quick, inexpensive safety standards, with substantial amounts of public participation. From the perspective of almost 5 years, one can see how overoptimistic were everyone's early expectations about the offeror process.

During this 5-year period, the Commission has issued only three standards, from eight offeror proceedings. Parenthetically, I would like to clear up something so you will know what I am discussing in the next few pages. Both the chairman and the vice chairman have alluded to or discussed eight standards that were developed. You should understand that standards under section 7 of the CPSA represent only a part of the safety regulations we develop. We also work standards under other acts, and we draft bans under the CPSA and under other acts administered by the CPSC.

The offeror process, as you know, is only used to develop standards under section 7. The long list of accomplishments cited by the chairman included many bans under section 8 which do not involve the offeror process. The vice chairman mentioned we have developed eight standards. I think the important thing is, we have attempted eight standards using the offeror process, only three of which bore fruit. The other five are still soaking up agency resources.

Without repeating the testimony which I previously gave to this subcommittee last fall, I will say that our experience has demonstrated that the offeror process has turned out to be exceedingly expensive and

time-consuming. Worst of all, it has consistently produced poor quality standards which the agency has had to rewrite substantially to make suitable for promulgation.

I guess I should make another point here. This agency is the agency that has the ultimate responsibility for promulgating and defending a standard. Under the offeror process, we are, in effect, yanked out of the development of a standard simply made a participant or an observer. This puts us in the awkward position of receiving a document which we must then defend, although we may not agree with it if we propose it as the offeror drafts it. We spend a lot of time putting draft standards into a form we can defend as Federal regulations.

With respect to matchbooks, for example, while it took 100 days for the offeror to develop the proposal, it then took 524 days for our staff to look at it and try to develop a technical rationale to save that proposal. I would disagree that because the offeror took only 100 days and the CPSC took 524, that the problem is with the agency and not the offeror. Much of the time on our part was spent trying to put the offeror's standard in a form that made sense, had a technical rationale, and could be defended in a court of law. There was a lot of backtracking to try to find out what the Matchbook Development Committee had in mind.

I gather that the chairman of the subcommittee has reached similar conclusions about the offeror process as those I have just stated. I note that H.R. 10819, as introduced by him, would permit the Commission to depart from the offeror process under certain conditions, as long as the Commission provides an opportunity for interested persons, including representatives of consumers and consumer organizations, to participate in the standards development process.

I commend the chairman for introducing this legislation, and I fully support it. I wish I could say that all of my colleagues also see the wisdom of this proposal. By the way, since last evening, I had to insert the words, "all of my colleagues," in my prepared statement because when I wrote the statement, I relied on the past public statements opposing changes to the offeror process of my colleagues. I am very pleased to see that Vice Chairman Franklin has departed from her previous position, albeit not quite far enough, in seeing the wisdom of the Chairman's proposed legislation. I only hope that the Chairman is persuasive in the rest of this hearing. We can both pray that she will come all the way around to see the full wisdom of this legislation.

Mr. ECKHARDT. I see that you are seated in accordance with your position on the offeror process.

Mr. BROWN. From right to left.

Mr. PITTLE. We are building on the best part.

Mr. ECKHARDT. Dependent upon your point of view, it can be said that things go downhill from the left, or uphill from the left.

Mr. PITTLE. As I understand my colleagues' general position, they believe the lack of performance of the offeror process has resulted primarily from a lack of proper management and not from major flaws of the process itself. My colleagues have cited the recent effort in miniature Christmas tree lights as an example of effective management of an offeror proceeding and argue it is a model for future proceedings.

I agree that this proceeding seems to have worked effectively. I do not agree it is a model for future proceedings. Among the significant

changes from the past offeror proceedings utilized in the Christmas tree light proceeding were: one, greater funding for consumer participation, particularly technically oriented consumers; two, more front-end research, information, and analysis by our staff; three, a narrowing of the number and scope of hazards to be addressed; four, indicating several promising solutions for the hazards to be addressed; and five, substantial participation and direction by the CPSC staff.

In passing, I should note that I have long called for and welcomed most of these changes, and for your future reference, I draw your attention to a May 30 memo that I submitted to the Commission in 1975: that appears on page 281 of the oversight hearing record of September 30, 1977.

However, the current commitment of the agency to incorporate these changes in future proceedings does not signify to me that the offeror process has at last succeeded. I believe it signifies how much of a failure the process truly is, and let me explain why I say this.

First, the real lesson to be learned from the Christmas tree light proceedings is that it shows the lengths to which the Commission must go simply to get a draft standard suitable to propose as a consumer product safety standard. Unless the Commission does virtually all of the basic research about a risk of injury, unless the Commission carefully trims down the task to narrow proportions, unless the Commission tells the offeror several ways in which to solve the problem, and unless the Commission monitors the offerors every step until the draft standard is complete, the process will not work.

In short, the management reforms we have instituted amount simply to the agency's "spoon-feeding" offerors. Second, the time and expense to the agency in spoon-feeding an offeror can be considerable. One cannot help but note that 2 years have passed from the date the Commission voted to initiate a section 7 proceeding for Christmas tree lights, and 7½ months have passed from the date the proceeding was commenced before the Commission received a draft standard from the offeror.

At this point, 1 year after the date we first invited offerors, we do not have a final standard. We simply have a document which must be proposed in the Federal Register as a possible standard for Christmas tree lights, and the full set of procedures to promulgate the standards under the APA is still ahead of us.

Third, there are situations in which the agency and the public it is supposed to protect simply cannot afford the luxury of spoon-feeding an offeror. For example, the Commission recently voted to begin proceedings to develop a safety standard under section 7 for cellulose home insulating material. We did so because we believe this material presents an unreasonable risk of injury due to its flammability, because approximately 6 million to 8 million homes a year will be retrofitted with insulation, a large number with cellulose materials in the next several years.

The Commission cannot afford to develop all the basic injury and engineering data, and suggest all of the promising solutions in a manner which seems necessary for an offeror to succeed. It is a fact that led me to support S. 2401 and its companion bill, H.R. 10637.

Fourth, even if the Commission were to have the time, money, and freedom from emergencies to spoon-feed all of its offerors, it is not

clear to me that there are enough interested groups, except for the affected industries, to be offerors. The only non-industry group that has yet sought to be an offeror on a continuing basis is the National Consumers League.

Clearly, we could not use this group for every standard we do, or it might end up so economically dependent on the Commission that its ability to maintain an independent status would be compromised, and quite frankly I would be very unhappy at the prospect of dealing only with industry offerors. The CPSC experience with industry offerors leads me to conclude that such offerors would not be generally under the Commission's direction, and will simply "warm-over" their own voluntary standards, and not much more.

Finally, even if all of the problems I have mentioned are addressed, I think it is a fair question at this point to ask whether or not the Congress, or the public it represents, ought to wait for another 5 years or even 1 more year to see if at last the process really could work. A far more intelligent step, in my judgment, would be for the Congress to give us the flexibility in appropriate cases to use other methods to involve the public in dveloping safety standards. As a final point, the suggestion was made that if this bill does not pass, we should find procedures to handle emergency cases. I can only predict if we are going to handle emergency cases expeditiously, we will not involve section 7 as presently written.

[Mr. Pittle's prepared statement follows:]

STATEMENT OF R. DAVID PITTLE, COMMISSIONER, CONSUMER PRODUCT SAFETY COMMISSION

Good morning. I realize that this Committee undoubtedly has a number of questions to address to the Commission so I shall reserve most of my comments to matters brought up by the members. However, I do have a few observations that I wish to make.

I have read a number of accounts of the CPSC that invariably allege a lack of progress by the agency based upon the fact that it has issued only three safety standards under the Consumer Product Safety Act in approximately five years. The negative vibrations that emanate from this statistic have recently reached substantial, if not overwhelming, force.

I urge the members of the Committee who would judge us harshly based on this statement to look at our record more closely. In point of fact, our achievements, while perhaps not completely satisfactory to you or to us, are substantially better than three standards in five years.

I say this for several reasons. First, we regulate the marketplace, not only through the Consumer Product Safety Act, but through four other acts transferred to us when the agency was established: the Federal Hazardous Substances Act (FHSA), the Flammable Fabrics Act (FFA), the Poison Prevention Packaging Act (PPPA), and the Refrigerator Safety Act (RSA). One who examines our activities under these acts in a fair manner, I believe, must conclude that the CPSC has produced a more than reasonable number of accomplishments. I shall not dwell on the reasons for the greater activity under the transferred acts than under the CPSA other than to note: (a) as a general rule, we are required by law to regulate, if possible, under the transferred acts rather than the CPSA, and (b) the procedures under the CPSA by which standards are set, the offeror, process, are, in my judgment, overly cumbersome and time-consuming. (I shall return to this point later.)

Second, in spite of difficulties with setting standards under section 7 of the CPSA, the agency has managed to utilize its authority to issue bans under section 8 of the Act very effectively during the last year. I believe this is a major step forward for the CPSC. Actions taken against certain products containing asbestos, against unstable refuse bins, against etxremely flammable contact adhesives, against paint containing lead, and action proposed against unvented gas-fired space heaters all attest to the effectiveness of the CPSC in utilizing this section of the Act.

Finally, I believe that section 15 of the CPSA represents a very powerful standard to be used to promote safety in all products currently in the marketplace. Section 15 states, in effect, that the Commission may take action against any product that presents a substantial product hazard.

Last year in a letter to the House Appropriations Committee, I stated some reservations concerning the effectiveness of the Commission's section 15 program. I believe this office has shown dramatic improvement since that time. Under section 15, this office again and again has moved against dangerous products in the marketplace.

In making these points, I do not claim that the performance of the Consumer Product Safety Commission has been flawless. I do claim that our achievements have been under-reported. I believe a full and proper evaluation of the CPSC requires a more balanced perspective on the agency—certainly more than seems to exist at this moment.

Whenever I think about the offeror process these days, I am reminded of the story about the fellow who removed all his clothes and jumped into a beautiful bed of red roses. Later, as a doctor removed the thorns from the fellow's bruised torso, he asked why the man had done such a thing. The anguished response was, "Well, doctor, at the time, it seemed like a hell of a good idea."

I have reluctantly concluded that this same set of words applies to the offeror process. When the Commission was established, the offeror process seemed to promise quick, inexpensive safety standards with substantial amounts of public participation.

From the perspective of almost five years, one can see how over-optimistic were everyone's early expectations about the offeror process. During this five-year period, the Commission has issued only three standards from eight offeror proceedings. (seven were under the CPSA; one was under the Federal Hazardous Substances Act.)

Without repeating testimony which I previously gave to this Committee, I will say only that our experience has demonstrated that the offeror process has turned out to be exceedingly expensive and time-consuming. Worst of all, it has consistently produced poor quality standards which the agency has had to rewrite substantially to make suitable for promulgation.

I gather that the Chairman of this Subcommittee has reached similar conclusions about the offeror process. I note that H.R. 10819, as introduced by him, would permit the Commission to depart from the offeror process under certain conditions so long as the Commission provides an opportunity for interested persons, including representatives of consumers and consumer organizations, to participate in the standards development process. I commend the Chairman for introducing this legislation and I fully support it. I wish I could say that my colleagues also see the wisdom of the proposal. As I understand their positions, they believe that the lackluster performance of the offeror process has resulted primarily from a lack of proper management and not from major flaws in the process itself.

My colleagues cite the recent effort with miniature Christmas tree lights as an example of effective management of an offeror proceeding and argue that it is a model for future proceedings. I agree that this proceeding seems to have worked effectively. I do *not* agree that it is a model for future proceedings.

Among the significant changes from past offeror proceedings in the Christmas tree light proceeding were: greater funding for consumer participants, particularly technically oriented ones; more "front-end" information and analysis by the CPSC; narrowing of the number and scope of hazards to be addressed; indicating several promising solutions for the hazards to be addressed; and substantial participation and direction by CPSC staff. In passing, I should note that I have long called for, and welcome, most of these changes.

However, the current commitment of the agency to incorporate these changes in future proceedings does not signify to me that the offeror process at long last has succeeded. I believe it signifies how much of a failure the process truly is. Let me explain why I say this.

First, the real lesson to be learned from the Christmas tree light proceeding is that it shows the lengths to which the Commission must go simply to get a draft standard suitable to propose as a consumer product standard. Unless the Commission does virtually all of the basic research about a risk of injury, carefully trims the task down to narrow proportions, tells the offeror several ways to solve the problem, and monitors the offeror's every step until the draft standard is complete, the process will not work. In short, the management reforms we have instituted amount simply to the agency "spoon-feeding" offerors.

Second, the time and expense to the agency in "spoon-feeding" an offeror can be considerable. One cannot help but note that two years passed from the date the Commission voted to initiate a section 7 proceeding and seven and one-half months passed from the date the proceeding was commenced before the Commission received the draft standard from the offeror. At this point, one year after the date we first invited offerors, we do not have a final standard. We simply have a document that must be proposed in the Federal Register as a possible standard for Christmas tree lights. And the full set of procedures to promulgate a standard are still ahead of us.

Third, there are situations where the agency and the public it is supposed to protect simply cannot afford the luxury of "spoon-feeding" an offeror. For example, the Commission recently voted to begin proceedings to develop a safety standard under section 7 for cellulose home insulation materials. We did so because we believe that this material presents an unreasonable risk of injury due to its flammability. Because approximately six to eight million homes per year will be retrofitted with insulation—a large percentage with cellulosic materials—for the next several years, the Commission cannot afford to develop all of the basic injury and engineering data, and to suggest promising solutions in a manner that seems necessary for an offeror to succeed. It is this fact that has led me to support S. 2401, and its companion bill H.R. 10637, which, among other things, would establish an interim standard for cellulosic home insulation.

Fourth, even if the Commission were to have the time, money and freedom from emergencies to be able to "spoon-feed" all of its offerors, it is not clear to me that there are enough interested groups, except for the affected industries, to be offerors. The only non-industry group that has yet sought to be an offeror on a continuing basis is the National Consumers League. Clearly, we could not use this group for every standard we do or else it might end up so economically dependent on the Commission that its ability to maintain an independent status would be compromised. And, quite frankly, I am very unhappy at the prospect of dealing only with industry offerors. The CPSC experience with industry offerors leads me to conclude that such offerors generally will not be amenable to Commission direction and will simply "warm-over" their own voluntary standards—and not much more.

Finally, even if all of the problems I have mentioned were somehow adequately addressed, I think it is fair to question at this point whether or not the Congress, or the public it represents, ought to wait another five years—or even one—to see if at last the process really works. A far more intelligent step, in my judgment, would be for the Congress to give us the flexibility in appropriate cases to use other methods to involve the public in developing safety standards.

Thank you.

Mr. ECKHARDT. Thank you, sir.

Mr. Broyhill?

Mr. BROYHILL. Ms. Franklin, I was curious as to why you had reached the conclusion that section 7(c) does not give the Commission the authority to modify as well as adopt existing voluntary standards. I assume you have the act before you. Could you point out to me where it says that?

Do the other commissioners agree with that conclusion?

Ms. FRANKLIN. Mr. Broyhill, the Commission last spring proposed an amendment which would allow us to make certain changes in existing voluntary standards before we promulgated them. The sense of what I am saying is very much what the Commission said to you last spring.

Mr. BROYHILL. As I understand and read this, and understood it when it was written, if a standard had been issued or adopted by a Federal agency or any other qualified agency or organization, then the Commission could publish that as a proposed safety rule, and then, of course, that would then be subject to the administrative procedures that are spelled out in section 9.

Ms. FRANKLIN. That is right.

Mr. BROYHILL. And then, of course, the proposed rule would be subject to change, and issued as a final standard based upon the various

criteria and so forth spelled out in section 9. Is that your understanding?

Ms. FRANKLIN. That is my understanding of the way the law is now. What I would be after would be the ability of the Commission to make some changes.

Mr. BROYHILL. At the beginning?

Ms. FRANKLIN. Correct, to allow the Commission to make substantive or technical changes, before it is proposed.

Mr. BROYHILL. Is this the reason the Commission has been reluctant to issue the insulation standard that GSA presently has, the proposed standard, and to try to get on with it?

Mr. BYINGTON. I don't think we have been reluctant. We are just in the process now of doing our section 7(b) notice. There is a distinct possibility that the Commission could use 515(c).

Mr. BROYHILL. The question is, why has not the Commission adopted the GSA standard. Why are they going the other way? Why couldn't they have done this months ago or a year or so ago?

Mr. BYINGTON. I don't think we are going the other way. The first action required by the statute is to put out a notice under 7(b). After we get that notice out, we receive existing standards like 515(c), or the ASTM standard, or someone else's. That is the point at which an existing standard can be picked up and proposed as a mandatory standard. I think the point Commissioner Franklin is making, and the point the majority of the Commission has been trying to stress for the last year, is the point you made earlier in terms of the inflexibility that the Commission sees that it has. That has been a point of some discussion inside the agency—how much flexibility the agency really has in making any changes in voluntary standards before proposing them.

The statute can be read, as you have just read it, to prohibit our making material changes in the voluntary standard before we propose it. If, however, we then make material changes in it after we get the comments back, we are going to have to repropose before issuing a final standard. That is the major issue in terms of expediting that situation.

Mr. BROYHILL. Wait. Let me get this in the record here. You are saying, then, and I must have a misconception of how section 7 works, I thought you had that flexibility now, either to proceed under section 7(b) or 7(c).

Mr. BYINGTON. No; the general counsel is here, and we can have him discuss it, but the way we read the act, to say, under (b), "a proceeding for the development of a consumer product safety standard under this act shall be commenced by the publication in the Federal Register of a notice which shall . . ." and it goes on to outline all of that.

Only after you have completed your responsibilities under section 7(b) may you then proceed to (c), (d), et cetera. If you pick up a voluntary standard under 7(c), after completing your work under 7(b), the basic question is, how much of a change can you make in this existing voluntary standard. The act talks about proposing an existing voluntary standard. If you make a major change, you may have to repropose. That is the basic question there.

Mr. PITTLE. The degree to which we can make changes is unclear. Section 7(c) is not worded in a way that one can read it and know the extent to which the CPSC is free to modify an existing standard

in order to promulgate it as a mandatory one. We will have to get guidance on this at some point from our General Counsel.

As to many of the voluntary standards that might be submitted under section 7(c), it has not been my experience that a voluntary standard, as it was written, was in the form that I would like. Something usually needs to be changed. It may be 80 percent of the way, but it needs enough changes that it may require us to redraft certain parts before we feel comfortable in promulgating it as a Federal rule.

Mr. BYINGTON. Mr. Chairman, could I make one comment that I wanted to make a moment ago for the record? I think some may be perceiving that I am unalterably opposed to this legislation and those changes in the law. That does not happen to be the case. I have no problem with it whatsoever. Any time Congress wants to give us more flexibility, I, as the chairman of a regulatory commission, would be happy to accept.

My point is, that will not solve the problem. Increased flexibility is not going to solve the problem of the time and costs that are going to be involved in the development of any technically complex, economically effective standard, whether or not we do it in-house, under contract, or under something called the offeror process. The point I tried to make was that, regardless of what it is called, who shares it, how it is paid for, what the deadlines are, there has to be a mechanism, a process.

My concern at the moment is that the offeror process has taken on some kind of an aura. All attention is focused on the offeror process. I don't care what you call it, but there is going to have to be a process that allows the various parties to be brought together and that will force a decision out of them.

I don't really care who chairs it, who pays for it, or what it is called, but if you are going to do it in standards development, it is going to take some time and cost some money. The biggest problem this agency has had with the so-called offeror process is that it did not manage it. It did not use the tool that it had.

There seems to be three criteria for successful standards development. First, you can't identify too many hazards. We bit off more than we could chew in several cases, and we have been gagging on them ever since. You must give specific, up-front directions to the offeror, the contractor, or the staff. Again, we haven't always done that. Finally, you must cooperate and participate with people developing the standard. If you don't have those three criteria, you will not get anything worth receiving. That has been the problem in the past, and that is what we have been trying to remedy.

Mr. BROYHILL. You are, of course, going over arguments that Mr. Eckhardt and I and Mr. Moss went over when this act was drawn up as to how to promulgate safety standards that are workable, in the public interest and so forth, and how to get them out of the back rooms of these agencies.

Mr. BYINGTON. Exactly.

Mr. BROYHILL. And to get them out in the public, and as you say, let those forces that be come out and work on them. If this is not working, certainly we need to do something about it, but I hate to have to put in a new system that is going to mean that we are going to draw the rules in the back rooms of the agency again, and that is what I am concerned about.

Mr. Pittle?

Mr. PITTLE. I am glad to hear you say that, and I am also glad to hear our chairman say that. I think, Mr. Chairman, you may have more support than I thought when I walked in here today for your legislation. I think it is a very real problem, a possibility, anyway, that Government agencies can develop an interest of their own which may not coincide with the public interest, and I can understand the concern you had back in the early seventies when you wrote this legislation.

It seems to me that the results are in, that the solution that was picked was a bit more than was necessary, because now you have taken Government so far from the control of the process that, as you can see by that chart [indicating], that virtually no standards are being written.

I think the flexibility in this legislation will help the process to work. We must have the opportunity to do more than to just be there while an offeror works.

Actually, I have been very much encouraged in the last hour, and I am glad I came this morning.

Mr. BROYHILL. Ms. Franklin.

Ms. FRANKLIN. I think I am about to present Commissioner Pittle with a silver spoon. I have a concern about Commissioner Pittle's comments regarding "spoon feeding" the offeror, implying that the Commission might be able to make do without doing the same work. I think there is an inconsistency in the logic of this.

What I think I hear Commissioner Pittle suggesting is that we would not need that front-end research, if the Commission itself were to undertake this process. I would submit that no matter who does it, we are still going to have to do that basic work, or the process will not operate.

Mr. PITTLE. Doing basic research is something that the engineers of our staff have to do to develop any standard. However, the type of front-end research that seems to be necessary for the offeror process to work is to solve the whole problem for the offeror.

In the Christmas tree light proceeding, for example, we had so much information ready to go that our own staff probably could have had something to propose a long time ago, but going through this proceeding, we got something back from the offeror which is probably one of the best that I have ever seen, but it still had a couple of months' worth of additional work we still have to do. We need the flexibility such that when we see a situation in the real world, not in the abstract, in which we have all of the information, and we have a couple of solutions which we are probably going to insist on anyway, that we be permitted to avoid the full set of offeror procedures.

I think public participation can be brought in in so many other ways, and reduce the waste and delay that lead to those long green lines on the chart over there.

Ms. FRANKLIN. If I may——

Mr. BROYHILL. Yes.

Ms. FRANKLIN. When you put in the hands of the Government the power to control every process, even if there is supposed to be public participation, I think you open the door for the public either to be shunted aside or considered as token participants. I would not want

our agency to do anything like that. But I really think you open the door to this—with agencies going off and writing standards themselves, coming up with a fait accompli.

I think public participation and the interaction of the public in meaningful ways is exceedingly important to getting a good standard.

Mr. PITTLE. This agency is so open and gone to such lengths to involve so many members of the public that such a scenario is never going to happen. Standards are never going to be written in the back room. The kind of concern you [indicating Mr. Broyhill] had before is not a real possibility. Our agency is so open that the chance of someone off in his office, not talking to anyone, writing a standard affecting an entire industry which suddenly appears in the Federal Register where no one has a chance to comment on it is virtually nonexistent.

There is a middle position. You must have public participation, and we are terribly committed to it. However, it makes little sense to tie us to the most cumbersome form of public participation. It is just a matter of giving us the flexibility to do it a little faster.

I have been before this subcommittee, and often the question has been asked, Why not more standards by this time? Why are you so slow in doing this? Mr. Broyhill, I think that the offeror process is one of the main reasons why we have not met your expectations. We can get rid of your concern by this legislation.

Mr. BROYHILL. Mr. Chairman, I am sure you have questions along this line, too, and I thought we might finish our lines of questioning with respect to the changes in the offeror process, but I wanted to ask one or two other questions along this line. Has the Commission used section 7(c) to any extent?

Mr. BYINGTON. No, sir.

Mr. BROYHILL. It is a valuable tool? Should it be used? Mr. Pittle apparently in his testimony does not feel that voluntary standards, standards that have been adopted by other organizations or even agencies of government maybe have a place here. Maybe I am misunderstanding.

Mr. PITTLE. No; that is not the position I take.

Mr. BROYHILL. It is my understanding when the act was first written that this was one of the keys to making this whole thing work, that what we would be doing would be energizing the private sector, really putting the burden on them to come up with workable standards, and not only making them more conscious of safety and safety standards, but utilizing their resources rather than the resources of the Government to do this.

Mr. PITTLE. You are talking about my remark. Maybe I should respond to that. It was not my position, and never has been, that voluntary standards are no good. I simply suggested that even good existing standards may have to be rewritten somewhat to be promulgated as mandatory standards. This may cause a problem in terms of section 7(c) of the CPSA. It seems to say promulgate that standard as it exists without modification.

Well, quite often it may be on target for eight or nine provisions, but there are one or two provisions I wouldn't want to promulgate.

Mr. BROYHILL. If we changed this slightly, would you utilize this section more?

Mr. PITTLE. I think that is true.

Ms. FRANKLIN. Yes.

Mr. BYINGTON. Yes.

Mr. PITTLE. May I say you are going the opposite way from the concern that was raised before. You are talking about taking a standard that was not written in the back room of a Government agency but rather in the back room perhaps of a trade association, where there was not the kind of public participation you are concerned about.

Mr. BROYHILL. But what you are at least doing is making an initial proposal along this line and then subjecting it to the public processes that are spelled out in section 9.

Mr. PITTLE. As long as we have the flexibility to make changes that we think should be made. Otherwise, you are always stuck unalterably with whatever the existing standard's requirements are. I think Commissioner Franklin is looking for more flexibility to modify it ourselves.

Ms. FRANKLIN. Yes.

Mr. PITTLE. And then propose it.

Ms. FRANKLIN. Mr. Broyhill, if I might continue, I think I hear Commissioner Pittle supporting my plea for flexibility on that count. I hope so.

Mr. BROYHILL. I don't think you are that far apart.

Ms. FRANKLIN. I think we have probably underutilized and even underconsidered the utilization of section 7(c). Part of the reason is its rigidity. It would be better if we had the express authority to modify a voluntary standard it needed and then put it out for comment. At the beginning, a majority of the Commission was very suspicious of voluntary standards generally, and I think there was some thinking that we really did not want to consider them, that we wanted to embark on a new course. Since then, my views have been modified and, so, I believe, have those of the Commission as a whole. There is far more receptivity to giving full consideration to mandating a voluntary standard.

Mr. BROYHILL. I recall reams of testimony back in those days where it was stated to the effect that if they could just adopt voluntary standards and put the force and effect of law behind those, what a giant step we would make toward safety.

Ms. FRANKLIN. What I think helped to shape some of our views at the time was the experience of OSHA. It had used a substantial number of voluntary standards and had run into a great deal of difficulty as a result.

Mr. PRITTLE. There is another point there. The vountary standards, when they are developed, don't necessarily involve all members of the public—including some of manufacturers—who might take a dim views if certain requirements were suddenly mandated. Their whole manufacturing process, even though their product might still be safe, might be thrown completely out of compliance. It is very important to me that section 7 does involve all segments of the public and that is a counterbalancing concern, one in which I have a very strong feeling.

Ms. FRANKLIN. There are other aspects, too. Our voluntary standards policy describes the criteria we would apply when we are thinking of mandating a voluntary standard. The basic question is, does this standard do the job in terms of addressing the risks?

That is where you start. Is it going to give us the safety the public needs? Beyond that, you look at other issues, anticompetitive effects, who participated in the development of the standard, and so on. It is not as though we are completely ignoring any of those things in proposing a voluntary standard. I think what we are after is more safety in the market place in the most expeditious way we can get it.

Mr. BROYHILL. Mr. Chairman, you go ahead now.

Mr. ECKHARDT. When we consider the participation of persons affected by the standard, I think that we may be overlooking the fact that this process develops the proposed rule. In addition, there are the more traditional publication and comment provisions of section 9.

In other words, this is not the only opportunity for involved persons to have their say. As a matter of fact, this is not even the traditional rulemaking type of participation. This is something that precedes that and which affords additional input. Now, if ultimately an offeror, a single offeror were to make a rule for himself and for all others who may be so engaged, there might be considerable injustice in that process. But you have after the offeror process the procedural safeguards in the section 9 rulemaking procedures. Section 9 goes beyond 553 rulemaking and permits an individual to come into the process with the right to be heard, with the right to file his position, and provides a very generous, or at least the act provides, a very generous means of review.

Instead of the ordinary arbitrary and capricious standard, the standard is substantial evidence on the record as a whole. Of course, this affords additional protection to participants as because it notifies the Commission in advance that it had better have strong justification for its standard.

In addition to that, the act provides that in the review process, if you have not adequately permitted questions to be asked which were material to the decision, that they may be asked for the first time at the court level. Moreover, section 9 provides—and I think this is certainly a strong warning to the Commission—that it had better be reasonable in providing its rules, that it had better hear everybody, that there may be recovery of court costs against the Government, should the contesting party win.

I make these points to emphasize that the opportunity of the public or of persons affected to be heard does not stop with this development process, whether it's conducted by an offeror or the Commission. This only establishes a standard which will ultimately be subjected to this whole rulemaking process under section 9.

Commissioner Franklin, you are concerned, that paragraphs 1, 2, 3, and 4, on pages 3 and 4 of the bill are stated in terms of either/or, that is the disjunctive.

Ms. FRANKLIN. That is the way I read it.

Mr. ECKHARDT. I do not exactly read it that way, but I think that since it does end with an or, it might be so read. If I may paraphrase what I think we intend to do, we intend to say that the Commission may develop a consumer product safety standard without soliciting an offeror. If the Commission finds that taking into account the nature of the risk of injury associated with such product and the expertise of the Commission with respect to such risk, and with respect to the means of eliminating it by developing consumer product safety standards, such

direct development by the Commission is the best and most expeditious way to devolp such a standard.

That is how I read that section. May I restate that taking into account the expertise of the Commission with respect to the risks, and with respect to the means of eliminating by developing consumer product safety standards, it seems more expeditious and effective for the Commission to develop its standard in-house. What is intended seems to me to be what you are asking for. In other words the question is whether to go through the process of nursemaiding someone else, an offeror, into providing a standard would be more cumbersome and time-consuming than to utilize your own expertise.

Why should you not consult interested persons directly so that you do not have the offeror process and then the determination of the Commission as to the adequacy of the standard. Of course, anybody affected still has the right to come in and protest the rule under section 9.

Ms. FRANKLIN. Mr. Chairman, I think I am hearing you say something different than the way I read this bill. The way I read this is that if the Commission made the finding that any one of the four criteria prevailed, that that is sufficient for us to do it ourselves.

Mr. ECKHARDT. That is perhaps the way we worded it, and maybe we should not. It seems to me we should say that the Commission should take into account its own expertise with respect to the risks. It should take into account its own expertise with respect to developing standards generally. Then, after taking those matters into account, the Commission should determine whether or not it was better to address the problem of establishing standards in-house with consultation or whether it was better to reject that in-house process and ask an offeror to develop the recommended standard. That may be different from what we say here, but it seems to me that is essentially what we seek to accomplish.

Ms. FRANKLIN. That is much closer to what I am suggesting. If you are saying that the Commission must take into account all of the criteria, then OK. It is the "or' that really threw me off. Perhaps the word should be "and." Then I think that you and I essentially agree, although I hope that there could be the requirement to look at our resource capability as well.

Mr. ECKHARDT. Did you have a comment, Commissioner Pittle?

Mr. PITTLE. I must say that the concern about gutting the offeror process is mitigated to me substantially by the next section; namely, section (B) on the top of page 4, because you make it very clear that whatever we do, regulations prescribed by the Commission have still got to incorporate all of the procedures for bringing in consumers, involving members of the public, manufacturers, distributors, retailers, all interested parties, so that there is no way in which the public participation factor gets lost. There is no possibility that this is going to be written in one of the back rooms in the agency.

So, it makes perfectly good sense to me that if any one of the factors—and that is why I was perfectly satisfied with the word "or"—if any one of the factors was so compelling that you don't want to initiate the full regimen of the section 7 process, as long as the consumers and the interested members of the public are brought in, that seemed to me to give the flexibility we needed.

If you change the word "or" to "and," it seems to me you must make every one of those factors a compelling factor, and that is something which I don't think you intend.

Mr. ECKHARDT. I am suggesting something different from either of these proposals. The proposition that you are making is that it might be well to have any one of these factors trigger the setting aside of the offeror process, if you give the sufficient notice in publication provisions of (b).

The other position that might be taken is that all of this should be shown and all of these findings should be made prior to setting aside the offeror standard. I am really not suggesting either approval. I am proposing that the first two factors, or really the first three factors simply be taken into account in any decision.

Mr. PITTLE. That is true.

Mr. ECKHARDT. They are not the kinds of things that require findings on a point-by-point basis, but rather they are matters which must unavoidably be taken into account before making any determination. I cannot see how any case would not take into account: (1) the nature of the risk of injury; (2) the expertise of the Commission with respect to such risk; and (3) the expertise of the Commission in developing safety standards generally. It is only after those things are found that the Commission can decide whether or not it would expedite the process for it to proceed on its own.

This does not necessarily mean that it must determine that the offeror process could not possibly work. The question would be whether or not the offeror process would be less expeditious, less desirable under the circumstances. That is what I am suggesting and I think it is a little different from either the question of requiring only one of these provisions to be shown or a provision that requires that all of them be shown. It seems to me it is a matter of taking into account all of these factors.

Mr. PITTLE. You were not weighing these factors in any way then.

Mr. ECKHARDT. No; I would leave to the Commission the authority to weigh the factors.

Mr. PITTLE. As long as subparagraph (b) stays there, it seems to me that that is fine.

Mr. ECKHARDT. There is some pretty good board-approved language which has been used in many bills when a final result shall take into account the consideration of a number of factors. It would seem to me it might be better, instead of listing them, 1, 2, 3, 4, to set it up as factors to be taken into account and then give the Commission the authority to consider the entire group as a whole.

Mr. PITTLE. That is very good.

Ms. FRANKLIN. I would certainly concur with that.

Mr. ECKHARDT. Suppose we did that. Would there be any disagreement on the part of the Commissioners with that provision?

Mr. BYINGTON. Yes.

Mr. PITTLE. Not me.

Ms. FRANKLIN. I suggest additionally that there be some reference to resources of the Commission, so that if we were to write our own standards, it would not throw our priorities and resources all out of kilter.

Mr. ECKHARDT. Mind you, this is an exceptional procedure which you either elect to follow or not. I think the common procedure would

still be the offeror procedure, so if you didn't have the resources to do it, you would not be forced to utilize this procedure.

Ms. FRANKLIN. I am feeling much, much better about all of this.

Mr. PITTLE. I knew you would do it.

Ms. FRANKLIN. He is persuasive. But then we knew that.

Mr. BYINGTON. I can see there is general agreement to the direction in which you are going, Mr. Chairman. I think the only point I was trying to make is, I don't blame the statute for our problems in the past, as much as other people seem to be. I blame the way we have managed our own tools and our own resources, and I think we, as an agency, could have done significantly better than that chart indicates with the tools we had, and even improving them. No one will argue with improving the tools we presently have, or increasing our flexibility. The bottom line however will still be whether or not we manage our tools and resources properly. If we are going to move more and more into a number of mandatory standards, the Commission, whatever flexibility it has, is either going to have to have more resources or is going to have to refocus some of its priorities.

So, I totally support an improvement in flexibility or fine tuning of the tools, but the bottom line of what that chart will look like 3 years from now is how well we manage inside.

Mr. ECKHARDT. I agree. I think that even under the existing language you could, as you have in some instances done, cooperate very closely with the offeror, so that you come very close to establishing your own standards. However, it seems to me rather artificial to require the Commission to treat it as an offeror situation rather than simply admitting at the outset that it is not and that the offeror process is not the proper way to proceed.

Mr. PITTLE. May I add one comment about the resource question? It seems to me that the only way we would save money by using the offeror process other than our being more involved in the management of the development of this standard is if we did not completely fund the management of the proceeding.

In the case of Consumers Union, we spent close to one-quarter of a million dollars to fund their management expenses, and that money did not necessarily have to go to an outside party if it wasn't done by an offeror, and we spent a considerable sum of money—the amount escapes me at the moment—for Christmas tree lights, to the National Consumers League.

Mr. ECKHARDT. You are saying resources could be preserved by either using the offeror process or by going the other way, depending on the case?

Mr. PITTLE. I am saying it is not clear to me that one is any cheaper than the other, because the amount of money we spend on trying to determine whether or not the rationale to a standard drafted by an offeror is adequate and justifiable, and letting contracts out, is money that could be spent to get proposals to put before the public ourselves.

Mr. ECKHARDT. And those green bars have added to them the process under section 9.

Mr. PITTLE. That is not even there.

Mr. ECKHARDT. That has not come up. That is not shown in this part at all. That would be in addition.

Mr. PITTLE. But that would be a fixed cost regardless of the procedure.

Mr. ECKHARDT. But it would be an addition in every case in which a rule resulted. Is that true?

Mr. PITTLE. Yes.

Mr. ECKHARDT. Mr. Broyhill?

Mr. BROYHILL. Thank you. Mr. Chairman, if we have completed that line of questioning, there are two or three other questions I would like to ask the chairman. He mentioned in his testimony that the agency has done a better job in responding to petitions from citizens asking for regulations to be issued. What kind of backlog do you have now with respect to petitions?

Mr. BYINGTON. We are down to two petitions that are very old. If you include, however, the last part of 1977, we have a backlog of four petitions over 120 days. That compares with a backlog of about 60, 1½ years ago.

Mr. BROYHILL. How many total?

Mr. BYINGTON. Since the agency's inception, we have received approximately 120 petitions. Twelve to 18 months ago, over 60 of them were 120 days or more old. Some of them were a couple of years old. Now we have only two of this backlog remaining.

Mr. BROYHILL. I see. With all of this talk about putting a strain on the resources of the Commission, I hate to ask you to do any work, but is there in existence a listing of those petitions and what happened to them?

Mr. BYINGTON. Yes; we would be happy to supply that for the record.

[Testimony resumes on p. 137.]

[The following material was received for the record:]

CPSC
PETITION LOG

ACT Administrative Procedure Act

DATE REC'D.	PETITION NO.	SUBJECT	PETITIONER	STATUS
10-9-73	AP 74-1	Adopt suggested regulations to implement the FOI Act.	Health Research Group Washington, D.C.	Denied - 11/73
5-5-76	AP 76-1	Financial compensation of certain participation in CPSC hearings.	Consumers Union et al. 1714 Mass. Ave., NW Washington, D.C.	Granted - 11/18/76
Renumbered per OGC 7-15-77	AP 77-1 (also see CP 75-12)	Require prepaid recall or warranty cards.	Paul G. Foldes, Esq. 2776 Ft. Scott Drive Arlington, VA 22202	Denied - 9/15/77
6-24-77	AP 77-2	Requests a rule requiring labeling and instructions for coal or wood burning stoves appliances & free standing fire places and their cartons.	Adam Paul Banner 2200 East Sugnet Midland, Michigan 48640	* CDSA: 2/2/78
8-17-77	AP 77-3	Amend Commission meetings policy to delete "negotiations for contractual services" from 16 CFR 1012.2(f).	David A. Swit 2934 Upton Street, NW Washington, D.C. 20008	Denied - 1/5/78

* CDSA - Commission Directed Staff Action

CPSC
PETITION LOG

ACT Administrative Procedure Act

DATE REC'D.	PETITION NO.	SUBJECT	PETITIONER	STATUS
8-1-77	AP 77-4	Exception to Architectual Glazing Standard for Materials contracted for prior to the effective date of the Standard.	Fred V. Anderson Anderson Glass Company 5350 Sun Valley Drive Sun Valley, Nevada 89431	Denied - 8/6/77
9-27-77	AP 78-1	Asks for certain labeling and testing requirements for flame retardant chemicals.	Hilary Kam et al. 1539 Chatham Colony Ct. Reston, VA 22090	Pending
11-15-77	AP 78-2	Requests an exemption from the chlorofluorocarbon labeling regulation for certain products manufactured by this firm.	Falcon Safety Products, Inc. 1137 U.S. Route 22 Mountainside, N.J. 07092	Pending
1-9-78	AP 78-3	Establishment a labeling requirement for dishwashers to warn consumers of hazards associated with backflow.	Samuel A. Freedman 1714 Chalet Ave. Anaheim, Calif. 92804	Pending

CPSC
PETITION LOG

ACT Consumer Product Safety Act

DATE REC'D	PETITION NO.	SUBJECT	PETITIONER	STATUS
5-30-73	CP 73-1	Water slides regulation	National Swimming Pool Institute & Aquaslide 'N Dive Corp.	Granted - 10/9/73
6-4-73	CP 73-2	Sunthetic turf regulation	National Football League Players Association	
8-7-73		Supplement	Monsanto	
9-3-73		Supplement	NFLPA	Denied - 10/9/73
6-7-73	CP 73-3	Proposed bicycle Standard be considered under CPSA in lieu FHSA	Bicycle Mfgrs. Assoc. of America	
8-2-73		Amendment		Denied - 10/9/73
6-8-73	CP 73-4	Fondue Pot Standard	Roger F. Dierking, Attorney	Denied - 10/9/73
6-14-73	CP 73-5	Toy regulation under CPSA in Lieu FHSA	Toys Mfgrs. of America	Denied - 8/27/73
5-18-73	CP 73-6	Mandatory extension cords & power supply cords standard	National Electrical Mfgrs. Association (Mr. H.P. Michener 155 E. 44th Street New York, N.Y. 10017)	Granted - 10/9/73 Reconsidered & Denied - 1/19/78

CPSC
PETITION LOG

ACT Consumer Product Safety Act

DATE REC'D.	PETITION NO.	SUBJECT	PETITIONER	STATUS
7-2-73	CP 74-1	Architectural Glass Standard	Consumer Safety Glazing Committee	Granted - 11/1/73
8-15-73	CP 74-2	Power lawn mowers, lawn & garden tractors standard	Outdoors Power Equipment Institute, Inc. (Jerome Powell, Attorney Gull, Lane & Powell)	Granted 11/10/73
10-29-73	CP 74-3	Lawn mower safety standard re: disengaging the rotary glade when not in use	Robert D. Meldahl James Masterson (Cennamo, Kremblas & Foster, Anthony D. Cennamo, 37 W. Broad St. Columbus, Ohio)	Denied - 6/6/74
9-11-73	CP 74-4	Aerosol Containers Regulation	Louis Benson Houtingdon Valley, Pa.	Withdrawn by letter of 1/28/74
11/12/73	CP 74-5	Aerosol spray products regulation re: Packaging	Center for Science in the Public Interest Washington, D.C. 20036	Granted in part 7/1/75, denied regulatory action

CPSC
PETITION LOG

ACT Consumer Product Safety Act

DATE REC'D.	PETITION NO.	SUBJECT	PETITIONER	STATUS
10-22-73	CP 74-6	Glass containers standard	Adolph Coors. Co. Golden, Colorado 80401	Denied - 7/17/75
12-5-73	CP 74-7	Regulation for EVI People powered vehicle (PPV) and related products	Consumers Union Washington, D.C.	Denied - 12/12/74
12-6-73	CP 74-8	Regulation banning pet turtles, tortoises & terrapins as hazardous products under Sec. 9	Consumers Union Washington, D.C.	Support FDA proposed ban 7/25/74 Final action 12/11/75 (Approved denial notice)
1/2/74	CP 74-9	"Pom poms" immiently hazardous	Philip S. Marstiller (Cole, Wells, Morano, Axselle & Johnson) 201 N. Blvd. Richmond, VA 23220	Not a petition per OGC memo 4/8/76
1-15-74	CP 74-10	Space heaters regulation	Tom W. Ryan, Jr. Missouri Pubic Interest Research Group P.O. Box 8276 St. Louis, MO 63156	Granted 10/31/74 Denied in part - 1/9/75; 5/19/77 Granted in part- 2/2/78

CPSC
PETITION LOG

ACT Consumer Product Safety Act

DATE REC'D.	PETITION NO.	SUBJECT	PETITIONER	STATUS
1/31/74	CP 74-11	Removal of "Rainbow lamps" from the market	Consumers Union Washington, D.C.	Granted Recall & Refund under Sec. 15(b) 2/5/74
2-20-74	CP 74-12	Liquid fuel regulation	Wheel Estates, Inc. T.W. Kruse, Jr., Pres. PO Box 202 Oakdale, Pa. 15071	Denied 5/3074
3-1-74	CP 74-13	Proposed bicycle standard be processed & considered under CPSA in liey of FHSA	Bicycles Mfgrs. Assoc. of America (BMA) (Ronald K. Kolins) Collier, Shannon, Rill & Edwards) 1666 K Street, NW Washington, D.C.	Denied - 6/20/74
3-6-74	CP 74-14	Declare certain dishwashers to be an imminent hazard (recall, repurchase or repair)	Consumers Union 1714 Mass. Ave., NW Washington, D.C. Peter H. Schuck James A. Brodsky	Denied - 6/20/74

CPSC
PETITION LOG

ACT Consumer Product Safety Act

DATE REC'D.	PETITION NO.	SUBJECT	PETITIONER	STATUS
4-15-74	CP 74-15	Regulation prohibiting the use of flammable fabrics in tents	Legislature of Rockland County County Office Bldg. New City, NY 10956 Victoria K. Seigerman	Granted 5/16/74
4-18-74	CP 74-16	Mandatory Standard for playground equipment	Elayne Butwinick 800 4th St., SW Washington, D.C.	Granted 6/20/74 (under FHSA) (SEE: HP 75-4)
4-15-74	CP 74-17	Request CPSC to require that manufacturers of power saws include a safety booklet	Barry H. Limoges Omaha, Nebraska	Denied 5/75
5-20-74	CP 74-18	Banning of Sears Roebuck & Company tractor	Thomas M. Flynn PO Box 3601 High Mar Station Boulder, CO 80303	Reclassified under Sec. 15
7-10-74	CP 75-1	Require Avalon Ind. to re-write direction "Bottle & Jar Cutter Kits"	Ms. Carolyn Cannon 114 Dogwood Street Vienna, VA 22180	Denied 2/5/76

CPSC
PETITION LOG

ACT Consumer Product Safety Act

DATE REC'D.	PETITION NO.	SUBJECT	PETITIONER	STATUS
8-28-74	CP 75-2	Promulgate Southwire's proposed Standard for aluminum alloy wiring and devices	Southwire Company Carrollton, GA 30117	Decision - 8/7/75 Denied request; Grant request to begin Sec. 7 proceeding
9-12-74	CP 75-3	Labeling requirements for Claw Hammars	Consumers Union	Denied 3/6/75
9-23-74	CP 75-4	High pressure airless paint guns	Dr. Richard Edlich University of VA Medical Center Charlottesville, VA	Referred to OPDI 5/8/75 Denied 5/12/77
10-21-74	CP 75-5	Textbooks regulations	Harvey E. Schock 30 Oak Ridge Drive Haddonfield, NJ	Denied 11/21/74
11-20-74	CP 75-6	Exempt solid Fuel space heaters from Proposed Sec. 7 Notice	Group of Stove Mfgrs.	Reclassified per OGC 12/12/74
11/22/74	CP 75-7	Reconsideration and denial of previous granted petition on space heaters	Gas Appliance Mfgrs. Association	Reclassified per OGC 12/12/74

CPSC
PETITION LOG

ACT Consumer Product Safety Act

DATE REC'D.	PETITION NO.	SUBJECT	PETITIONER	STATUS
11-20-74	CP 75-8	Promulgate regulation banning pressurized products containing certain fulorocarbon propellant compounds	Natural Resources Defense Council, Inc. 1710 N Street, NW Washington, D.C.	Denied 7/11/75
11-21-74	CP 75-9	Standards for Aluminum & Magnesium step and extension ladders	Frederick Saphra, P.E. 2340 Langden Drive Seaford, NJ	Denied 11/18/76
12-6-74	CP 75-10	Blowguns regulation	Rep. Edwin Forsythe	Denied 1/29/76 (encourage voluntary action)
12-13-74	CP 75-11	Fire extinguishers Standards	W.J. Mechlenburg Power-Pak Products PO Box 5132	Denied - Week of 2/16/78 (Ballot)
1-3-75	CP 75-12 (renumbered by OGC as AP 77-1; 7-29-77)	Require prepaid recall or warranty cards	Paul G. Foldes, Esq. 2776 Ft. Scott Drive Arlington, VA 22202	see AP 77-1
1-8-75	CP 75-13	Cellular Plastic furniture regulation re: flammability hazards	Dr. R. Brady Williamson Berkeley, Calif.	Pending

CPSC
PETITION LOG

ACT Consumer Product Safety Act

DATE REC'D.	PETITION NO.	SUBJECT	PETITIONER	STATUS
2-7-75	CP 75-14	Proceedings on refuse bins (dumpsters)	Dr. Stephen R. Redmond Commissioner of Health Dutchess County, NY	Granted 10/7/76
3-6-75	CP 75-15 (HP 75-14)	New rules re: lead in paint under CPSA	Peter Schuck & Mark Silbergeld Consumers Union	Granted 8/18/77
12-13-74	CP 75-17	Adoption of ANSI Z97.1 re: Architectural Glass	William W. Korn K.S.H., Inc. St. Louis, MO	Denied 4/10/77
3-75	CP 75-18	Harness-Racing Sulkies Standard	Track-Cat Sulky Co. Lowell, Mass.	Denied 3/31/77
4-17-75	CP 75-19	Mandatory Standards for certain automatic washing machine tubs	Roy Rick Rick Appliances Burbank, Calif.	Denied 1/29/76
4-22-75	CP 75-20	Window Bars Standard re: spacing of bars	Dr. Stephen Lerman Dept. of Pediatrics University of Nebraska 42nd & Dewey Ave. Omaha, Neb. 68105	Denied 4/14/77

31-737 O - 78 - 7

CPSC
PETITION LOG

ACT Consumer Product Safety Act

DATE REC'D.	PETITION NO.	SUBJECT	PETITIONER	STATUS
4-25-75	CP 75-21	Soft drink bottles regulation re: design & construction of	Thomas G. Packard	Denied 12/16/76
4-25-75	CP 75-22	Alcoholic beverages containers Standards	Thomas G. Packard	Re-numbered to CP 75-21 (only) per OGC 6/19/75
5-5-75	CP 75-23	Grocery carts Standards	Edward Press, MD	Denied 10/6/77
5-16-75	CP 75-24	Oven Standards	Mrs. Susan T. Glascoff	Denied 11/18/76
5-12-75	CP 75-25	Hair Stylers Standards (other similar products)	Giant Food Company Esther Peterson	Denied 1/5/78
5-29-75	CP 75-26 (See HP 75-21)	Standards for or banning of certain projectile toys (tou guns, bows, & arrows, etc.)	Kenneth N. Jacoby 156 Anderson Road King of Prussia, PA 19406	* CDSA (ballot) 1/12/78
4-24-75	P 75-27	Banning of certain fluorocarbon compounds (aerosols & refrigerants)	Burt Pines, City Attorney City Hall East Los Angeles, CA 90012	Denied 12/23/75

* CDSA - Commission Directed Staff Action

CPSC
PETITION LOG

ACT Consumer Product Safety Act

DATE REC'D.	PETITION NO.	SUBJECT	PETITIONER	STATUS
7-16-75	CP 76-1	Electric fans regulations re: blade exposure	Missouri Public Interest Research Group	Denied 1/29/76
7-8-75	CP 76-2	Mini-hair dryers regulations	Mrs. Georgiann Hawrysz	Denied 1/5/78
10-1-75	CP 76-3	Actuated power stud drivers Standards	Joel D. Bailey, Esq. Moss, Carter, Branton & Bailey PO Drawer 499 Beaufort, SC 29902	Denied 3/18/76
10-7-75	CP 76-4	Five-Gallon glass containers (for dispensing drinking water) Standards	Gordon S. Churchill, Esq. Tyson & Churchill Suite 204, Mission Valley 1660 Hotel Circle N. San Diego, CA 92108	Denied 12/16/75
11/17/75	CP 76-5	Sec. 8 proceedings re: Electrical stun gun (Taser Public Defender)	Michael Anton Lubin 4701 Conn. Ave., NW Washington, D.C. 20008	Closed 3/25/76 (no jurisdiction)
12-23-75	CP 76-6	Banning of fluorocarbon compounds in aerosol products	Thomas B. Stoel, Jr. Natural Resources Defense Council, Inc. 917 15th St., NW Washington, D.C. 20005	Granted 11/22/76

CPSC
PETITION LOG

ACT Consumer Product Safety Act

DATE REC'D.	PETITION NO.	SUBJECT	PETITIONER	STATUS
12-12-75	CP 76-7	Issue bicycle Standards under CPSA in lieu FHSA	Bicycle Mfgrs. of America, et al. 4666 K St., NW Washington, D.C. 20006	Denied 1/15/76
1-5-76	CP 76-8	Lighting fixtures Standards re: home use	Michael Smith 1524 Collins Circle Elk Grove, IL 60007	Withdrawn by petitioner 2/11/76
1-6-76	CP 76-9	Snowmobiles Standards	George A. Peters, Esq. 11777 San Vicente Blvd. Los Angeles, CA 90049	Denied 7/28/77
1-9-76	CP 76-10	Pull-tab, pull-off lid containers Standard	James M. Durlacher 6623 Winnock Drive Indianapolis, Ind. 46220	Denied 8/19/76
5-4-76	CP 76-11	Regulation re: Importation of animal hair products contaminated with anthrax spores	John K. Emerson, D.V.M. Chief Public Health Vet. Colorado Dept. of Health 4210 E 11th Ave. Denver, Colorado 80220	Denied 8/19/76
5-1-76	CP 76-12	Synthestic turf Standard	Emanuel Celler, Esq. NFL Players Assoc. 1025 Conn. Ave., NW Washington, D.C.	Denied 9/2/76

CPSC
PETITION LOG

ACT Consumer Product Safety Act

DATE REC'D.	PETITION NO.	SUBJECT	PETITIONER	STATUS
5-20-76	CP 76-13	Soft drink bottles regulation	Judith Hecht 800 4th Sreet Washington, D.C.	Denied 12/16/76
7-7-76	CP 76-14	Gas furnaces and gas conversation furnaces Standard re: possible carbon monoxide hazards	Michael Smith 1524 Collins Circle Elk Grove, IL 60007	Denied 1/6/77
7-28-76	CP 76-15	Ban aerosol products containing fluorocarbon compounds	Ruby Compton Thomas Stoel National Resources Defense Council 917 15th St., NW Washington, D.C.	Granted 11/22/76
7-8-76 NOTE: rule as petition by Comm. vote on 8-23-76	CP 76-16	Standard for Cross connections re: back flow problem in consumer products that depend on water	S.G. Wood % Office of the Bldg. Comm. City of Roanoke 215 Church Ave., SW Roanoke, VA 24011	Denied 2/24/77
8-30-76	CP 76-17	Standard for pierced earring support wire	Donald Montague % Jane Berger 6335 Duke St., Apt. 612 Alexandria, VA	Denied 12/22/76

CPSC
PETITION LOG

ACT Consumer Product Safety Act

DATE REC'D.	PETITION NO.	SUBJECT	PETITIONER	STATUS
8-3-76	CP 76-18 (from HP 76-19)	Standards for all types of off the road motorized vehicles	Mr. & Mrs. Michael F. Pawlak General Delivery Echo, Louisiana 71330	Denied - Week of 1/28/78 (ballot)
9-16-76	CP 76-19	Communication antennas label warning re: shock hazard	Lawrence Chapman 718 MacArthur Ave. Harvey, Louisiana 70058	Granted 1/19/77
10-20-76	CP 77-1	Set standards for home insulation	Raymond D. Jones Chief Counsel Metro. Denver D.A.'s Consumer Office 655 South Broadway Denver, Colorado 80209	*CDSA 11/10/77 Granted in part - 2/9/78 (Flammability hazard of cellulose insulation)
12 14 76	CP 77-2	Set standards for belt driven grinders	Wm. T. Schuessler, V.P. Wissota Mfg. Co., Inc. 2401 Nevada Ave. N. Minneapolis, Minn. 55427	Denied 7/21/77
12-22-76	CP 77-3	Set standard to require labeling of space ventilation cooling fans	Lawrence H. Chapman 718 MacArthur Ave. Harvey, Louisiana 70058	Denied 7/28/77

CPSC
PETITION LOG

ACT Consumer Product Safety Act

DATE REC'D.	PETITION NO.	SUBJECT	PETITIONER	STATUS
1-26-77	CP 77-4	Set standard to address misdirection of aerosol containers	David A. Swankin, Esq. National Consumers League 1785 Mass. Ave., NW Washington, D.C. 20036	Denied 8/25/77
1-27-77	CP 77-5	Issue a rule for architectural glazing materials or an amendment to the Consumer Product Safety Standard for Architectural Glazing Materials	Robert J. Cunitz, Ph.D 5205 Krailway Drive Rockville, MD 20853	Denied 9/21/77
2-24-77	CP 77-6	Issue a rule concerning the use of refrigerants used in commercial and residential refrigeration and air conditioning systems	James C. LeVangie 1430 Pine Whiff Ave. Edgewater, MD 21037	Denied 10/31/77
2-1-77	CP 77-7	Set safety standards for football helmets and shoes	Dr. A.C. Larcher 8036 South Western Ave. Chicago, Ill. 60620	Denied in part - 1/19/78
3-9-77	CP 77-8	Exempt "openings in doors through which a 6" diameter sphere is unable to pass" from the Standard for Architectural Glazing Materials	Milton W. Smithman Staff Vice President Nat'l Assoc. of Home Bldrs. 15th & M. Sts., NW Washington, D.C. 20005	Denied 9/21/77

CPSC
PETITION LOG

ACT Consumer Product Safety Act

DATE REC'D.	PETITION NO.	SUBJECT	PETITIONER	STATUS
3-29-77	CP 77-9	Develop a safety rule for labeling of new gas furnaces for homes	Michael Smith 1524 Collins Circle Elk Grove Village, Ill. 60007	Denied week of 12/30/77(Ballot)
3-30-77	CP 77-10	Develop a consumer product safety standard for chain saws	John Purtle, Esq. 150 South Third St. Batesville, Arkansas 72501	*CDSA 12/8/77
3-28-77	CP 77-11	Amend architectural glazing standard as to weathering	Plastic Safety Glazing Comm. % John Altman, Continental Polymers 2225 East Del Amo Blvd. Compton, Calif. 90220	Granted 9/21/77
4-20-77	CP 77-12	Amend the architectural glazing standard to exempt certain decorative glass	Lemeul R. Green Counsel for Stained Glass Assoc. of America 1005 Central Trust Tower Canton, Ohio 44702	On Commission agenda: 3/9/78

* CDSA - Commission Directed Staff Action

CPSC
PETITION LOG

ACT Consumer Product Safety Act

DATE REC'D.	PETITION NO.	SUBJECT	PETITIONER	STATUS
4-25-77	CP 77-13	Withdrawal of Matchbook Standard	Frederic Upton DD Bean and Sons 10 Centre St. Concord, NH 03301	Denied 6/2/77
6-10-77	CP 77-14	Amend the Standard for Architectural Glazing Materials to exempt "openings in doors through wich an 8 in. diameter sphere is unable to pass."	Richard Snyder, V.P. Nat'l. Lumber and Bldg. Dealers Assoc. 1990 M St., NW Washington, D.C. 20036	Denied 9/21/77
7-6-77	CP 77-15	Exempt traditional wood stile and rail doors from the Standard for Architectural Glazing Materials.	Edward A. Mahoney, Jr. The Mahoney Sash & Door Co. 1908 Mahoning Rd., NE Canton, Ohio 44705	Denied 9/21/77
7-28-77 Note: rule as petition by Comm. vote on above date	CP 77-16	Amend Standard for Architectural Glazing to (1) exempt laminated glass from impact tests (2) enlarge size of panels (3) create a third class of products.	Kim D. Mann Turney & Turney Suite 1010 7101 Wisconsin Ave. Washington, D.C. 20014	Withdrawn - 10/28/77
10-7-77	CP 78-1	Exempt metal furniture from the ban on lead-containing paint.	John Montgomery, Esq. National Paint and Coatings Assoc. 1500 Rhode Island Ave., NW Washington, D.C. 20005	Granted - week of 1/5/78 (Ballot)

CPSC
PETITION LOG

ACT Consumer Product Safety Act

DATE REC'D.	PETITION NO.	SUBJECT	PETITIONER	STATUS
9-13-77	CP 78-2	Amend Standard for Architectural Glazing to modify the provisions concerning the acceptability of plastics after application of the accelerated weathering tests.	Edward Naidus APC Corporation 44 Utter Avenue Hawthorne, New Jersey	Pending
10-5-77	CP 78-3	Issue a rule governing the possible explosion hazards associated with beer kegs.	Nixon deTarnowsky, CSP 225 Sprain Road Scarsdale, New York 10583	Pending
10-21-77	CP 78-4	Amend the Standard for Architectural Glazing Materials to clarify the treatment of windows	George A. Green Elco Manufacturing, Inc. 4339 N. Baldwin Ave. El Monte, Calif. 91734	Pending
10-18-77	CP 78-5	Amend the Standard for Architectural Glazing Materials to replace the test procedures in sections 1201.4 and 1201.5 with test procedures in ANSI Z-97.1-1975.	Kim D. Mann, Esq., atty. to the Glass Tempering Assn. Turney & Turney Suite 1010, 7101 Wisconsin Avenue Washington, D.C. 20014	Pending

CPSC
PETITION LOG

ACT Consumer Product Safety Act

DATE REC'D.	PETITION NO.	SUBJECT	PETITIONER	STATUS
11-4-77	CP 78-6	Amend the Standard for Architectural Glazing Materials as it applies to laminated glass.	Jerold Jacobs, Esq. atty. for National Glass Dealers Association Santarelli & Gimer 2033 M St., N.W. Washington, D.C. 20036	Granted in part--Week of 12/2/77 (Ballot vote)
11-23-77	CP 78-7	Develop a standard for gas and electric lawn edgers to address the hazard of thrown objects.	Gerald L. Price, Esq. 1645 West Valencia Drive Fullerton, California 92634	Pending
11-15-77	CP 78-8	Establish a safety rule for "the Service Drop Wires" which are furnished to residential consumers of electric power.	G. Judson Scott, Esq. 600 Montgomery Street San Francisco, Ca. 94111	Pending
Renumbered per OGC 1/3/78	CP 78-9 (formerly HP 76-20)	Take regulatory action on the alleged flammability hazards of "Bounce" fabric softener.	Solon Automated Services Inc., % Anthony O. Brown Barnett, Alagia & Carey 1725 DeSales St., N.W. Washington, D.C. 20006	Denied--Week of 1/26/78 (Ballot)

CPSC
PETITION LOG

ACT Flammable Fabrics PAGE F-1

DATE REC'D.	PETITION NO.	SUBJECT	PETITIONER	STATUS
5-29-73	FP 73-1	Reconsider decision not to postpone the effective date of Flammability Standards for mattresses.	National Association of Bedding Mfgrs. (NABM)	Denied - 5/31/73
5-30-73	FP 73-2	Rescind requirement for use of a warning label on mattresses which have not undergone the cigarette ignition test.	Small Bedding Mfgrs. Emergency Council (SBMEC)	Denied - 5/31/73
6-4-73	FP 73-3	Stay effective date of mattress Standards pending outcome of Civil suit by NABM	National Association of Bedding Mfgrs. (NABM)	Denied - 6/4/73
6-4-73	FP 73-4	Postponement of effective date of Mattress Standards pending judicial review.	Small Bedding Mfgrs. Emergency Council (SBMEC)	Denied - 6/5/73
6-29-73	FP 73-5	Exempt small rugs from the laundering requirements of the Small Rug Flammability Standard (FF 2-70)	The Carpet & Rug Institute (CRI)	CDSA - week of 1-5-78 (ballot)

CPSC
PETITION LOG

ACT Flammable Fabrics

DATE REC'D.	PETITION NO.	SUBJECT	PETITIONER	STATUS
7-16-73	FP 74-1	To close investigation (722-3170) or in the alternative, to defer further action pending clarification of recognized ambiguities in testing procedures.	W.T. Grant Company	Closed--3/29/77
7-27-73	FP 74-2	Promulgation of regulation on labeling and advertising of flammable children's sleepwear Sizes 0-6X	Health Research Group Patricia Powers Brendan McTaggart Wash., D.C.	Granted--11/5/73
9-21-73 via Congressional channels	FP 74-3 (Also see: FP 75-2)	Exemption of mattress mfrs. & renovators with annual gross volume of less than $250,000 from Standard for Flammability of Mattresses (FF 4-72 - as amended).	Twin City Mattress Co. Mr. S.P. Provenza Bossier City, LA	Denied--3/11/74
10-25-73 11-13-73	FP 74-4	Approval of alternate laundering procedure under the Standard for the Flammability of Mattresses (FF 4-71) Supplement	RAMCON, Inc. George S. Buck, Jr. Memphis, Tenn. 38112	Granted--9/15/77

CPSC
PETITION LOG

ACT Flammable Fabrics

DATE REC'D.	PETITION NO.	SUBJECT	PETITIONER	STATUS
11-9-73	FP-74-5	Establish Standards for the retail marketing of children's sleepwear Sizes 0-14X.	Connecticut Citizens Research Group Hartford, Conn. 06106	Granted--1/21/74
11-13-73	FP 74-6	Exemption of lounging robes made of terrycloth from Standards for the Flammability of Children's Sleepwear, Sizes 0-6X & 7-14X (FF 3-71 & PFF 5-73)	Barouch Brothers, Inc. New York, N.Y.	Denied--1/28/74 Reconsider and denied--6/27/74
11-27-73	FP 74-7	Approval of alternate sheet specifications for testing use under the Standard for the Flammability of Mattresses (FF 4-72)	National Association of Bedding Mfgrs. 1150 - 17th St., N.W. Washington, D.C.	Granted--1/30/74
10-30-73	FP 74-8	Exemption of small mfgrs. of mattresses from Standard for the Flammability of Mattresses.	Cox Mattress Co. Abilene, Texas	Denied--1/2/74
12-3-73	FP 74-9	Further extension of time in which to comply with Standard for the Flammability of Mattresses.	Shifman Brothers P.O. Box 832 Martinsburg, W. Va.	Denied--8/8/74

CPSC
PETITION LOG

ACT Flammable Fabrics

DATE REC'D.	PETITION NO.	SUBJECT	PETITIONER	STATUS
12-20-73	FP 74-10	Exemption of Firegard (R) 100% polyester fabrics from the 50 cycle laundering procedures under the Doc. FF 3-71.	M. Lowenstein & Sons, Inc., Geoffrey V. Lund Director, Research & Development 1430 Broadway New York, N.Y. 10018	Granted--9/15/77
2-1-74	FP 74-11	Exemption of mfgrs. of "one of a kind" mattresses, re: Sec. 2(d) of the Standard for the Flammability of Mattresses (FF 4-72 - as amended).	Myron R. Cataldo 211 A Joaquin Ave. San Leandro, CA 94577 Charles Castro Bay Area Mattress & Keva Mattress	Granted in part--7/24/75
2-1-74	FP 74-12	Exemption of Flame Resistant (FR) acetate from the laundering required by par. 4(d)4 of Standard for the Flammability of Children's Sleepwear (FF 3-71)	Man-Made Fiber Producers Association, Inc. 1150 - 17th St., N.W. Wash., D.C. 20036	Granted--9/15/77
2-26-74	FP 74-13	Exemption of mattresses not shipped in interstate commerce from the Flammability Standard for Mattresses	Mr. Morris Faxon Mid West Bedding Co. 1301 W. Fafayett Detroit, Mich. 48226 (Jack Faxon, St. Senator)	Denied--3/3/74

CPSC
PETITION LOG

ACT Flammable Fabrics

PAGE F-5

DATE REC'D.	PETITION NO.	SUBJECT	PETITIONER	STATUS
2-26-74	FP 74-14	Exemption of mattresses not shipped in interstate commerce from the Flammability Standard for Mattresses.	Mr. Reece B. Morrel Ellison, Morrel, Hays & Nelson 4815 So. Harvard Tulsa, Okla. 74135	Denied--3/3/74
5-7-74	FP 74-15	Exemption of boys' robes from FFA standard (sizes 7-14)	Harry Matsil & Son 10 W. 33d St. New York, N.Y. 10001	Denied--4/25/75
5-17-74	FP 74-16	Modification of Standards for surface flammability of wool carpets.	Alvarado Dye House, Inc. Edmund Teyrovsky 30542 Union City Blvd.	Denied--4/3/75
7-25-74	FP 75-1	Exemption from 50 cycle laundering procedure re: flame retardant all polyester fabric.	Spring Mills, Inc. Fort Mill, SC William H. Martin	w/d 10/14/74
8-16-74	FP 75-2	Six (6) month delay to the labeling decision of mattresses.	Twin City Mattress Co. Bossier City, LA	Reclassified per OGC 12/19/74
8-12-74	FP-75-3	Establishment of Flammability Standards for Children's Clothing.	The Commonwealth of Mass. Office for Children	Denied--11/14/74

CPSC
PETITION LOG

ACT Flammable Fabrics

DATE REC'D.	PETITION NO.	SUBJECT	PETITIONER	STATUS
5-31-74	FP 75-4	Approval of certain AAICC test method of dry cleaning.	The Wool Bureau	Depetitioned per OGC 6/9/76
	FP 75-5	Exemption of artificial grass carpet from Surface Flammability of Carpets & Rugs Standard (Doc. FF 1-70)	Turf/AM	Granted--8/29/74
12-9-74	FP 75-6	Adoption of Calif. State Fire Marshal Standard for the Flammability of Children's Clothing	Ms. Stephanie Russell Ad Hoc Committee for a Stronger Standard	Denied--6/19/75
1-10-75	FP 75-7	Exemption from certain requirements under FFA for acetate flame-retardant fabrics	Man-Made Fiber Producers Assoc., Inc.	Withdrawn--7/18/77
2-20-75	FP 75-8	Investigation of existing flammability standard, re: polyurethane mattresses.	Nevada State Fire Marshal	Denied--12/29/76
4-18-75	FP 75-9	Various requests re: Standards for children's sleepwear sizes 0-6X & 7-14 incl.: Clarify certain sections; amend sections on garment production units (GPU) identification.	John Heald, Chairman Apparel Products Flammability Commettee American Apparel Mfgrs. Assn. 1611 N. Kent St. Arlington, Va. 22209	Granted in part; Denied in Part-- 4/25/75

31-737 O - 78 - 8

CPSC
PETITION LOG

ACT Flammable Fabrics

DATE REC'D.	PETITION NO.	SUBJECT	PETITIONER	STATUS
4-25-75	FP 75-10	Sixty (60) day extension in implementation of labeling and recordkeeping requirements for sleepwear 0-6X & 7-14.	Lousi Maier, President Nazareth Mills, Div. Kayser Roth Corp. New York, N.Y.	Denied--5/2/75
4-25-75	FP 75-11	Sixty (60) day extension re: Recordkeeping requirements for garment production unit (GPU) identification.	Harold Jetter General Nitewear Corp. 350 5th Ave. New York, N.Y. 10001	Denied--5/2/75
4-28-75	FP 75-12	Sixty (60) day extension on GPU labeling requirements.	M.D.Silverman, Chairman F.Silverman & Sons, Inc. 1350 Broadway New York, N.Y. 10018	Denied--5/2/75
4-25-75	FP 75-13	Six (sic) day extension on recordkeeping, GPU requirements under FF 5-74.	Frank Masterson Product Manager Champion Products Inc.	Denied--5/2/75
4-25-75	FP 75-14	Sixty (60) day extension on GPU, recordkeeping requirements	Milt Handis Allison Mfg. 350 5th Ave. New York, N.Y. 10001	Denied--5/2/75

CPSC
PETITION LOG

ACT Flammable Fabrics PAGE F-8

DATE REC'D.	PETITION NO.	SUBJECT	PETITIONER	STATUS
4-29-75	FP 75-15	Sixty 60) day extension on GUP, recordkeeping requirements under FF 5-74.	Stanley Wilker Wilker Brothers Co. New York, N.Y.	Denied--5/2/75
4-28-75	FP 75-16	Six-month extension for labeling requirements for garment production unit (GPU) identification under FF 5-74 and Doc. FF 3-71.	Leo J. Feuer William Carter Co. Needham, Mass. 02194	Denied--5/2/75
4-29-75	FP 75-17	Sixty (60) day extension on GPU labeling and recordkeeping requirements.	Stone Mfg. Co. Greenville, S.Car.	Denied--5/2/75
	FP 75-18	Delay implementation of labeling requirements.	Sen. John Stennis	Denied--5/2/75
4-30-75	FP 75-19	Exemption of disposable pediatric surgical gown from laundering requirements of FFA regulations	Mr. Allyn Asch, VP Angelica Corporation 700 Rosedale Ave. St. Louis, MO.	Granted--3/18/76
4-25-75	FP 75-20	Six month extension for rules and regulations re: Sleepwear	Stayon Products Greenville, SC	Denied--5/8/76

CPSC
PETITION LOG

ACT Flammable Fabrics

DATE REC'D.	PETITION NO.	SUBJECT	PETITIONER	STATUS
7-9-75	FP 76-1	Exemption from Flammability Standards for Children's Sleepwear Sizes 0-14 re: garments used in hospitals.	Orville Pick Madison United Hospital Laundry, Ltd.	Granted--3/18/76
9-5-75	FP 76-2	Flammability Standards for Pillows and bedding.	Jerry Seibel, Consumer Affairs Minneapolis, Minn.	Denied--11/4/76
9-16-75	FP 76-3	Exemption of "one of a kind" mattresses from Flammability Standards for Mattresses.	Norman C. Berry, Esq. Westmoreland Prof. Bldg. 1610 S.E. Glenwood St. Portland, Oregon 97202	Denied--7/21/77
8-19-75	FP 76-4	Flammability Standards for Wall Coverings.	Talbot S. Lindstrom Whitman & Ranson Suite 1010 1730 Pa. Ave., N.W. Wash., D.C. 20006	Denied 11/18/76
2-14-77	FP 77-1	Amend or revoke children's sleepwear standard sizes 0-6X	Joanne Siegle & Dr. Reuben Epstein 88 Thorndike St. Arlington, Mass. 02174	Granted--4/7/77

CPSC
PETITION LOG

ACT Flammable Fabrics

DATE REC'D.	PETITION NO.	SUBJECT	PETITIONER	STATUS
5-20-77	FP 77-2	Adopt as a national standard the California Upholstered Furniture Flammability Regulations.	Howard C. Winslow, Chief, Bureau of Home Furnishings, Dept. of Consumer Affairs State of California 3401 La Grande Boulevard Sacramento, Calif. 95823	CDSA--9/15/77
	FP 78-1	Amend the flammability standard for children's sleepwear.	Rep. Andrew Maguire U.S. Congress House of Representatives Washington, D.C. 20515	Declassified as a petition per OGC memo 11/3/77
11-4-77	FP 78-2	Amend the flammability standard for mattresses.	Esther Peterson Special Asst. to the Pres. for Consumer Affairs The White House Washington, D.C. 20500	Pending

CPSC
PETITION LOG

ACT Hazardous Substances (Incl. CPTSA)

DATE REC'D	PETITION NO.	SUBJECT	PETITIONER	STATUS
5-16-73	HP 73-1	Amend Electrically Operated Toy Regulations Sec. 191b(3)(e) and stay effective pending amendment.	Aurora Products Corp.	Denied--8/73
5-16-73 7-12-73	HP 73-2	Amend Electrically Operated Toy Regulations Sec. 191b(3)(d)(2), 191b (3)(e), 191b (5)(e)(5) and 191b(6)(g)(3) and stay effective date pending amendment. Addendum	Toy Mfgrs. of America Inc. (TM)	Denied, except amend to allow use of more flexible electric cord--8/73.
6-25-73 7-16-73	HP 73-3	Amend Electrically Operated Toy Regulations labeling requirements (Reg. 191b) & stay effective date of Reg. 191b to 6-30-74 Addendum	Hobby Industry Assn. of America, Inc.	Denied--8/73
7-13-73	HP 74-1	Interpret electrically operated toy definition (Reg. 191b (1) to the effect that it does not incompass nursery lamps, or in the alternative, exempt such lamps from regulation.	Dolly Toy Company	Granted--9/73

CPSC
PETITION LOG

ACT Hazardous Substances (Incl. CPTSA)

DATE REC'D	PETITION NO.	SUBJECT	PETITIONER	STATUS
11-28-73	HP 74-2	Exemption of class C fireworks (Devil Bangs) from FHSA regulations classifying certain fireworks as banned hazardous substances.	George T. Monsour P.O.Box 9038 Shreveport, LA 71109	Exemption not required per OGC
12-6-73	HP 74-3	Declare that candles with Metal-core wicks are an imminent hazard to be treated as a banned hazardous substance.	Health Research Group Wash., D.C.	Denied 12/21/73
12-7-73	HP 74-4	Repeal regulation exempting novelties consisting of mixture of polyvinyl acetate, U.S. Certified Colors, and not more than 25% by weight of acetone, and intended for blowing plastic balloons from classification as banned hazardous substance and to determine by regulation that all plastic balloon toys containing aceton are banned hazardous substances.	Consumers Union Washington, D.C.	Denied--6/20/74
12-17-73	HP 74-5	Ban all toys that fail to comply with the toy safety standards and promulgate mechanical safety standards for children's toys.	Western Mass. Public Interest Research Group	Granted in part; Denied in part; ODSA reprojectiles--week of 1/26/78 (Ballot)

CPSC
PETITION LOG

ACT Hazardous Substances
(Incl. CPTSA)

DATE REC'D	PETITION NO.	SUBJECT	PETITIONER	STATUS
12-18-73 12-18-73	HP 74-6	Abate the exposure of children of Genessee County Mich. to the unreasonable risk of injury posed by 89 toys	Robert F. Leondard Prosecuting Attorney for Genessee County Michigan	Granted--2/74 Closed by letter per vote 6/12/75
2-1-74	HP 74-7	Promulgate a rule banning high tar yield cigarettes from interstate commerce.	Institute for Public Interest Representation 600 New Jersey Ave.,N.W. Wash., D.C. 20001	Denied--5/16/74
2-1-74	HP 74-8	Amend regulations to provide for an exemption for "Rotocrib" from regulation identifying certain full-size baby cribs as banned articles.	Borg-Warner Corp. Roy C. Ingersoll Research Ctr. Donal W. Collier, VP Wolf & Algonquin Rds. Den Plaines, IL 60018	Regulation not applicable
2-1-74	HP 74-9	Take appropriate action to eliminate or reduce the risk of injury associated with "water buffalo sandals."	The National Committee on Student Consumer Action P.O.Box 1133 Bloomington, Ind.	Denied--1/3/75

CPSC
PETITION LOG

ACT Hazardous Substances (Incl. CPTSA)

DATE REC'D	PETITION NO.	SUBJECT	PETITIONER	STATUS
2-20-74	HP 74-10	Reconsider the administrative procedures currently in effect for banning toys under 16 CFR 1500.18(a)(1)(2)(3).	Aberman, Greene & Locker, Attorneys 540 Madison Avenue New York, N.Y. 10022 (Toy Mfgrs. of America)	Withdrawn by letter from petitioner 9/2/77
2-21-74	HP 74-11	Declare aerosolized consumer products containing vinyl chloride to be banned hazardous substances.	Health Research Group	Granted--5/74
4-16-74	HP 74-12	Interpret 16 CFR 1500.47 re: caps and toy guns and amend if necessary and develop standards for design and construction of toy guns.	Spear & Hill for Edison Giocattoli, S.P.A. 1750 New York Ave., N.W. Wash., D.C. 20006	Denied--1/3/75
4-19-74	HP 74-13	Declare that lead-wick candles be treated as imminent hazard.	Health Research Group David C. Masselli Sidney Wolfe, M.D.	Denied--7/11/74
4-29-74	HP 74-14	Ban "Scotch-Guard" because of trichlorethane content.	Health Research Group	Denied--7/24/75
5-7-74	HP 74-15	Exemption of electrical transformer for model trains from electrical toy labeling.	Hobby Industry of America, Inc. 200 50th St. New York, N.Y.	Denied--2/20/75

CPSC
PETITION LOG

ACT Hazardous Substances
(Incl. CPTSA)

DATE REC'D	PETITION NO.	SUBJECT	PETITIONER	STATUS
5-22-74	HP 74-16	Exempt from "Combustible" labeling on paints and kindred products.	National Paint & Coating Assn. 1500 Rhode Island Ave., N.W.,Wash., D.C. 20005	Denied--10/6/77
6-3-74	HP 74-17	Amendment to Sec. 1500.89(7) of the FHSA regulations.	The Parker Pen Co. Barry Roberts of Pope Ballard & Loos, 888 - 17th St., N.W. Washington, D.C.	Denied--4/24/75
8-15-73	HP 74-18 (Orig. #PP 74-13)	Exemption of Artex roll-on decorator paint from Sec. 3(c) of PPPA.	Artex Hobby Products 711 W. Vine Street Lima, Ohio 45802	Denied--9/74
6-20-74	HP 75-1	Ban cigarettes that do not discontinue burning.	Several furniture mfgrs. assoc.	Denied-9/19/74
7-12-74	HP 75-2	Regulation banning sale of bullets for hand guns.	Ms. Susan R. Sullivan The Committee for Hand Gun Control, Inc.	Denied 9/5/74 Reconsidered per court action; closed 11/3/76

CPSC
PETITION LOG

ACT Hazardous Substances (Incl. CPTSA)

DATE REC'D	PETITION NO.	SUBJECT	PETITIONER	STATUS
	HP 75-3	Ban specific aerosol products which have caused three confirmed deaths as a result of inhalation.	PAM Club 111 Greenway Rd. Churchville, N.Y.	Part one denied (no jurisdiction); Parts two & three denied w/o prejudice --6/19/75
	HP 75-4	Playground equipment (renumbered) (See: CP 74-16)	Elayne Butwinick	Granted--8/8/74
	HP 75-5	Stay or modification of an order.	Gordon D. Coplein Darby & Darby 405 Lexington Ave. New York, N.Y. 10017	Denied request to deliver banned cribs; partially granted request to allow replacement 3/28/75
9-16-74	HP 75-6	Consider changing the present flammable and combustible definitions to agree with those of other governmental depts.	Ashland Oil Co. 5200 Paul G. Blazer Memorial Parkway Dublin, Ohio 43017	Denied--12/2/74
9-12-74	HP 75-7	For change to part 1505, re: placement of date code by manufacturer.	Gerald M. Bloom, VP Hasbro Industries, Inc. 1027 Newport Ave. Pawtucket, R.I. 02861	Granted--8/18/77

CPSC
PETITION LOG

ACT Hazardous Substances (Incl. CPTSA)

DATE REC'D	PETITION NO.	SUBJECT	PETITIONER	STATUS
9-23-74	HP 75-8	Change requirement for letter height in caution labeling for toys.	Hasbro Industries 1027 Newport Ave. Pawtucket, R.I. 02861	Denied--Week of 9/22/77 (ballot)
9-26-74	HP 75-9	Extend 0.5% as safe level of lead in residential paint under FHSA and Lead Paint Poison Prevention Act.	National Paint & Coating Association 1500 Rhode Island Ave., N.Y., Wash., D.C.	Closed--3/25/75 (Denied in effect)
12-26-74	HP 75-10	Do not propose effective date for bike regs. until regs. are final.	Bicycle Mfgrs. Asso.	Denied--1/16/75
12-30-74	HP 75-11	Standards for Christmas decorations.	Herman B. Glaser Glaser & Blitz	Denied--Week of 2/2/78 (ballot)
2/24/75	HP 75-12	Standards for guard rails for youth beds (sharp edges, rung-spacing)	Janice L. Herold Bethesda, Md.	Denied--11/13/75
2-24-75	HP 75-13	Exemption of Super Liquid Cor-ec-type from labeling requirements	Eaton Allen Corp. Ralph Ramirez	Denied--1/22/76
3-6-75	HP 75-14 (cf. CP 75-15)	Establish new rules re: Lead in paint under CPSA.	Consumers Union Mark Silbergeld Peter Schuck	Granted--8/18/77

CPSC
PETITION LOG

ACT Hazardous Substances (Incl. CPTSA)

DATE REC'D	PETITION NO.	SUBJECT	PETITIONER	STATUS
	HP 75-15	Exemption of certain lead-containing coatings from classification banned hazardous substances.	National Paint & Coating Association	Reclassified not a petition per OGC memo 2/9/76
12-2-74	HP 75-16	Exemption of certain racing bicycles from Bicycle Regulations and Standards.	Bill's Derailleur Bicycle Specialists	W/d by letter 10/15/75
2-18-75	HP 75-17	Prevent the sale of cigarette lighters and knives sold in vending machines as toys.	Rep. Leonor K. Sullivan	Denied--4/15/77
4-28-75	HP 75-18	Reinstate ban on the sale of Easter grass which does not meet the requirements of the FHSA.	Highland Mfg. Co.	Denied-10/30/75
5-5-75	HP 75-19	Banning infants clothing and bedding that contain nylon thread.	Patricia McGowan	Denied-5/26/77
5-22-75	HP 75-20	Ban household substances containing nitrobenzene and dinitrobenzene.	Daniel M. Lipkin	Denied--10/6/77
5-29-75	HP 75-21 (cf: CP 75-26)	Standards for, or ban certain projectile toys (e.g., toy guns, bows and arrows, etc.)	Kenneth N. Jacoby 156 Anderson Rd. King of Prussia, Pa.19406	CDSA week of 1/9/78 (ballot)

CPSC
PETITION LOG

ACT Hazardous Substances (Incl. CPTSA)

DATE REC'D	PETITION NO.	SUBJECT	PETITIONER	STATUS
6-27-75	HP 76-1	Proceedings on hazards allegedly caused by "Tremco Mono I Part Acrylic Sealant.	Kenneth R. Biasco 3100 South Michigan Chicago, Ill. 60616	Denied--1/15/76
9-2-75	HP 76-2	Declare "pop-zit" toy an imminent hazard.	Quentin Steinberg Steinberg & Steinberg 1210 Joseph Vance Bldg. Seattle, Wash. 98101	Denied--7/28/77
9-2-75	HP 76-3	Mandatory labeling on non-protective infant carriers for use in automobiles.	Gisela Moriarty, Pres. Action for Child Transportation Safety 400 Central Park W. New York, N.Y. 10025	W/d--11/17/75
9-12-75	HP 76-4	Label exemption by Parker Pen Co.	Dickson R. Loss, Esq. Pope, Ballard & loos 700 Brawner Bldg. 888 17th St., N.W. Wash., D.C. 20006	W/d by letter of 6/17/76
10-29-75	HP 76-5	Exemption of certain paints for barns from lead in paint requirements.	George R. Murphy Technical Director, Midland Cooperative, Inc. 2021 Hennepin Avenue Minneapolis, Minn. 55413	Denied--9/2/76

CPSC
PETITION LOG

ACT Hazardous Substances (Incl. CPTSA)

DATE REC'D	PETITION NO.	SUBJECT	PETITIONER	STATUS
11-11-75	HP 76-6	Require labeling of alleged toxicity hazards of mistletoe and poinsettia plants.	Bob Boehler 369 Stillwell Ave. Kenmore, N.Y. 14217	Denied--12/18/75
11-11-75	HP 76-7	Exempt two (2) oz. tube of "Wilhold" Cyanoacrylate glue from FHSA labeling requirements.	C.W. Comegys, Jr. Wilhold Glue, Inc. 8707 Millergrove Dr. Santa Fe Springs, CA	Granted--Week of 9/30/77 (ballot)
3-3-76	HP 76-8	Warn consumers of the carbon monoxide hazards associated with paint strippers.	Judy Braiman, Pres. Empire State Consumer Assn. 109 Heather Drive Rochester, N.Y. 14625	Granted--1/5/78
3-12-76	HP 76-9	Ban Household contact cements or adhesives containing highly flammable and toxic vapors generating organic solvents such as toluol and acetone.	Barbara Peters Research Assistant George A. Peters, R.P.E. 11777 San Vicente Blvd. Los Angeles, CA 90049	Grant in part--12/16/76
3-24-76	HP 76-10	Require cautionary laundering labeling on children's sleepwear treated with the flame-retardant chemical "Tris."	Environmental Defense Fund Robert H. Harris 18th St., N.W. Wash., D.C. 20036	Granted--4/7/77

CPSC
PETITION LOG

ACT Hazardous Substances (Incl. CPTSA)

DATE REC'D	PETITION NO.	SUBJECT	PETITIONER	STATUS
3-23-76	HP 76-11	Exempt coating for radio-control powered aircraft from lead-in-paint regulations.	John Montgomery, Esq. Nat'l. Paint & Coating Assoc. 1500 Rhode Island Ave. Wash., D.C. 20005	Granted--8/18/77
3-23-76	HP 76-12	Establish a consumer safety rule for hunting type arrow-heads forbidding sale to minors.	Sidney L. Moore, Jr. P.O. Box 1642 Decatur, GA 30031	Denied--7/21/77
5-4-76	HP 76-13	Ban the fabric softener "Bounce" a product of Proxter & Gamble.	Judy Braiman, Pres. Empire State Consumer Assn. 109 Heather Drive Rochester, N.Y. 14625	Denied--10/14/76
5-6-76	HP 76-14	To forbid the sale of paint thinners to minors.	Betty J. Freiheit 2403 N.W. 51 Street Ft. Lauderdale, Fla. 33309	Denied--Week of 10/28/77 (ballot)
6-1-76	HP 76-15	Take Regulatory action re: Home playground equipment.	Theodora Sweeney 3038 Yorkshire Rd. Cleveland Heights, Ohio 44118	Pending

CPSC
PETITION LOG

ACT Hazardous Substances (Incl. CPTSA)

DATE REC'D	PETITION NO.	SUBJECT	PETITIONER	STATUS
6-18-76	HP 76-16	Amend bicycle regulations so that "in-motion wide-angle reflectors" will comply with reflectivity reflectivity requirements.	Norbert A. Kirk ABC Toy Designers 43 East Ohio St. Chicago, IL 60611	Denied--7/28/77
7-7-76 (sent to Commissioner Pittle)	HP 76-17	Change FHSA first aid labeling for methyl alcohol-base radiator anti-freeze.	Herbert S. Denenberg	Granted--7/22/76
7-15-76	HP 76-18	Ban patching compounds containing asbestos.	NRDC & CU Ruby I. Compton, NRDC 917-15th St., N.W. Wash., D.C. 20005	Granted--4/28/77
8-3-76	HP 76-19 Renumbered CP 76-18	Mandatory standards for Honda "off the road" three wheel motor scooter.	Mr. & Mrs. Michael E. Pawlak General Delivery Echo, LA 71330	See CP 76-18
10-14-76	HP 77-1	Amend 15 U.S.C. sec. 1262(b) which relates to the labeling of self-pressurized containers to require labeling of those products containing fluorocarbons.	Chemical Specialties Manufacturers Assn.,Inc. %Ralph Engel, Ex. Dir. 1001 Conn. Ave., N.W. Washington, D.C. 20036	Denied--1/13/77

CPSC
PETITION LOG

ACT Hazardous Substances (Incl. CPTSA)

DATE REC'D	PETITION NO.	SUBJECT	PETITIONER	STATUS
11-11-76	HP 77-2	Issue a standard concerning all-weather braking standards for bicycles.	Carl Shoolman 610 Reynolds Arcade Bldg. 16 Main Street Rochester, N.Y. 13614	Denied--Week of 1/26/78 (ballot)
11-9-76	HP 77-3	Require ingredient labeling on on products containing agents on NIOSH Toxic Substances List	Barry H. Rumack, M.D. Rocky Mountain Poison Ctr. W. 8th and Cherokee Denver, Colorado 80204	Denied--10/6/77
1-3-77	HP 77-4	Exempt ink used in certain pens produced by the Parker Pen Co.	Pope Ballard & Loos 700 Brawner Bldg. 888 17th St., N.W. Washington, D.C. 20006	Granted--Week of 11-10-77 (ballot)
1-5-77	HP 77-5	Ban particle board containing formaldehyde.	Mark I. Berson P.O. Box 840 Greenfield, Mass. 01301	Denied--1/5/78
1-14-77	HP 77-6	Institute proceedings for standard for children's umbrellas.	Thomas E. McMahon Reston International Ctr. Reston, Va. 22091	Denied--Week of 9/22/77 (ballot
1-31-77	HP 77-7	Exempt porous tip marking devices containing more than 12 grams of ink from FHSA regs.	F.E. Gilbert, V.P. The Sanford Corp. Bellwood, Ill. 60104	Closed--11/16/77

CPSC
PETITION LOG

ACT Hazardous Substances (Incl. CPTSA)

DATE REC'D	PETITION NO.	SUBJECT	PETITIONER	STATUS
2-8-77	HP 77-8	Ban the flame retardant chemical "Tris" from further use as a flame retardant for children's sleepwear.	Robert Harris Environ. Defense Fund 1825 Conn. Ave., N.W. Washington, D.C. 20036	Granted in part (ban) 4/7/77 CDSA re labeling
2-9-77	HP 77-9	Label products using tremolitic talc to alert consumers to high level of asbestos.	Peter Greene & Sidney Wolfe, Public Citizen Group, 2000 P St., N.W. Washington, D.C. 20036	Granted in part
1-25-77	HP 77-10	Amend bicycle regulations to state that all bicycles sold in U.S. must be assembled by qualified persons.	Vincent J. Bellitte Long Island Bicycle Dealers Assn. P.O. Box 657 Rocky Point, N.Y. 11778	Denied--Week of 11/10/77 (ballot)
4-15-77	HP 77-11	Ban artificial fireplace logs and ashes containing asbestos.	Rachel Scott and the Environ. Defense Fund 1525 18th St., N.W. Wash., D.C. 20036	Granted 4/28/77
5/5/77	HP 77-12	Declare Benzene a banned hazardous substance and remove all products containing benzene from the market.	Peter Greene & Sidney Wolfe, Health Research 2000 P St., N.W. Washington, D.C. 20036	CPSA: 9/21/77

CPSC
PETITION LOG

ACT Hazardous Substances (Incl. CPTSA)

DATE REC'D	PETITION NO.	SUBJECT	PETITIONER	STATUS
10-27-77	HP 78-1	Ban sulfuric acid drain cleaners intended for use in or around the household.	Thomas O. Henteleff,Esq. & Glenn E. Davis, Esq. Attys. for Hercules Chem. Co. Kleinfeld, Kaplan & Becker 1200 17th St., N.W. Washington, D.C. 20036	Pending
11-23-77	HP 78-2	Establish special labeling for "Whink" rust remover and other products containing hydrofluoric acid.	Arden J. Bradshaw, Esq. Johnson, Moonan & Bradshaw 600 South Second St. Mankato, Minn. 56001	Pending
12-13-77	HP 78-3	Amend the electrical toy regulation to clarify the phrase "moving parts associated with the motor" in sec. 1505.6(e)(4)(ii).	Lanny J. Davis, Esq. Attys.for: Natural Science Industries, Ltd. Patton Boggs & Blow 1200 17th St., N.W. Washington, D.C. 20036	Pending
1-31-78	HP 78-4	Request a noise standard to address the risk of substantial and permanent hearing loss from firecrackers.	Joan Hayes, Chairman of the Board, Citizens Against Hoise 1178 Fort St. Mall, Rm.9 Honolulu, Hawaii 96813	Pending
2-10-78	HP 78-5	Requests amendments to the bicycle regulations.	Theodore H. Hoppock,Esq. Attorney for 3M Co. Billing, Sher & Jones, PC 2033 K Street, N.W. Washington, D.C. 20006	Pending

CPSC
PETITION LOG

ACT Hazardous Substances (Incl. CPTSA)

DATE REC'D	PETITION NO.	SUBJECT	PETITIONER	STATUS
2-9-78	HP 78-6	Requests amendments to the regulations for fireworks devices.	John A. Conkling, Secy. American Pyrotechnics Assn. 407 Campus Avenue Chestertown, Md. 21620	Pending

CPSC
PETITION LOG

ACT Poison Prevention Packaging

DATE REC'D	PETITION NO.	SUBJECT	PETITIONER	STATUS
5-14-73	PP 73-1	Postpone effective date for special packaging for aerosol and paste oven cleaners containing sodium hydroxide and potassium hydroxide.	American Home Products Corp.	Denied--5/24/73
6-4-73	PP 73-2	Permit package and supply of Omega Oil (methyl salicylate) in conventional package until not later than August 30, 1973.	Block Drug Company	Denied--6/29/73
6-11-73	PP 73-3	Exempt Sorbitrate Sublingual Tablets and Chewable Sorbitrate Tabs from PPPA special packaging requirements for human oral prescription drugs.	ICI America, Inc.	Granted--8/73
6-14-73	PP 73-4	Temporarily suspend special packaging requirements under PPPA for methanol products.	Adell Chemical Corp.	Denied--7/25/73
6-26-73	PP 73-5	Extend effective date of special packaging requirements for turpentine and methyl alcohol until October 6, 1973.	National Paint & Coatings Assn.	Denied--7/25/73

CPSC
PETITION LOG

ACT Poison Prevention Packaging PAGE P-2

DATE REC'D	PETITION NO.	SUBJECT	PETITIONER	STATUS
8-1-73	PP 74-1	Extend effective date to Oct. 15, 1973 of the special packaging requirements for methyl alcohol products.	The Barcolene Co. Holbrook, Mass.	Denied--9/18/73
8-1-73	PP 74-2	Exempt erythromycin ethylsuccinate preparation from PPPA special packaging requirements for human oral prescription drugs.	Abbot Laboratories North Chicago, Ill.	Granted--1/11/74
8-2-73	PP 74-3	Exempt choloxin (sodium dextrothyroxin) tablets from PPPA special packaging requirements for oral prescription drugs.	Flint Laboratories, Div. of Travenol Laboratories, Inc. Morton Grove, Ill.	Denied--1/16/74
8-2-73	PP 74-4	Exempt synthroid (sodium levothyroxin) tablets from PPPA requirements for oral prescription drugs.	Flint Laboratories	Denied--1/16/74
8-20-73	PP 74-5	Exempt oral contraceptive products (norlestrin & loestrin) from PPPA requirements.	Parke,Davis & Co. Detroit, Mich.	Granted--1/11/74

CPSC
PETITION LOG

ACT Poison Prevention Packaging

DATE REC'D	PETITION NO.	SUBJECT	PETITIONER	STATUS
8-17-73	PP 74-6	Extend effective date of special packaging requirements for methanol.	Custom Chemical Co. 1415 Platte St. P.O.Box 5305 T.A. Denver, Colo. 80217	Denied--9/18/73
8-21-73	FF 74-7	Extend effective date of special packaging requirements for methyl alcohol.	Warren Oil Co. 727 South 13th St. Omaha, Nebraska 55114	Denied--9/18/73
8-28-73	PP 74-8	Extend effective date for child-proof closure for hazardous products methanol & various solvents.	Lyon Chemicals Van waters & Rogers 2313 Wycliff St. St. Paul, Minn. 55114	Denied--9/18/73
7-27-73	PP 74-9	Extend effective date for PPPA requirements for methanol.	W. H. Barber Co. 825 Thornton S.E. Minneapolis, Minn.55414	Denied--9/18/73
8-9-73 8-15-73	PP 74-10	Extend effective date for PPPA requirements for methanol. Supplement	E. Targosz & Co. 200 Seegers Elk Grove Village, Ill. 60007	Denied--9/18/73

CPSC
PETITION LOG

ACT Poison Prevention Packaging PAGE P-4

DATE REC'D	PETITION NO.	SUBJECT	PETITIONER	STATUS
8-10-73	PP 74-11	Temporarily stay effective date for child-proof closures for methanol.	Chemreal Corp. 1600 Jay Street Rochester, N.Y. 14611	Denied--9/18/73
8-15-73	PP 74-12	Extend deadline to Nov/Dec for child-resistant closure for methanol.	Midway Can Co. 2341 Hampden Ave. St. Paul, Minn. 55114	Denied--9/18/73
8-15-73	PP 74-13 (See: HP 74-18)	Exempt under Sec. 3(c) of PPPA Artex Roll-on decorator paint (petroleum distillates) - labeling.	Artex Hobby Products, Inc., 711 W. Vine St.	Denied--10/74
8-31-73	PP 74-14	Extend effective date for PPPA requirements for safety closures methanol.	United Gilsonite Lab. Scranton, Pa. 18501	Denied--9/18/73
9-11-73	PP 74-15	Extend effective date for PPPA requirements for safety closure methanol.	Malco Products, Inc. Barberton, Ohio	Denied--9/18/73
9-12-73	PP 74-16	Relief from conditions of child-protection packaging standard for methyl alcohol.	Garry Laboratories, Inc. Tonawanda, N.Y.	Denied--9/18/73

CPSC
PETITION LOG

ACT Poison Prevention Packaging

DATE REC'D	PETITION NO.	SUBJECT	PETITIONER	STATUS
9-13-73	PP 74-17	Exempt questran (cholestyramine) from the child protection packaging standard.	Mead Johnson Labs. Evansville, Indiana	Granted--1/11/74
9-13-73	PP 74-18	Exempt K-Lyte, potassium effervescent tablets from child protection packaging standards.	Mead Johnson Labs.	Granted--1/11/74
9-13-73	PP 74-19	Exempt oracon and oracon 28 from the child protection packaging standard.	Mead Johnson Labs.	Granted--1/11/74
9-17-73	PP 74-20	Exempt otassium phenoxymethyl penicillin and hydrabamine phenoxymethyl penicillin granules for oral solution from the child-protection packaging standards.	Ross Laboratories Div. of Abbott Labs. Columbus, Ohio 43216	Denied--4/18/74
9-17-73	PP 74-21	Exempt norinyl, norquen & Nor-Q.D. tablets from special packaging standards.	Syntex Laboratories	Granted--1/11/74
9-21-73	PP 74-22	Exempt oral contraceiptive drugs, ovral and ovrette from packaging standards.	Wyeth Laboratories,Inc.	Granted--1/11/74

CPSC
PETITION LOG

ACT Poison Prevention Packaging PAGE P-6

DATE REC'D	PETITION NO.	SUBJECT	PETITIONER	STATUS
9-14-73	PP 74-23	Extend effective date of requirement for special packaging for caustic drain pipe cleaners.	Camp Laboratories, Inc. 2d Ave. & 13th St. Brooklyn, N.Y.	W/d--9/26/73
9-24-73	PP 74-24	Exempt klorvess effervescent tablets from the special packaging standards.	Dorsey Laboratories Div. of Sandoz-Wander Lincoln, Nebraska	Granted--1/11/74
9-28-73	PP 74-25	Extend effective date of requirement for special packaging for products containing more than 4% of methanol.	Quaker Oil Corporation St. Louis, MO. 61347	Denied--11/18/73
10-4-73	PP 74-26	Temporarily exempt from special packaging requirements products containing more than 2% of Sodium hydroxide.	Ethol Chemicals, Inc. Chicago, Ill. 60647	Denied--11/16/73
9-13-73	PP 74-27	Extend effective date of special packaging requirements for methyl alcohol products.	Empak Industries	Denied--9/18/73
10-12-73	PP 74-28	Exempt from special packaging requirements oral contraceptives Ortho-Novum products & micronor.	Ortho Pharmaceutical Corp. Raritan, N.Y.	Granted--1/11/74

CPSC
PETITION LOG

ACT Poison Prevention Packaging

DATE REC'D	PETITION NO.	SUBJECT	PETITIONER	STATUS
10-22-73	PP 74-29	Exempt from special packaging requirements for unflavored aspirin, containing preparations with no more that fifty (50) grains of aspirin	Bristol-Myers Products Div. of Bristol-Myers Company New York, NY	Denied 11/21/74
10-29-73	PP 74-30	Exempt sodium fluoride products, luride drops and thera-flur drops from packaging standards	Davies Rose Hoyt Pharmaceutical Div. of Kendall Company Needham, Mass.	Denied 1/11/74 Reconsider & Granted for luride 6/20/74; thera-flur not covered by stand.
11-27-73	PP 74-31	Exempt pyrantel pamoate (antiminth) oral suspension, unit cups from the special packaging standards	Pfizer Pharmaceuticals 235 E. 42nd Street New York, NY 10017	Denied 8/1/74
12-5-73	PP 74-32	Exempt six oral liquid antibiotic drugs from the special packaging standards	Wyeth Labs., Inc. Box 8299 Phila., PA 19101	Denied 8/29/74
12/11/73	PP 74-33	Exempt the oral contraceptive products, Enovid, Ovulen & Demulen from special packaging requirements	Searle Laboratories Div. of G.D. Searle and Company Box 5110 Chicago, IL 60680	Granted 1/11/74

CPSC
PETITION LOG

ACT Poison Prevention Packaging PAGE P-8

DATE REC'D	PETITION NO.	SUBJECT	PETITIONER	STATUS
1-8-74	PP 74-34	Exempt iodinated glycerol (Organidin Solution) 50 mg./ml. from special packaging requirements	Wampole Laboratories Denver Chemical Mfgr. Company 35 Commerce Road Stanford, Conn. 06904	Denied 2/5/76
1-29-74	PP 74-35	Extend for five to seven days effective date of the special packaging standards for kindling and illiminating liquid (cigarette lighter fluid)	Zippo Manufacturing Co. Bradford, PA 16701	Denied 4/7/74
2-7-74	PP 74-36	Extend effective date of special packaging standards for cigarette lighter fuels in spout type containers from Jan. 30, 1974 to Sept. 30, 1974 and to exempt 4 1/2 ox. size Ronson lighter fluid from packaging standard	Ronson Corporation Harry Lerner, Attorney One Ronson Road Woodbridge, NJ 17095	More data sought 2/7/74; Denied 6/13/74
2-11-74	PP 74-37	Exempt haloperidol ("Haldol") from special packaging standards	McNeil Laboratories, Inc. Camp Hill Road Ft. Washington, PA 19034	Denied 8/8/74
2-21-74	PP 74-38	Exempt K-Lyte Cl Powder from special packaging standards	Mead Johnson Research Center Evansville, Ind. 47721	Denied 8/21/75

CPSC
PETITION LOG

ACT Poison Prevention Packaging PAGE P-9

DATE REC'D	PETITION NO.	SUBJECT	PETITIONER	STATUS
3-8-74	PP 74-39	Exempt Dichlorphenamide (Orathrol) tablets from the special packaging standards	Alcon Laboratories, Inc. H.A. Whissen 6201 S. Freeway P.O. Box 1959 Ft. Worth, TX 76101	Denied 3/28/75
3-8-74	PP 74-40	Exempt (Ogen) piperazine estrone sulfate tablets from special packaging standards	Abbott Laboratories A.G. Ramsey No. Chicago, IL 60064	Granted 10/24/74
3-8-74	PP 74-41	Exempt colestipol (Colestid) drug from special packaging standard	The Upjohn Company E.L. Schumann, Ph.D. Kalamazoo, Mich. 49001	Denied 6/5/75
3-18-74	PP-74-42	Exempt four unit dose potassium supplement liquids from special packaging standard	Warren-Teed Pharmaceutical Inc. 582 W. Goodale Street Columbus, Ohio 43215	Denied 4/15/76
3-22-74	PP 74-43	Exempt multivitamin drops (Vi-Penta F) from special packaging standard	Hoffman-La Roche, Inc. E.B. Anderson, VP Nutley, NJ 07110	Granted 3/3/77

CPSC
PETITION LOG

ACT Poison Prevention Packaging

DATE REC'D	PETITION NO.	SUBJECT	PETITIONER	STATUS
3-28-74	PP 74-44	Exempt from special packaging requirements the radiopaque drug sodium tyrpoanoate (Bilopaque (Sodium) capsules, NDA 13-731	Winthrop Laboratories 90 Park Ave. New York, NY 10016 B.C. Crouch	Denied 9/4/75
3-28-74	PP 74-45	Exemption from special packaging requirements the radiopaque drug iopanoic acid (Telepaque) tablets	Winthrop Laboratories	Denied 9/4/75
4-1-74	PP 74-46	Exemption from special packaging requirements three oral liquid antibiotics: potassium penicillin G, potassium phenoxy-methyl, penicillin oral solution ampicillin trihydrate oral suspension	John D. Copanos, Inc. 6110 Robinwood Rd. Baltimore, MD 21225 Dan J. Badia	Denied 8/15/74
4-11-74	PP 74-47	Exemption from PPP reg. Potassium penicillin G, potassium phenoxy-methyl penicillin, and ampicillin trihydrate	Biocraft Labs., Inc. 92 Route 46 E. Paterson, NJ 07407	Denied 8/29/74
4-19-74	PP 74-48	Exemption from PPPA reg., K-Lor potassium chlorida supplement	Abbott Labs.	Denied 8/21/75

CPSC
PETITION LOG

ACT Poison Prevention Packaging

DATE REC'D	PETITION NO.	SUBJECT	PETITIONER	STATUS
2-25-74	PP 74-49 (See: PP 75-11)	Exempt potassium chloride supplement from special packaging requirements	Cooper Labs	w/d 9/13/74
7-3-74	PP 75-1	Exempt celestone from special packaging requirements	Schering Corporation Gallopin Hill Rd. Kennelworth, NJ	Granted 4/15/76
7-11-74	PP 75-2	Exempt mebendazole (VERMOX) from special packaging requirements	Ortho Pharmaceutical Corporation Raritan,NJ 08869	Denied 6/15/75 Reconsider & Denied 6/19/75
7-24-74	PP 75-3	Ninety (90) day extension of the effective date for child protection packaging of ethylene glycol-based antifreeze containers	BASF Wyandotte Corp. Wyandotte, Mich. 48192	w/d 8/30/74
7-1-74	PP 75-4 75-5	Exemption from PPPA: achromycin V drops, declomycin drops, nilstat oral drops	Lederle Laboratories Pearl River, NY 10965	All three Granted 11/20/75
7-29-74	PP 75-7	Extend to Nov. 1, 1974, special packaging requirements for ethylene glycol-based antifreeze	Jefferson Chemical Co. Inc. PO Box 53300 Houston, TX 77052	w/d 9/5/75

CPSC
PETITION LOG

ACT Poison Prevention Packaging PAGE P-12

DATE REC'D	PETITION NO.	SUBJECT	PETITIONER	STATUS
7-18-74	PP 75-8	Exempt medrol from PPPA regs. to package a partial lot in non-complying package	Upjohn Co. Kalamazoo, MI 49001	Denied 8/8/74
8-16-74	PP 75-9	Temporarily exempt from special packaging requirements ethylene glycol	Therm-X Chemical & Oil Corporation Commack, NY 11725	Commission voted 11/14/74; moot
8-21-74	PP 75-10	Extention of the deadline for use of child resistant closures on antifreeze	Ohio Farmers Grain & Supply Assn.	w/d by letter 9/15/74
9-25-74	PP 75-11	Exempt Kay Ciel (potassium chloride) powder; withdraw previous petition PP 75-49	Cooper Laboratories 110 E. Hanover Rd. Cedar Knolls, NJ 07927	Denied 8/21/75
10-3-74	PP 75-12	Exempt mandelamine methenamine madelate from special packaging requirements	Warner-Chilcott 201 Tabor Road Morris Plains, NJ	Denied 3/18/76
1-8-75	PP 75-13	Exempt signasul from special packaging requirements	Key Parmaceuticals (American Urologicals)	w/d 10/31/75

CPSC
PETITION LOG

ACT Poison Prevention Packaging

PAGE P-13

DATE REC'D	PETITION NO.	SUBJECT	PETITIONER	STATUS
1-24-75	PP 75-14	Require special packaging for toilet bowl cleaners	Mary Lascinski	Referred to EPA 9/11/75 (no CPSC jurisdiction)
	PP 75-15	Temporarily exempt from the child resistant requirements charcoal lighter fluid	Zoe Chemical Corp.	Denied 3/27/75
7-7-75	PP 76-1	Temporarily exempt aspergum from certain requirements	Plough, Inc.	w/d 7/29/75
7-25-75	PP 76-2	Permission to continue to use non-complying labels & extension time	The Mentholatum Co.,Inc.	Denied 1/15/76
7-7-75	PP 76-3	Exempt turpentine from PPPA Regs.	Baldwin Oils & Commodities PO Box 5097 Greenvile Station Jersey City, NJ 07305	w/d 8/25/75
8-25-75	PP 76-4	Require labeling of cosmetics packaged in containers resembling toys	Roberta Madden Consumer Protection Center 1779 Government St. Baton Rouge, LA 70802	Denied 4/29/76

31-737—78——10

CPSC
PETITION LOG

ACT Poison Prevention Packaging

DATE REC'D	PETITION NO.	SUBJECT	PETITIONER	STATUS
9-24-75	PP 76-5	Require special packaging on products containing 250 mg elemental iron instead of 500 mg as proposed by CPSC	Technical Advisory Washington State PPPA Olympia, Wash.	Granted3/31/77
1-8-76	PP 76-6	Exempt flura drops, sodium fluoride solution from special packaging requirements	Stanley N. Bachman, Pres. Kirkman Lab., Inc. P.O. Box 3929 Portland, Oregon 97208	Withdrawn 3/15/77
1-13-76	PP 76-7	Exempt sodium fluoride drops from special packaging requirements	Ted Tamaki, VP Stanley Drug Products P.O. Box 3108 Portland, Oregon 97208	Closed 7/6/77
3-12-76	PP 76-8	Exempt sodium fluoride drops from special packaging requirements	Richard C. Nemanick, VP Lorvic Corp. 8810 Frost Avenue St. Louis, MO 63134	Granted Week of 12/8/77 (Ballot vote)
3-23-76	PP 76-9	Include the drug acetaminophen under the PPPA regs.	Steven D. Steckel, Pharm.D. Asst. Dir. Pharm. Univ. of Rochester School of Medicine 601 Elmwood Avenue Rochester, NY 14642	Granted 1/26/78

CPSC
PETITION LOG

ACT Poison Prevention Packaging

DATE REC'D	PETITION NO.	SUBJECT	PETITIONER	STATUS
3-25-76	PP 76-10	Exempt mycostatin oral suspension containing no more than 6,000,000 units, from PPPA regulations	Harvey A. Sussman F.R. Squibb & Sons P.O. Box 191 New Brunswick, NJ 08903	Closed 3/8/77
5-19-76	PP 76-11	Amend the provisions of the PPPA concerning aspirin-containing powders	Joseph E. Silverman VP Block Drug Company 257 Cornelison Ave. Jersey City, NJ 07302	Granted 2/10/77
4-27-77	PP 77-1	Exempt Erythromycin Ethylsuccinate Chewable Tablets, 200 mg from PPPA regulations	James B. Curry, PhD Regulatory Operations Pharmaceutical Products Div. Abbott Laboratories North Chicago, Ill. 60-64	Closed- 10/27/77
7-19-77	PP 77-2	Exempt VERMOX (mebendazole) from PPPA regulations	Russell J. Hume ORTHO Pharmaceutical Corp. Dir. of Scientific Infor. Raritan, NJ 08869	Granted - Week of 10/14/77 (Ballot)
5-20-77	PP-77-3	Exempt K-Lyte Double Strength tablets in effervescent form from PPPA regulations	Paul Ogles Associate Director Drug Regulatory Affairs Mead Johnson Evansville, Indiana 47721	Closed 10/27/77
11-23-77	PP 78-1	Exempt K-Lyte Double Strength tablets in effervescent form	Paul Ogles Associate Director Drug Regulatory Affairs Mead Johnson Evansville, Indiana 47721	Pending
12-5-77	PP 78-2	Exempt Erythromycin Ethylsuccinate Chewable Tablets, 200 mg from PPPA regulations	Arnold M. Schacter Regulatory Operations Abbott Laboratories North Chicago, Ill. 60064	Pending

CPSC
PETITION LOG

ACT Poison Prevention Packaging

DATE REC'D	PETITION NO.	SUBJECT	PETITIONER	STATUS
11-25-77	PP-78-3	Exempt "Medrol Dosepak" containing twenty-one (21) 4 mg tablets from PPPA regulations	H.R. Allen, M.D. Group Manager, Domestic Pharmaceutical Regulatory Affairs The Upjohn Company Kalamazoo, Michigan 49001	Pending

Mr. BROYHILL. It is my understanding that you have established some type of priorities for the agency.

Mr. BYINGTON. Yes, sir.

Mr. BROYHILL. In connection with this right to petition, how do these meld? In other words, you have set up a set of priorities, and I am trying to petition you to do something. How does this fit in? Can you explain that?

Mr. BYINGTON. Yes. We have developed an operating plan for the current fiscal year. The operating plan for fiscal 1978 indicates what major actions we are going to be taking and what our resources are going to be doing during the year.

Unfortunately, we are still somewhat behind in terms of getting the standards and petitions and other things out, so our resources at the moment are what I would call rather fully committed, and therefore we don't have much flexibility in terms of resources in the months ahead. From a management point of view everyone is really booked for the year. Therefore, what we end up having to do is bring before the Commission every quarter the decisions they made in that last quarter, and outline what our options are in terms of what projects we may want to defer or adjust to put any new particular project in. This is done on a collegial basis by the voting of the majority of the commissioners. They decide when they want to start projects they have just approved or how they want to defer ongoing projects to take up emerging situations.

So, unfortunately, we do not have any latitude, and we would hope that after another 18 months or so we may be able to have some so that the decision the Commission makes in January would go in the pipeline within 3 to 6 months after.

Mr. BROYHILL. On the home insulation issue, let me finish that up. I had some other thoughts on that. What is the recommendation of the Commission? Is there a divergence of opinion on whether or not we should adopt the bill pending before us that would impose this staturily?

Mr. BYINGTON. I think there is a divergence of opinion.

Mr. BROYHILL. I think you have commented. What about the other commissioners. Are they of the same opinion? You are saying you don't want us to act on that bill, as I understand it.

Mr. BYINGTON. I am in support of the bill.

Mr. BROYHILL. You are in support of the bill?

Mr. BYINGTON. Yes; I support the bill in giving us informal rulemaking to deal with insulation. However, I think that we should not be limited to just the fundamental reproducible test method, but that we should also consider the economic situation—the impact on small business, the impact on supply, the impact on price, and that type of thing. We should also take a look at the testing method as it relates to a real life situation, and we ought to drop the study or at least separate it from the standard. I think we ought to look at the two things separately.

So, what I was suggesting was that if there is anything we could drop, the study appears to be the logical candidate. I am in favor of the Congress moving to a mandate which allows us to have an interim standard right now that we can enforce, and then we can make adjustments as we need to.

Mr. BROYHILL. Is there any divergence of views on that?

Ms. FRANKLIN. The home insulation situation is, at best, muddled at the moment, and it seems to worsen every day. Clearly, there has been a greatly stimulated demand for insulation products. But the demand has not been met, so a variety of things are happening in marketplace. With respect specifically to this bill, I think that you can make an argument that 515(c) of the GSA standard, it mandated, is better than nothing at all.

On the other hand, the tunnel test, while it is reproducible, apparently does not simulate the kind of conditions that would be present in your attic or your walls in a way that relates to flammability. It just does not. So, we could be in a situation of having mandated 515(c) when GSA comes out with their updated revision, with different tests in it. In effect, we could be enforcing an obsolete standard. Then we would have to go through another process to come up with something else; namely, 515(d) or some combination of 515 (c) and (d).

In addition, there are, as you may know, not very many tunnel testers available, which creates an enforcement problem for us and the industry. There are fewer than 12 of the testers commercially available, I understand. These sorts of problems exist but, again, it may be that the present GSA specification is better than nothing. Personally, I think the legislation that you are considering, which has been changed some from the earlier version in the Senate, is a better bill.

Earlier, I was very strongly against the Senate bill. With the revisions in the House bill, I do not feel quite as strongly.

Mr. BROYHILL. Do you have any other comments?

Mr. PITTLE. Yes. I don't know if the comments from the Commission have been received by the subcommittee yet, but if they have not—do you know if those have been sent?

Mr. BYINGTON. Yes.

Mr. PITTLE. I agree to certain provisions. However, there are certain ambiguities in the language which could be cleaned up. As a basic thrust this is much like our receiving a proposed standard from an offeror except that if you pass that act, you are a very compelling offeror who will not do much changing of it.

It is like receiving an existing standard which this would be, and it is better than nothing. It is not quite great, and of course we are the agency that has got to be responsible for enforcing it. That does not mean that the tunnel test is a great test.

There are a lot of concerns raised as to whether or not it is relevant to the actual hazard, but on the other hand, if we were to start to develop a standard on our own, which we are in the process of doing, the section 7 process, at a minimum, will take, as the chairman said, approximately 1½ years.

We have not done much front end research here. We don't have a lot of promising solutions to give that offeror, as we did in Christmas tree lights. We can't guarantee our process will work. This legislation may fill an important need for the consumer now, because as I said in my statement, we are going to be having millions of homes retrofitted over the next several years. The need the protection that the cellulose material will meet certain minimum flammability standards.

So, I think on balance it is a good piece of legislation that will do the job now if some of the changes we are suggesting in the language are adopted.

Mr. BROYHILL. Yes.

Ms. FRANKLIN. The boric acid situation, I think, also needs some mention. The 515(c) standard that would be mandated by the bill has a corrosiveness aspect to it, and boric acid has been the major kind of treatment used on cellulose insulation. Boric acid is in very short supply, which creates a problem for some people in the industry.

Another complication—and I suppose it is true any time you have a situation marked by great demand and a fixed capacity in certain segments of the industry—substitute products must enter the marketplace to fill the demand. Everyone scrambles, with different segments of this industry all competing fiercely. As I understand it, there is great tension in this industry now, with the cellulosic manufacturers feeling that other segments of the industry are stimulating closer controls on them, in order to get a competitive edge.

I don't entirely know how to assess this, but clearly this is another aspect that needs to be considered in the total scheme of things. We simply don't want our actions today to stimulate other safety or competitive problems down the road.

Mr. BROYHILL. Competitive fallout.

Ms. FRANKLIN. Yes.

Mr. BROYHILL. Mr. Chairman, let me turn to another area, if I could. The last time that we had the Commission before us, I don't think you were here at that time, but we were talking about the possibility of consolidating the act. I know that there have been conversations and so forth about this. Of course, the subcommittee has postponed any consideration of trying to consolidate the various acts that you have jurisdiction over. Of course, we are back here again in the reauthorization period, and I thought that maybe we might have a chance to explore this a little.

My question is, now, after your appearance here, you are leaving. Do you think this idea of consolidation of the act is appropriate? In other words, what kind of recommendation would you be making about this?

Mr. BYINGTON. I'll try to be brief about this, because, as you indicate, that is the kind of thing we could have a long discussion on. My recommendation is that they be consolidated. I strongly support the consolidation of the acts. I also believe that consolidation can be done one act at a time. In other words, I don't want to do what we've done in the offeror process—biting off more than we can chew and ending up gagging on it. We can consolidate the acts one at a time.

I would do the Hazardous Substances Act first. With some adjustments in the Consumer Product Safety Act, particularly in giving the Consumer Product Safety Commission flexible recall authority, especially under section 8 of the act, and in moving some items, such as those relating to toys, under the Consumer Product Safety Act, I don't believe consolidation would either cause a significant problem or a major disruption. I do think it would be a giant step in the right direction.

One of our problems has been the internal problem of deciding in each case what act we were going to regulate under. We have been talking about the speed with which we ought to be regulating, but the Commission constantly finds itself in a quagmire of procedural discussion. We are always discusing what act to regulate under for what purpose. For example, the primary focus of the Hazardous Substances Act is recall authority, authority which does not exist under a section 8 ban under the Consumer Product Safety Act. However, the recall under section 15 of the Hazardous Substances Act is automatic and doesn't give any recognition to the economics or the structure of the marketplace, or to whether or not a recall is necessary. We have been faced with, and have discussed, this issue several times.

Mr. BROYHILL. What has been your experience in court utilizing that?

Mr. BYINGTON. Disastrous. I don't think we have effectively regulated under the Hazardous Substance Act, and I find us up to our proverbial tail in litigation. A perfect example is the mylar kite situation, where the Commission bounced back and forth between two different acts before we came to a final decision, and we don't have a final rule on mylar kites.

I strongly urge the subcommittee to give serious consideration to consolidating the acts, even if it had to be done one at a time. Now, I would have some concern if the subcommittee and this Commission were going to go headlong into a major program to consolidate all of the acts within 360 days. That would be a very resource-intensive situation, and I am not sure it would be the most productive use of our resources. I do believe that a staggered schedule could be undertaken, and that would expedite the efforts of the Consumer Product Safety Commission.

If you do not want to consolidate the acts, I would make another recommendation. That is, to amend the Hazardous Substances Act to avoid section 701(e) proceedings, and to make recalls under section 15 more flexible. I would also suggest that you go ahead and add to the Consumer Product Safety Act the ability for the Commission to decide whether or not recall is necessary, and if so, to structure it appropriately for that particular situation, keeping in mind the condition of the marketplace and the economic aspects. With language like this, the Commission could propose a ban under section 8 of the Consumer Product Safety Act, and also propose a recall. Therefore, all parties would have an opportunity within that 30 days allowed under section 8 to comment, not only on our ban, but also on our recall.

Then we could go out with a final ban and a final recall. I think that this approach could substantially eliminate a great deal of the litigation, and the whole argument of whether there was due process not only in the ban but in the recall.

Mr. BROYHILL. We have covered a lot of things here in just a few minutes. Could you put these down in some form?

Mr. BYINGTON. I would be happy to supply for the record my thoughts.

[The material referred to follows.]

CONSOLIDATION OF ACTS

The question of consolidation of the Acts administered by the Consumer Product Safety Commission (CPSC) is indeed a very complex and important issue. This is true from both a substantive and procedural perspective.

I believe that the ultimate goal of this agency should be a total consolidation of our Acts. This would assure uniformity in the regulatory process and reduce the procedural burdens inherent in administering several statutes. I am aware, however, that practical considerations such as the high number of staff hours that would be required and the controversy surrounding many of the issues that would have to be faced during such a process may dictate against total consolidation at this time.

If it is determined that a total consolidation effort, including an intensive review and extensive redrafting of our existing statutes and regulations should not presently be undertaken, we could substantially move in the direction of that ultimate goal through harmonizing amendment of our two primary statutes, the Consumer Product Safety Act and the Federal Hazardous Substances Act. This first step towards uniformity could be the basis for consolidation and make the ultimate goal of consolidation easier.

Obviously, there are many areas of the transferred acts that differ from the CPSA. These include numerous remedial, jurisdictional, substantive and procedural matters. However, the three that have caused the most serious problems and which need to be addressed at this time are: (1) Recall Authority under CPSA and FHSA; (2) 701(e) Provision of the FHSA; and (3) Civil Penalty Authority under the FHSA

1. *Recall authority under the CPSA and FHSA.*—The procedures for recall of a potentially dangerous product under the FHSA are set forth in section 15 of the Act. Essentially, they call for the repurchase, up the chain of distribution from the consumer to the manufacturer, of any article or substance which is a "banned hazardous substance." Under the Act, this repurchase is required automatically without further action by the Commission without regard to the structure of the marketplace, and without regard to the severity of the risk of injury presented by the banned product. Repurchase of the entire article for the purchase price paid is required even if the aspect of the article which renders it banned could easily be repaired or replaced. When this inflexible procedure is applied blindly to an article which may only deviate in a minor respect from a complex set of requirements, such as the Commission's bicycle regulations, unnecessary hardship, unrealistic costs, and confusion can be expected to result without a compensatory increase in consumer safety.

Recall authority under the CPSA is more flexible under section 15. The Commission can require a manufacturer, distributor, or retailer of a consumer product that presents a substantial product hazard to give notice of the defect and to repair or replace the product or refund the purchase price. If an imminent hazard is discovered, the Commission under section 12 may seek to have a district court order, appropriate notice, and recall. These provisions do not solve the entire recall problem, however, since they both involve formal adjudications which may be quite lengthy, and since they would be difficult to administer where a great many manufacturers, distributors, and retailers are involved.

One possible solution would be to delete the automatic repurchase provisions under the FHSA and to replace them with a procedure which would authorize, but not mandate, the Commission to issue a separate repurchase regulation for each banning regulation. Such a regulation, which should be issued for comment at the same time as the banning regulation is issued, could be tailor-made to provide an appropriate notice and recall remedy, relating directly to the particular type of violation and the particular marketing methods for the product. Consistency with the CPSA would be obtained by adding a similar discretionary provision under that Act, not to replace, but to supplement the existing recall authority. Discretionary recall authority could be applied to products not in compliance with: (1) a standard issued under section 7, (2), a ban issued under section 8, and (3) a regulation issued under section 27.

2. *Section 701(e) procedures under the FHSA.*—The present procedures for declaring products to be hazardous substances or banned hazardous substances (except for toys presenting electrical, mechanical, or thermal hazards) under the FHSA (sections 2(q)(1)(B) and 3(a)) are governed by the complex requirements of Section 701(e) of the Federal Food, Drug, and Cosmetic Act. These requirements call for two-stage rulemaking. First, a notice of proposed rulemaking is issued, public comments are received, and a "final" regulation is issued. If valid objections are received to the final regulation and a hearing is requested, the provisions of the regulation objected to are stayed pending the completion of a formal, usually lengthy, adjudicatory-type hearing. This process is very expensive and time consuming for all parties involved. It also means utilizing a vehicle that is usually quite inappropriate for the issuance of legislative type regulations

requiring the balancing of competing policy considerations. Such procedures are more suited for resolution of purely factual issues.

Therefore, I would recommend substituting the procedures under Section 9 of the CPSA for the section 701(e) procedures. This would provide for notice of proposed rulemaking, an opportunity for interested members of the public to submit written comment and to make an oral presentation of their views, and the issuance of a final rule subject to judicial review. The proceedings would be informal so as to facilitate public participation and would help ensure that proposed rules could be acted upon expeditiously.

3. *Civil penalty authority under the FHSA.*—Under the present FHSA, the Commission is limited in enforcement remedies to (1) recommending that the Department of Justice institute criminal proceedings for violations of section 4, (2) instituting seizure actions against misbranded or banned hazardous substances, or (3) instituting injunction proceedings to restrain violations of the Act. An amendment adding civil penalty provisions would give the Commission an additional enforcement option which would provide the flexibility presently provided under the CPSA needed to address the many gradations of violations with which the Commission must deal on a daily basis. A civil penalty could be sought, for example, in a situation where there are no violative goods to seize, no continuing violation for which an injunction is needed, and no past acts sufficient in seriousness to be the proper subject of a criminal proceeding.

An amendment to the FHSA which would provide civil penalties was contained in S. 3755, introduced by Senator Pearson in the 94th Congress, and originated as a recommendation of the Comptroller General contained in his report entitled "Better Enforcement of Safety Requirements Needed by the Consumer Product Safety Commission" (July 26, 1976, B–139310). It is also contained in S. 709, introduced in the current Congress at the Commission's request by Senator Magnuson and currently pending before the Subcommittee.

I strongly recommend that these proposed changes be implemented as expeditiously as possible. I believe that they will serve to provide a foundation for the uniform application of our statutes and will ultimately make less burdensome the consolidation of the Acts we administer.

Mr. BROYHILL. Has the Commission done a study of this? Is there available any critique of some of the problems? I am sure there would be problems, because I am familiar enough to know that in certain areas you have got to use one or the other acts rather than the Consumer Product Safety Act. You could not just repeal those other acts and leave the Consumer Product Safety Act standing alone, because you would leave so many holes. There would be a lot of legal work that would have to be done here, but it would seem to me it would help, particularly in the area of litigation, and perhaps even staff time.

Mr. BYINGTON. A couple of things. One, I think it would really help, because some might be less reluctant to use the Consumer Product Safety Act if there was some recall authority under the act.

Second, I would be happy, as I said before, to supply for the record some of the things I have written on this. Also, we would supply for the record the memorandums that have been completed by our Office of General Counsel when they asked us to look at this over the period of the last 12 to 18 months.

Mr. ECKHARDT. Such memorandums will be accepted for the subcommittee's files.

Mr. PITTLE. This is a very important issue which every so often raises its head. Its importance doesn't rise or fall, but the discussion does, and I think from my perspective, probably because I am at the other end of the table, I have a different view from the chairman. There are features, I think, within each of those acts that are so unique that they are worth saving. This is my opinion, after spending many an hour with our General Counsel's staff, and my own personal staff, trying to see what would be the net effect of the consolidation.

In a nutshell, I think this book here [indicating] where you see the several acts printed together: when you were finished with the consolidation, it would probably be the same number of pages, minus the title pages, because the provisions are unique enough and important enough that you would want to save most of them. In order to bring them all together you would just have a thicker act with the same provisions in it.

I think the chairman's point about changing section 701(e) and the Hazardous Substance Act is probably the critical one, because the question arise up as to whether or not you should use the Refrigerator Door Safety Act or the Flammable Fabrics Act. The question comes up in some of the dangerous chemicals and children's products, as whether it should be handled under the Hazardous Substances Act or the Consumer Product Safety Act.

Section 701(e) and the other extensive evidentiary rulemaking procedures involved there have caused us all enough concern for the intense amount of time and effort.

So, I think section 701(e) is an important consideration, and I would hope that we could some time focus on that and possibly amend that act to delete it.

Mr. BROYHILL. Thank you, Mr. Chairman. That is all I have.

Mr. ECKHARDT. I have a few questions concerning 27(e). Section 27(e) permits the Commission to require manufacturers to provide information about safety hazards to consumers at point of sale. Issuing a rule under section 27(e) does not involve the rather lengthy processes used in issuing other types of rules. We frequently may be confronted with an emergency like the home insulation question, in which it may take some time ultimately to draft a final set of standards. My question is, why not utilize section 27(e) in the meantime with respect to information? For instance, the Commission's own findings have shown that cellulose home insulation seems to have caused fires. In seven out of nine cases, it was because a recessed light or source of heat was too close to the insulation. This is an installation problem that could have been avoided. Perhaps one day we shall mandate that the material itself not be flammable. But in the interim, should we not require under section 27(e), which could be done rather quickly, notification to the consumer. I understand in most cases that the manufacturer does the installing, but where that is not the case, should we not inform whoever installs the insulation of the reasonable safety precautions that should be taken.

I would think that that would be a very, very effective way to improve immediately the situation. While the consumer will not always pay attention to such notice, if he has been so informed and if his house does burn down, then he is also informed of a possible claim of negligence against the manufacturer. I give a lot of credence to this business of disseminating information. Have you any comment on that?

Mr. BYINGTON. Yes, sir, I do. I totally agree with everything you have said in terms of our ability to use section 27, and I am also pleased that we can now come to you and say we have been using section 27 for the first time. We have used it with aerosal chlorofluorocarbons and put out our labeling there as we participated in the ban-

ning process with EPA and FDA. That labelling regulation is out in final.

We have also used section 27 for CB antenna. There we have the problem of electrocution in the installation of CB antennas, and we are looking at whether it will be possible to set a standard. In the meantime we have used section 27 to get labeling out there again immediately, which is what you are talking about. While you are working over here on the one hand on a potential standard, can't you do something fast? The answer is, Yes, we can and we did, for the CB antenna situation, with permanent and hang-tag labeling.

We are also thinking about section 27 labeling for the children's sleepwear chemically treated for flame retardant purposes. While we still may not know everything about some of those flame-retardant chemicals, we are moving toward labeling. A regulation, again, that would require labeling of the sleepwear that has been chemically treated for flame retardants is now in draft.

Specifically, though, for home insulation, we have been able to achieve what we would have under section 27(e) on a voluntary basis. The primary problem is in fibrous glass and rock wool types where there was great concern about inhalation during installation, and the fibers getting into the eyes, and all of that type of thing. We have met with the industry in cooperation with the Federal Trade Commission. We all sat down and we reached a voluntary agreement on how the packages would be labeled. We have been able to do that voluntarily, I think, even faster than we could have under 27(e) because we believe at this point that we have voluntary agreement. We are also looking at doing a survey of cellulose insulation to determine what we have in terms of labeling.

However, with fibrous glass and rock wool, we have a much smaller number of manufacturers, maybe 8, 12, 15, depending upon who is included as a subsidiary of whom. You can literally look at 8, 10, or 12 bags and say, are those accurate, and then you can bring those players to the table and deal with them.

In cellulose insulation, no one even knows how many are out there. Many of the more responsible manufacturers have reasonably adequate labeling. So, yes, in this case, as we continue to take a look at labeling, I do believe it would be possible and maybe most appropriate for the agency to proceed under 27(e) if we find that generally the labeling in the industry for cellulose home insulation is bad.

Mr. ECKHARDT. Let me raise a related point. Section 15, as I read it, requires a manufacturer when he has information which reasonably supports the conclusion that his product is not safe to notify you of that fact. It might be a means of achieving some immediate relief before standards could be set to simply advise such manufacturers of the existence of this provision. Would that not be a desirable proceeding?

Mr. BYINGTON. I tried to do that personally in meetings with the cellulose insulation people. Our section 15 people are taking a look at the matter. As I said in my summary comments, I also believe that section 12, imminent hazard authority, could be used, particularly where we find totally untreated cellulose insulation.

One other point, too, as it relates to 27(e), is, that we do have underway and should have in the marketplace within the next 30 days a major information and education program to deal with many of the

things you are talking about in terms of information on installation and so on.

Not only are we dealing with what the bags say, but we have put together what we think will be a very significant and helpful information education campaign for the American consumer on what they ought to looking for when they buy it, how they should be installing it, what some of the problems are, and how they ought to deal with it carefully.

At the same time, we assure you we are looking at the product in the marketplace, and we will take such actions as we feel we can support under sections 15 or 12.

Mr. ECKHARDT. There is a list, I understand, compiled by the Federal Trade Commission of 700 manufacturers of cellulose insulation. That might be a good list to notify under section 15. I am thinking that if they are informed of their duty to so supply information and if they violate a statutory duty, it may very, very severely effect a damage case at some later time. If I were a manufacturer, I would consider that notice of the requirement to provide such information a very, very serious matter.

Mr. BYINGTON. I understand what you are saying, and without trying to cloud the issue, I do think that we have a special problem with cellulose insulation. That is what I always call the spectrum, the band of quality cellulose insulation. At the bottom of the spectrum, a certain amount of chemical to provide flame-resistance is required, but an overabundance of that chemical, unless it is boric acid, can cause other problems such as corrosiveness. I think that the problem we have out there is more whether or not quality control standards are adequate and less whether or not manufacturers are flagrantly making insulation that would just burn.

If we find the latter to be the case, as we are trying to check now, we would take action in sections 15 and 12, and we would certainly follow up on your thoughts in terms of seeing how much better we can communicate our intent and interest to the other manufacturers.

Mr. ECKHARDT. I have a specific question here on another subject. The Commission in its comments on the insulation bill suggests that the existing GSA standard be modified to require material to have a flame spread classification of 0 to 25.

Mr. BYINGTON. Yes, sir.

Mr. ECKHARDT. GSA standards permit a spread classification of 0 to 50. Why does the Commission feel that this would enhance protection provided the consumer?

Mr. BYINGTON. Our technical people believe that any flame spread over 25 is just too flammable, and Mr. Brown may like to add some comments.

Mr. BROWN. Sir, the standard has to do with 0 to 25 and 25 to 50 flame spread rating. It has to do with use. It is a purchasing standard. The use to which the purchaser will put the insulation involves protected uses as opposed to ceilings and other open uses. The fear we have from an enforcement standpoint is that the standard is a point of manufacture standard. We don't know when they are manufacturing it, where somebody is going to install it, so we would prefer to have the more stringent 0 to 25 levels.

So, if insulation is installed in an open, exposed area, the consumer has that level of protection.

Mr. ECKHARDT. Do you have any further questions?

Mr. BROYHILL. No.

Mr. ECKHARDT. I wish to commend the Commission for its initiative in pursuing in the courts action to declare aluminum wiring systems an imminently hazardous consumer product. It is my understanding that the defendants are challenging whether the Commission has jurisdiction over components in residences. As one of the sponsors of the original act, I have no doubt that the Commission does have jurisdiction.

Our hearings today and this coming Tuesday on home insulation serve as clear evidence that they do. Insulation, like aluminum wiring is a component of a residence. Yet no question has been raised challenging the Commission's jurisdiction. The Commission's jurisdiction over aluminum wiring is just as clear. Mr. Chairman, I certainly agree with you that the proper place for authority with respect to dangers in insulation is in the Commission rather than in the Energy Department. I see, not the same kind of conflict that ordinarily exists between persons concerned with the commercial interest, but rather a conflict which results from an honest desire on the part of the energy agency to move very rapidly. I fear that, in their eagerness, they might overlook some of the dangers involved in insulation.

I certainly agree that the authority should reside in the Consumer Product Safety Commission.

Mr. BYINGTON. Thank you.

Mr. ECKHARDT. Just as there is no doubt in my mind that the Commission has jurisdiction over home insulation which is a component of a residence, I am equally certain that Congress intended the Commission to have jurisdiction over residential electrical systems as well. Congress never intended that protection of the public be based on an artificial distinction between those items physically a part of the home and those which are not.

We have a recorded vote at this time, and if there are no further questions of the Commissioners, I want to thank you very much for your candid testimony and your very helpful enlightenment on several of these points. Thank you again.

Mr. BYINGTON. Mr. Chairman, we appreciate the opportunity to appear before you and the members of the subcommittee.

Mr. ECKHARDT. We will return and reconvene the hearing at 20 minutes of 12.

[Brief recess.]

Mr. ECKHARDT. The committee will be in order.

Mr. Locker, will you identify yourself for the record and proceed?

STATEMENT OF AARON LOCKER, ON BEHALF OF THE CHAMBER OF COMMERCE OF THE UNITED STATES

Mr. LOCKER. Thank you, Mr. Chairman. My name is Aaron Locker. I am a practicing lawyer in New York, and I represent several industries regulated by the agency. I am here on behalf of the Chamber of Commerce of the United States. In that connection I have prepared and submitted and ask that you place in the record a formal statement which expresses the chamber's view.

Mr. ECKHARDT. Without objection, it will be so ordered.

Mr. LOCKER. Rather than bore the subcommittee with a repeat reading of that or even summarization or highlighting of it, I would like to in an extemporaneous way address myself to the colloquy between the chairman and Mr. Broyhill and the commissioners this morning and some of the interesting subjects raised.

Before doing so, I would like to deal with the bill specifically at hand, the one submitted by you, Mr. Chairman. To succinctly put it, the chamber is opposed to the legislation. We think it is undesirable. We think it is unnecessary. We think, most importantly, it will not further the objectives you are trying to achieve with its introduction.

Let me be specific with respect to paragraph 2(a) or section 2(a). Ostensibly, the bill proposes to give the Commission authority under certain circumstances to develop a standard. The word "develop" is used, but I was rather surprised—pleased, I should say—that two of the commissioners, at least when they started their testimony this morning, were being dragged somewhat reluctantly to the altar of investation with Commission development powers.

I think the chairman opposed it. I think Vice Chairman Franklin opposed the authority to develop. We in industry are concerned that the authority to develop will soon translate itself into the authority to promulgate. What we may have is yet another agency with enormous powers to promulgate or mandate safety standards. However, assuming that does not happen, assuming we deal with the language as it is contained, the vesting into of authority to develop safety standards.

Let me address the conditions under which the agency would exercise that authority. One, if the Commission finds that such action is in the public interest because of, and two the nature of the risk of injury associated with such product.

Mr. Chairman, I do not know what that language means. The Commission already has authority to regulate unreasonable risks of injury, and to develop standards therefor under section 7. Why should the Commission be given authority to develop standards because of the nature of risk of injury associated with such products? Is the nature of the risk anything other than unreasonable? What does that language mean? The language on its face is clear, and within the context of the legislative history. I fail to understand what that criteria objectively establishes by which either industry, a litigant, or the Commission, can use as a guide to determine whether it should act under this subsection.

Then, three, the expertise of the Commission with respect to such risk of injury. I do not wish to sound presumptuous, Mr. Chairman, but I must say, what expertise does this agency have? In the law, we couch ourselves or clothe ourselves with the myth of presumed administrative agency expertise. I can say, frankly, on the basis of my experience with the agency, and it has been extensive, it has never been more of a presumption than in this case. I refer to your own chart. I refer to your own questions of the Commissioners.

Why, after being presented with a relatively simple standard for a matchbook would it take 524 days, almost 1½ years past the statutory time to evaluate the standard? Where is the Commission's expertise, sir?

Mr. ECKHARDT. With respect to matchbooks, I do not think that any special expertise is required. I would say that the Commission

might very well have initiated the standards rather than having an extensive study of matchbooks.

Mr. LOCKER. Sir, we have 10,000 different consumer products subject to the regulatory authority of this Commission: If I recall the legislative history, 10,000 products. Looking at the chart, television receivers, power lawnmowers, two extraordinarily complicated products, those two, or at least power lawnmowers, the television receivers are boarded at tremendous effort and tremendous expense. Those two have consumed more time in the postofferor process than anything else.

Are you suggesting, sir, that the Commission and its mythical expertise possess that kind of expertise in those areas?

I work intimately with the Commission, with its staff, with its engineers. I represent one dozen industries affected by it. The Commission does not possess that expertise, in my opinion. I think in the opinion of the chairman it does not, and in the opinion of the vice chairman it does not.

Mr. ECKHARDT. It is your testimony then that the Commission is not sufficiently qualified to serve in the position it is serving.

Mr. LOCKER. No; I am saying, sir, that the Commission does not have expertise within itself to develop standards with the resources allocated to it at the present time. However, I wonder whether you could possibly allocate enough resources in developing the kinds of extraordinarily complex standards that might be involved in a television set or outdoor power equipment, expeditiously. I am not saying that expertise could not be acquired over a period of years. Yet the thrust of this legislation as I see it, Mr. Chairman, is expedition, improvement over the Commission's abysmal performance. That is my word, not yours, characterized by those green bars. I admit, as Congressman Broyhill pointed out, that those green bars represent the process before section 9 has been factored into the proceeding.

Let me go on, sir, with the analysis of the section 2(a). The expertise of the Commission with respect to such risk of injury. What is the Commission's expertise with respect to risk of injury?

It has been my experience that it is the exertise we all have. It is that expertise which surfaces on the basis of 100 percent 20–20 hindsight, the emergence of a pattern after a series of accidents. I know of no expertise, I know of no basis for Commission action which has been predicated on expertise exercised ab initio without this hindsight.

Let me go further. The necessity for expedition, Mr. Chairman, is there on your chart. It seems to me the reason for this bill is the very fact that the Commission has not been able to expedite the development of a safety standard. Now, I question why. Is it because the Commission has not itself had the authority to develop or expedite a standard? Or is it because the Commission has not used that enormous authority effectively or well? What is the basic premise under which the subcommittee proceeds in giving the Commission even more authority to exercise in the face of a record that it has not exercised that which it has efficiently or well?

If I recall the criticisms of the Congress, of Senator Ford, of Representative Moss, of you yourself, it has been that this Commission has not been expeditious. Now, if the reason for lack of expedition, sir, is the fact that it has not had authority to develop a standard, perhaps we should examine that. I think, if I may paraphrase the

chairman of the agency in one of the few times I agree with him, the reason has been—and we are all aware of it, those of us who observe the Commission on a regular basis—the failure of the Commission to function effectively or efficiently, the failure to adequately utilize the resources it has, or to spend the moneys that it has.

We are all familiar with the organization and reorganizational debacles that accompanied the tenure of Chairmen Simpson and Byington. We are about to get another Chairman who will undoubtedly reorganize the agency and replace the top staff. Is the reason for disappointment in the Commission the fact that the Commission has never had the authority to develop standards?

It has manifested no ability in any of its activities, no special expertise in either the development, assessment, or evaluation of risk, which warrants the bestowal upon this agency of this extra power. I have heard, if my ears were correct, both Chairman Byington and Vice Chairman Franklin, and even Commissioner Pittle, to say that if we were to receive this gift of authority, we would require enormous resources to support it. Those statements are confirmed by my knowledge of the engineering staff.

Mr. ECKHARDT. I did not hear that from Commissioner Pittle. I would have to check the testimony.

Mr. LOCKER. I may be attributing to Commissioner Pittle something he did not say.

Mr. ECKARDT. As I understood him, what he said was, enormous resources could be used wastefully in either process.

Mr. LOCKER. And have been, sir.

Mr. ECKHARDT. But he felt it was desirable to have the option of utilizing the less wasteful process of the two.

Mr. LOCKER. Let me come back to the question of the choice, then. As I see the criteria for exercising that choice or making that determination, there are none existent. I therefore question both the necessity or the desirability of vesting them in the Commission at this time.

The Commission in its testimony pointed to its recent success with the mandatory standard for Christmas tree lights. I happen to represent the manufacturers of those lights. I am impelled to place that testimony in the context in which I think this subcommittee should observe it. First, the standard was not necessary. It was not necessary on the basis of the extraordinarily limited injury data which suggested a need for the standard.

Second, when the Commission was determined to proceed with the development of such a standard, industry developed one itself. It had it rewritten by the National Bureau of Standards after it was initially drafted by industry members. Most importantly, in a period of about 8 months, the standard was translated into new merchandise which complied with the standard even though that merchandise was, for the most part, made in the Far East.

In a period of 8 months, industry quantified the safety of its product, developed a standard, had it cast in language acceptable to the most critical engineers of the National Bureau of Stanards, and had it available to the Commission this was done in the face of an injury data base which, in the opinion of the staff, did not warrant the mandating of a standard.

Why, then, did the Commission go forward to develop a standard? Why did not, if I may use Mr. Broyhill's question, why did not the Commission mandate that standard? It is essentially that standard which was "developed" by the National Consumers League. Why didn't the Commission mandate that standard under section 7(c) of the Consumer Safety Product Act?

Why, sir, has the Commission mandated no standard under section 7(c) of the Consumer Product Safety Act? Am I to believe that with the hundreds, if not thousands, of standards in existence today, this Commission with this authority has not been able to find a single safety standard that can be mandated? Is it necessary to spend $160,000 to $300,000 for the development by the offeror process of a standard when one is already in existence?

This Commission is not using the powers it already has under section 7(c). I cannot understand why you seek to bestow additional powers on the Commission in this area.

Well, those are just a few of the remarks that occurred to me as a result of the colloquy this morning. These have been based on my experience with the Commission, and it has been extensive in the representation of regulated industries. I apologize if my vehemence or concern was expressed in strong terms. However, it happens to be the way I feel. I have the feeling in this bill that we are discussing the legendary situation of the king traveling through the streets, with everyone proclaiming his beautiful garments when he is walking around naked.

This Commission has too much power. It has power it has not used. More importantly, it has power that it cannot use or has not demonstrated a capacity to use efficiently. Why bestow on it extra power which has, as I see it, a potential for enormous abuse?

Thank you for the opportunity.

[Mr. Locker's prepared statement follows:]

STATEMENT OF AARON LOCKER, ON BEHALF OF THE CHAMBER OF COMMERCE OF THE UNITED STATES

I am Aaron Locker, a member of the law firm of Locker and Greenberg in New York City. I am appearing before this Committee as a witness for the Chamber of Commerce of the United States. I serve as Chairman of the National Chamber's Advisory Group on Product Safety which seeks to increase the involvement of corporations and trade associations in product safety matters. Accompanying me today is Jeffry L. Perlman, the Associate Director for Consumer Affairs for the National Chamber.

We appreciate the opportunity to present our views on H.R. 10819, and amendment and authorization for the Consumer Product Safety Act. The Chamber supports the goals of H.R. 10819; that is to speed up the development of safety standards while insuring that the resulting safety standard is the product of broad technical and non-technical input from all interested parties. Additionally, we are particularly pleased to see the flexibility in the time period permitted to an offeror to develop a safety standard under H.R. 10819.

We fear, however, that Section 2(A), which would, under certain broad circumstances, permit the Consumer Product Safety Commission (hereinafter, "Commission") to develop safety standards in-house, without issuing invitations to interested parties, is counterproductive to the goals of the legislation. The offeror process is a new idea. There is no question but that there have been problems and that there is much room for improvement. Nevertheless, any changes should not limit input into the development process.

There are more appropriate means for promoting the efficient operation of the offeror process than having the Commission take complete control over the development process. Before invitations are extended, the Commission must improve

its information gathering effort. There is a need to define more clearly for the offeror the hazard and injury he is expected to address. Subsequently, after an offeror is selected, the Commission should provide for improved communication between itself and the offeror to insure that the development process stays on track. These problems will require a general re-evaluation and refining of the Commission's administrative procedure. Lastly, but very important, additional safety standards can be put in place if the Commission will emphasize consideration of voluntary standards promulgated by industry.

Therefore, I recommend that Section 2(A) be deleted, since it would limit greatly the offeror process and is alien to promoting a broad-based participation in the standards development.

The National Chamber is very much aware of the impatience with the perceived slowness of the offeror process. We further recognize that, to a great extent, Section 2(A), is an attempt to speed up this process. However, it is important to remember that the criticism of the present offeror process is that it is slow, not that is is unworkable. Enactment of Section 2(A) would be an admission that the Commission has been unable to provide the guidance and management skills necessary to promote the expeditious development of a safety standard through the present open offeror procedure and, is therefore, turning to a limited input approach. Further, this proposed provision is based on the assumption that a quality standard can in fact, be developed more quickly in-house than through the offeror process. This assumption is grounded in supposition, rather than fact.

To develop an effective standard quickly, the Commission must be able to manage the analysis from original discovery through evaluation of the offeror's recommendation. As I have suggested, one of the Commission's major problems has been its inability to manage and coordinate its activities with those of the offeror. Because the Commission has not developed all the necessary hazard and technical data, it has been unable to offer assistance and circumscribe the offeror's planning and writing of the safety standard. For proof of this failing, one need only look at the history of the swimming pool slide standard which was characterized by inordinate delay and unnecessary expenditure of time and money. If the Commission is unable to provide adequate assistance to the expert offerors, it is doubtful it can do better by taking over the safety standard development process.

In order to insure that the standard recommended is the best possible one, it is important that all views be represented. We question whether the Commission has this skill. The problems involved in insuring that the Commission is aware of the interests of industry are obvious. One glaring example is the difficulty the Commission would have in ascertaining a cost-benefit ratio. The Commission seldom, if ever, knows what a safety standard will cost the manufacturer or what percentage of that cost it will determine must be passed on to the consumer. In addition, there is a need for a myriad of opinions on how much additional cost the consumer is willing to pay for the product. Where price destroys the salability of the product, injury in the job market results when the consumer determines to buy a different (and conceivably more dangerous) product at a lower price. These are arguments best made by the different groups intimately involved with the manufacture and consumption of the product and not by Commission staffers seeking to defend their position.

It is not enough to say that the Commission will be prepared to hear all points of view. What is needed, and what the present offeror system offers, is an opportunity for the different interests to talk, negotiate, and examine the problems with one another. Ideally, the result is a recommendation, each part of which is finally accepted by all interests. With the Commission managing the process there is a substantial risk that the end product is not a synthesis or compromise. Rather, the end product might be a judicial-like determination based on what the Commission perceives to be the weight of the evidence. This result is open to attack by all "losing" interests.

Finally, this provision assumes the Commission is able to perform the kind of quality technical work necessary to insure the proper standard. Simply put, the Commission has not demonstrated that it possesses this ability. To limit input from those who manufacture the product as well as from consumers—those who use the product—seems a foolish waste of resources.

Enactment of Section 2(A) would destroy the system of what can be called "checks and balances" which presently exists in the offeror process. Former Chairman Richard Simpson has described the offeror process as being divisable into three phases. First, a finding of risk and determination of need based on

analysis of injury data. This function is performed by the Commission, but by necessity, must be considered, refined and expanded upon by the offeror when he develops a proposed standard. Second, is the attempt of the offeror and his committee to write a standard. Finally, the Commission evaluates and reworks the offerors' proposals, criticizing those portions with which it disagrees. It seems clear from Mr. Simpson's description that the offeror process is intended to permit independent interests, be they Commission, consumer, or industry, to evaluate each others work throughout the development process. This evaluation process insures that any standard is subject to careful scrutiny by independent and often competing interests. Sec. 2(A) eliminates these independent and ongoing evaluations. Under Section 2(A), the Commission controls and evaluates all work at all points in the development process.

This new provision has additional potential for mischief. Under the current law, an offeror's recommendation for a safety standard receives priority consideration from, we hope, an objective staff. However, if the Commission has developed its own proposal, it may be less willing to give proper consideration to the recommendations of outside groups. The 92nd Congress recognized this danger. The proposed standard must be legitimate consideration and not be discarded because the staff has a different proposal.[1] If Sec. 2(A) is enacted, the staff will indeed have a different proposal. Therefore, prior to enactment, Congress should assure itself that the Commission's work is of such high quality that there is no harm in restricting the input of private interests into Commission decisions.

We have, for lack of a better description, a philosophical objection to Section 2(A). When the Consumer Product Safety Commission Act was enacted, Congress was concerned that the development process be characterized by fair and open hearings. Congress understood that the best standards would result from unimpeded input by non-Commission sources, such as consumers, academics, and industry. Therefore, a clear and open offeror process was established. To change this process is a backing away from this policy of openness, as well as the policy of open government so forcefully championed by President Carter.

Finally, we question whether it is wise, from a practical point of view, to give this Commission a very broad power to develop standards on its own. The language of Section 2(A) is almost totally non-restrictive. In order to activate Section 2(A), the Commission need only follow normal administrative rules. Its decision is practically non-reviewable. An interested group which is not invited to participate in the development process must go into federal court to complain of the Commission's failure to issue invitations for offerors. There, under the Administrative Procedures Act, the court will reverse the Commission's action only if it finds it arbitrary and capricious; a heavy burden for any plaintiff to bear. We do not believe it is wise for the Congress to make it this easy for the Commission to limit access by interested parties. This history of the Commission indicates a need for additional, rather than less, assistance.

We agree with the Commission Office of Program Planning which contends that the basic concept of the offeror process is judged to be well grounded. I intend to reiterate some weaknesses in the operation of the Commission which, if corrected, will increase its speed and efficiency without resorting to limiting amendments.

It is obvious that prior to the development of a safety standard the Commission must first identify the hazard and the injury. Unfortunately, as stated above, the Commission's procedures for hazard identification and analysis have not been sufficient. This weakness was recognized by the Comptroller General of the United States in a December 12, 1977, report to the Congress titled: "The Consumer Safety Commission Needs to Issue Safety Standards Faster". The Comptroller stated:

"The Commission has not been obtaining data needed to identify injuries caused by consumer products and to evaluate the hazards associated with these products to determine the unreasonable risk of injury associated with them. The Commission did not have adequate procedures or data systems to assist in determining the cause of product-related injuries or to determine which hazardous products required regulatory action (pp. 14)."

This weakness in the identification process means that offerors have not been given a specific problem to solve. Rather, in effect, the offeror has been told that a problem exists and that he should solve it. The result is an inevitable lack of agreement in the offeror's committee as to the specific problem, and what

[1] See, House Report No. 92–1153, June 20, 1972.

type standard is required. This type of diffuse effort always consumes excessive amounts of time. For the expeditious planning of a standard, the offeror must have concise information describing the problem and the resulting injury. Today, as confirmed by the Comptroller, the Commission does not supply this information.

It is necessary that the Commission refine its information gathering process. It needs to determine more carefully how a product is being used; what type injury it causes; and who is using it when the injury occurs. Further, the Commission must improve the quality of its investigators as well as improve the evaluation of the results of these investigations. These improvements will follow from additional intensive training of the Commission's investigators and technicians. Once the Commission can tell the offeror specifically what it requires, the offeror will be better able to avoid irrelevant and unnecessary procedures and tests.

Inefficiency and lack of speed also result from poor communication between the offeror and the Commission during the development process. Often, historically, Commission staff members have taken a hands-off attitude while monitoring the offeror's work. Commission monitors have, in some instances, failed to assist offerors when problems were identified. This policy has meant inadequate guidance to offerors especially during those times when it was most needed. Offerors have requested technical and procedural assistance from monitors but have been refused because of the Commission's hands-off policy.[2] On other occasions, Commission staff has attempted to develop standard tests over the opposition of the offeror. In the midget Christmas tree lighting standards development, the Commission staff sought to include as part of the briefing package to the Commission, a material flamability test specifically rejected by the offeror. This failure to assist in keeping the process on track can result in the offeror expanding the scope of his work into areas not intended by the Commission as well as competition between staff and offeror. This inevitably leads to the unnecessary expenditures of time, money and effort.

The Chamber supports the Commission's effort to permit the offeror to develop a standard free of pressure from the Commission. However, the Commission should insure that the offeror is doing the specific job the Commission intended to be done. If the offeror deviates or indicates a need for assistance, the Commission could step in. Further, the Commission must recognize that a standard need not necessarily be developed to cover every conceivable risk presented by a product. Therefore, the Commission must be prepared to limit the offeror's work. Attempts to develop a standard for every possible hazard will use resources of time and money more properly utilized elsewhere. If the Commission can guide the offeror lightly into the proper areas and insure that only necessary data is gathered and necessary tests are made, it will promote an expediated development process. However, the Commission must recognize that the offeror has been selected because of his ability and should not be subjected to unnecessary Commission interference.

An additional weakness in the procedural process is the Commission's failure to evaluate the offeror's recommendation in a timely fashion. For example, it took the Commission 108 days to evaluate the swimming pool slide standard. Much of this delay can be attributed to the lack of a formal procedure for evaluating standards. Formal procedures would give both the offerors and the Commission staff guideposts to follow in assembling the information necessary to obtain Commission approval.

Another avenue which should be employed is emphasis on voluntary standards. It is unlikely that the Commission can develop more than a few standards per year. Since the purpose of the Commission is, after all, to promote product safety it should utilize fully the resources available to it. One of the greatest resources is voluntary standards. These standards are developed in the appropriate industry. They come complete with technical data. They offer the Commission an opportunity to simply evaluate. If satisfactory, they can be implemented industry-wide in far less time than a Commission mandated standard. The result is a diminution in the number of hazard related injuries at a net savings in time, money and effort.

In summary, the National Chamber supports the offeror process as it presently exists. We recognize the Consumer Product Safety Commission has not operated as effectively as originally intended. However, we do not believe effectiveness and efficiency would be enhanced by giving the Commission greater powers.

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[2] Report to the Congress, supra, p. 9.

Rather, the Commission's performance must be improved through fine-tuning the workings of the present procedures. We therefore urge that Section 2(A) be deleted from H.R. 10819.

Mr. ECKHARDT. Mr. Locker, I thought we had pointed out the limitations on the Commission in the exercise of this authority. I thought we had probed that pretty thoroughly.

Mr. LOCKER. I am not suggesting that you had not. I am only adding my voice to yours, Mr. Chairman.

Mr. ECKHARDT. I see. Mr. Broyhill?

Mr. BROYHILL. In the colloquy with the members of the Commission this morning, it was their position that section 7(c) needed to be amended so that they would have the authority to promulgate or propose a voluntary standard that could be amended somewhat by the Commission. Would you agree with this need for a change in that?

Mr. LOCKER. Well, I am aware of the proposals which have come before the Congress with respect to amending section 7(c) in the past. I would say this. First, the Commisson has never exercised its power under section 7(c). Why, then, does it seek to have it amended? In the case of Christmas tree lights, for example, a standard was in existence. If you examine the standard as developed by the National Consumers League, you will see that essentially NCL adopted the standard which industry adopted and implemented in a period of 8 months.

Mr. BROYHILL. How much advance are you talking about? Give me a time frame. Are you saying that industry adopted this particular standard and was using it far in advance of the promulgating?

Mr. LOCKER. No; when the so-called need for the standard arose, it arose within the context of section 15. The staff had preliminarily determined that literally every minature Christmas light imported into the United States from the Far East presented a substantial hazard and should be the subject of a 15(b) report. It invited every manufacturer—"every" may be a large word, but about 25 manufacturers were invited to submit substantive hazard reports under section 15(b). I represent most of those manufacturers. In each case we denied the existence of a substantial risk of injury.

The suggestion of the staff that the American public was about to be the subject of mass incineration or electrocution is ludicrous in light of the history and statistics, and the industry's own experience. Nonetheless, the Commission invited the reports. They were filed. The staff recommended section 15 action on a massive scale. The Commission disagreed with the staff.

It said, for the most part no, there were no substantial hazards. They were only unreasonable risks. However, directed the staff to prepare a proceeding under section 7. This was all before the Christmas season, and these lights, if they have any use, are used extensively during Christmas. It was at that time that the industry held its breath to find out whether in fact all of these substantial risks of injury would come home to roost in the form of mass electrocution or incineration. Nothing happened.

Mr. ECKHARDT. We have a vote at this time. We will have to take a recess. Do you have any further questions?

Mr. BROYHILL. I could save both of us some time in asking technical questions with respect to my questions about consolidations of the Act in that area, if it would be permissible, Mr. Chairman.

Mr. ECKHARDT. Why don't we just leave the record open? You may submit written questions and written answers.

Mr. LOCKER. I will be delighted.

Mr. ECKHARDT. Without objection, the record will be left open for that purpose.

[The information referred to was not available to the subcommittee at the time of printing.]

Mr. ECKARDT. I also would like to leave the record open with respect to whether or not there has been incidence of a number of fires with respect to Christmas tree lights. I would like to know that myself.

The committee will be recessed for 10 minutes.

[Brief recess.]

Mr. ECKHARDT. The committee will be in session.

Mr. Rauch, will you come forward?

STATEMENT OF ROBERT RAUCH, STAFF ATTORNEY, ENVIRONMENTAL DEFENSE FUND, ACCOMPANIED BY LESLIE DACH, SCIENCE ASSOCIATE

Mr. RAUCH. Thank you, Mr. Chairman.

My name is Robert Rauch. I am staff attorney with the environmental defense fund. With me today is Leslie Dach, science associate with EDF.

Mr. Chairman, with your permission, I would like to depart from my prepared testimony and simply ask that it is entered into the record.

Mr. ECKHARDT. Without objection, it will be so ordered.

Mr. RAUCH. I think in the interest of time I would like to simply try to summarize the major points in the testimony, and also add a number of others in response to some of the comments made by the Commissioners earlier this morning.

First of all, we think that the key issue before both this committee and the Commission at this time in terms of the reauthorization question is the Commission's ability to effectively produce a cancer policy. Chairman Byington himself, with whom I must say I agree very rarely, admitted as much this morning. He said he thought this was the key issue, and we agree with him.

Now, as I am sure you are aware from the hearings that have been held in the past year, the Commission's record in this area can be characterized at least at this time as nothing other than abysmal. It has been almost 2 years now since EDF first petitioned the Consumer Product Safety Commission to regulate tris-treated children's garments. During the 2 years which have passed since that time, we have repeatedly pointed out to the Commission the need to produce a viable cancer policy. Indeed, one of the reasons we petitioned them on tris was to get them to set some precedents which could later be used in the development of such a policy.

In the past year, despite repeated requests from EDF, the Commission has made very, very little progress in this area. Now, it is true that as of right now, there are two drafts of such a policy circulating within the Commission, one of them prepared by the staff and one by Commissioner Pittle and his immediate staff. Of the two, we clearly favor Commissioner Pittle's draft. We think it certainly is a far superior document. We think in many respects it is a very good policy.

However, we do have problems with it in two significant respects. The first is that the policy, despite moving closer toward an automatic proposal of a ban under section 8 once a classification decision has been made, does not go far enough. It still gives the staff far too much leeway in deciding if and when something should be proposed, and I would emphasize the point you made earlier this morning. Mr. Chairman, which is, all we are asking the Commission to do is propose things here. There is then subsequent rulemaking for the public and other interested parties to fully provide their comments. Your comment was made in reference to the offeror process, which we wish to address later, but we think the same comment applies here.

We see no reason, once a classification decision has been made, that something is a carcinogen, that a consumer product contains a carcinogen, that there should be an inordinate delay in terms of proposing a ban under section 8. After all it is only a proposal. There is no reason for the Commission to take, 3, 4, or 6 months analyzing whether they should even propose a rule. The very considerations the Commission will consider during that period are identical to those which would be considered during the rulemaking.

Indeed, many of those same considerations must be explicit findings under section 9 of the act, as you know. What we object to is the suggestion that the Commission must first go through its own process at the staff level and then duplicate the same process in the public comment and rulemaking period, if for no other reason than that the Commission will not have the benefit of public comments during the staff evaluation.

So, what we should suggest as the first major change is that the Commission immediately proceed to propose with the appropriate regulatory action once the Commission classification decision has been made. Now, in discussing this I realize I have not gone into a great deal of detail on the proposal. I am assuming the subcommittee is reasonably familiar with it. I would be happy to annswer any questions if I have not made myself clear.

[Mr. Rauch's prepared statement follows:]

STATEMENT OF ROBERT RAUCH, STAFF ATTORNEY, ENVIRONMENTAL DEFENSE FUND

Good Morning. Mr. Chairman, members of the Committee, I am Robert Rauch, Staff Attorney for the Environmental Defense Fund. With me today are Leslie Dach, Science Associate and Anita Johnson, also a Staff Attorney with EDF. EDF is a non-profit public interest gorup with over 45,000 members that has long worked for elimination of unnecessary human exposure to toxic chemicals. In the past, we have successfully petitioned the Consumer Product Safety Commission (CPSC) for regulations on the flame-retardant chemical TRIS and asbestos-containing fireplace logs. In conjunction with these petitions, we have testified before both the House and Senate on the Commission's activities.

Today, I would like to discuss two broad issues. The first is CPSC's failure to develop a policy for the regulation of consumer products posing a carcinogenic risk. The second is suggestions for changes in the Consumer Product Safety Act and the Federal Hazardous Substances Act. These suggestions grow out of our experience with attempting to use these statutes to protect the health of the American consumer.

Symptomatic of the Commission's inability to pull itself out of its self-imposed quagmire has been its failure to develop a responsive, scientifically sound approach to the regulation of carcinogenic chemicals in consumer products. EDF considers this failure inexcusable. Almost a year has passed since CPSC banned TRIS. Its only action since then has been against a number of products containing asbestos. And those standards were the result not of CPSC initiative

but of constant public and private agitation by EDF and other public interest groups. Getting these standards was a fight from beginning to end, despite the fact that the cancer risk posed by asbestos exposure has been documented in the medical literature for years.

Current CPSC procedures produce an endless stream of delays before rule-making on a carcinogenic hazard begins. There is no regulation forcing the Commission to respond, within a specific time period, to scientific information identifying a carcinogenic ingredient in consumer products, and, therefore, years can and do go by between the knowledge that something is a hazard and a CPSC attempt to do something about it. Moreover, there is no Commission policy delineating the types of scientific information the Commission considers sufficient for regulatory action and the kind of regulatory action that should follow a given kind of information.

There is every reason to expect that a variety of consumer products will contain ingredients that pose a cancer risk. For example, we already know that a number of products contain benzene or acrylonitrile, chemicals for which OSHA has proposed workplace standards. Other products, such as paints, dyes, chemical deodorizers and household aerosols also pose potential risks.

In short, there is an overwhelming need for the CPSC to develop and implement a policy for the identification, classification and regulation of consumer products posing a carcinogenic hazard.

The Commission itself has felt this need and Commissioner David Pittle and the CPSC Office of Program Management have drafted cancer policies. Characteristically, these proposals have serious and debilitating flaws.

EDF has conferred extensively with the CPSC on its proposed policies. Indeed, months ago, we began drafting a petition to CPSC containing our proposals for such a policy. We halted our work when the Commission let it be known that they were working on a similar document themselves. But here it is months later and nothing satisfactory has emerged. Moreover, CPSC has set no date for completing work on its draft proposals.

Of the two CPSC drafts, the one authored by Commissioner Pittle is superior. Its scientific criteria for identifying and classifying carcinogenic ingredients are for the most part satisfactory. However, it fails to set up strict time tables for classifying a substance following the receipt of scientific data and gives the Commission complete discretion in deciding whether regulation should follow classification. No matter how compelling the scientific evidence may be, the Pittle proposal allows CPSC years of deliberation before taking any action. This is clearly unacceptable.

I will not describe the cancer policy EDF would have proposed to CPSC. It sets up strict schedules for classification and automatically initiates rule-making following classification.

Under our proposal, within 60 days of a person's notifying CPSC of scientific evidence purporting to indicate that a substance poses a carcinogenic risk to humans, the Commission would classify the substance into one of three categories depending on the type of scientific evidence provided. Each of the three categories would have different regulatory consequences. Before classification, the Commission would determine if the chemical is present in consumer products in such a way as to result in human exposure and whether any other government agency was taking action that would make CPSC involvement unnecessary.

The first category, Category A, would consist of all chemicals which have been shown to cause a statistically significant increase in benign or malignant tumors or a decrease in the time between exposeure and onset of tumors in humans or in one well-conducted, reproducible experiment with one or more animal species; or chemicals for which other evidence is considered sufficient by the Commission for Category A classification. Within 2 weeks after Category A classification, CPSC would have to initiate rule-making under § 8 of the Consumer Product Safety Act (CPSA). During this rule-making, it would be assumed that only zero exposure to the carcinogen would fully protect consumer health.

As a matter of policy, EDF maintains that all carcinogenic ingredients in consumer products to which there is human exposure should be banned unless there are no available substitutes for the ingredient or product, the ingredient is necessary for the product to fulfill a certain function, and there is an overwhelming societal need or that function. In cases where all these requirements were met, the concentration of the ingredient should be lowered under § 7 to that amount necessary for product performance. An example here might be

benzene in gasoline. If benzene cannot be substituted for in gasoline and gasoline remains essential to our economy, then the amount of benzene in gas should be reduced to the lowest amount absolutely needed for gasoline performance.

Category B substances would be chemicals for which the animal or human data is suggestive or for which positive results exist in one of more short-term tests for mutagenicity, malignant transformation, or DNA interaction. Within 2 weeks of classification under Category B, the CPSC would initiate rule-making under § 27(e) of CPSA to make the potential hazards of the compound known to the consumer. CPSC would also insure through § 27(e) rule-making that the scientific studies necessary to determine whether a chemical belongs in Category A are begun. Finally, under § 7 the Commission would seek to ban all Category B materials that are not essential for product performance or limit the concentration of the chemical in the product to that necessary for product performance.

Category C would consist of chemicals that belong to a class of compounds that regularly displays carcinogenic activity. Examples of such classes are the aromatic amines, which include benzidine and many hair-dye chemicals, chlorinated hydrocarbons, for example, aldrin, the nitrosamines and polycyclic aromatic hydrocarbons. Within 2 weeks after CPSC classifies a chemical in Cateory C, it would initiate § 27(e) rule-making to require the kinds of short-term tests on which a Category B determination could be made. The inclusion of Category C in a CPSC cancer policy is critical because it enables the Commission to assume a more active role in assessing the potential hazards of consumer products. It would encourage safety testing of products before they appear on the market and provides the basis for declaring some products safe, thus helping to eliminate some of the public fatalism about chemical causes of cancer.

The EDF cancer policy also proposed two criteria for the mandatory use of the imminent hazard provisions of § 12 of CPSA. First, § 12 would be used against any Category A chemical in a consumer product to which the consumer cannot eilminate his exposure by simply terminating use of the product. For example, asbestos-containing fireplace logs leave asbestos fibers in the home that persist even if the consumer stops using the logs. Second, § 12 would be followed when use of a consumer product results in exposeure to a Category A substance at a level that meets or exceeds an existing or proposed OSHA standards. For example, the use of benzene-containing paint strippers in closed environments such as garages results in a much higher exposure to benzene than that permitted for workers. In suggesting this reliance on dose to trigger the imminent hazard provisions, we are not suggesting that a safe level of exposure to a carcinogen has been demonstrated, but rather that risk increases as dose increases.

EDF also support use of the imminent hazard provisions when the number of consumers exposed is high, or when a chemical is particularly potent. However, we have not arrived at this time at a method for quantifying these factors that would enable an automatic triggering of § 12.

The CPSC's failure to enact a policy on long-term health hazards is not, of course, its only failure. A recent study by the General Accounting Office noted that in four years of existence, the Commission has issued only three safety standards: swimming pool slides, architectural glass, and matchbooks.[1] GAO criticized the CPSC's priorities in choosing these and the four other consumer standards undergoing development. These three standards took an average of 834 days to promulgate under a statutory scheme which mandates promulgation in 330 days. Considering that the Commission has been appropriated $57 million since 1973, we think that a work product of three standards is pitiful.

The enormous cost to the taxpayer of this work product might be justifiable if the three standards set general policy for future, expedited product actions. This is not, however, the case. Each product has been dealt with on an ad hoc basis, and the carry-over to future safety problems is small. A general policy on carcinogens will reduce many marketplace hazards, compared to a single action on a single product.

Last week, the CPSC announced that it had published a pamphlet called "Super sitter," which instructs babysitters on what precautions to take, such as getting the telephone numbers of the doctor, poison control center, a hospital and the number where the parents can be reached (N.Y. *Times*, Feb. 21, 1978, p. 21). While the merit of these suggestions is indisputable, their obviousness leads one to question whether the Commission will do almost anything to avoid the difficult, technologically complex issues of marketplace safety that product safety standards entail.

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[1] "The Consumer Products Safety Commission Needs to Issue Safety Standards Faster." December 12, 1977. See also Jackson, "The Relaxed Regulator," in Trial 12, 5 (1976) 12.

We are unable to suggest statutory changes which will cure the four-year indolence of the Commission. Nevertheless, certain sections of the statutes do cry out for streamlining, so that, given the will, the Commission can perform more effectively.

The Commission should be able to develop consumer product safety standards itself.—Standard-setting is a complex process which is difficult and fraught with danger. Someone must determine how a product is to be designed and at what expense, at the same time assuring that the standard is not being used unfairly to create monopolies or inhibit valuable safety innovation. The difficulty of standard-setting is compounded by having the standard formed by outside organizations, largely industry groups, that are accustomed to the lowest-common denominator, don't-rock-the-boat approach of private standard-setting organizations. Once the outside group has developed a standard, the Commission must evaluate it, a step which entails development internally of much the same expertise which the outside group has. In many cases, it is more economical, more reliable, and faster to develop standards in house. This option is available to the Food and Drug Administration under the Medical Devices Amendments, which, like the Product Safety Act, rely strongly on use of standards to curb marketplace hazards. 21 U.S.C. 360d(c)(4).

The Commission should have explicit, general rule-making authority under the Consumer Product Safety Act. The Act now confers explicit authority to promulgate rules for supplying the Commission with technical data, rules for pre-market notification to the Commission for certain new products, rules for the form and content of certain labels, rules for the maintenance of records and reports, etc. The Commission has explicit rule-making authority under the Hazardous Substances Act and may well have implicit, Administrative Procedure Act, or constitutional authority to do so under the Consumer Product Safety Act. General rule-making authority is, of course, important for consumers. Rule-making encourages thoughtful, systematic development of policy, consistency of actions, and economy of proceedings. When agencies are required to articulate their standards for decision-making, they are more inclined to be wise and less inclined to be arbitrary. Moreover, rule-making permits development of policy under essentially legislative procedures rather than adjudication on individual cases, and prevents agency policy from being relitigated every time it is applied to a specific product. Increasingly, the courts are requiring governmental bodies to promulgate rules for their conduct most recently in *Sherril* v. *Knight* for the U. S. Court of Appeals for the District of Columbia, (Case no. 76–1945, December 15, 1977), where the Court required the White House to issue standards for granting or refusing press passes to journalists, so that press passes would not be arbitrarily refused.

Findings required for issuance of consumer safety rules should be simplified.—Under current law, the Commission must make findings as to the degree and nature of the risk of injury the rule is designed to eliminate or reduce. But it must also make findings as to "the need of the public for the consumer products subject to such rule, and the probable effect of such rule upon the utility, cost, or availability of such products to meet such need; and any means of achieving the objective of the order while minimizing adverse effects on competition or disruption or dislocation of manufacturing and other commercial practices consistent with the public health and safety." 15 U.S.C. 2058(c). The necessity for these elaborate findings impedes issuance of consumer product safety rules because the findings force the Commission to make judgments beyond its expertise, and involve an enormous amount of fact-gathering not directly related to health and safety. The requirements of these findings, technical as they are, will be used by manufacturers to challenge consumer product safety rules in court.

Procedures under the Hazardous Substances Act and the recall provision of the CPSA should be simplified.—Regulation of hazardous substances and remedies under 15 U.S.C. 2064 now requires a formal, trial-type hearing, which consumes a great deal of time and money. 21 U.S.C. 701(e) of the Food, Drug and Cosmetics Act is the formal hearing section mandated for hazardous substances. [Of the 16 formal hearings held under that section, "In not one instance did the Agency complete a rulemaking proceeding involving a hearing in less than two years, and in two instances more than ten years elapsed between the first proposal and the final order. The average time lapse was roughly four years." Hamilton, 60 Cal. L. Rev. 1276, 1287 (1972).]

Formal hearings on peanut butter ran four and a half months. The hearing transcript was 7,736 pages. [Much of the debate centered on whether peanut butter should contain 87 percent or 90 percent peanuts. Formal hearings on vitamin pill

limitations ran intermittently for over two years. The transcript consumed over 32,000 pages. Hearings on carbon tetrachloride, a substance known to be lethal, ran for two years, during which time the product was on the market. The danger of this product had been common knowledge in the scientific community for years. The Heffron Report commissioned by the National Commission on Product Safety comments:

"Administrators apparently fear that a major conflict in rulemaking or enforcement would tie up so much of the agency's resources that its ability to press its program would be hamstrung." [2]

Formal evidentiary hearings are the perfect instrument for those who would obfuscate and delay agency action. The mere availability of formal hearings has put FDA in the position of having to compromise its actions to avoid holding formal hearings. The formal hearing system allows industry to blackmail FDA in this way: either compromise your position or we'll request a formal hearing.

Last, formal hearings held under § 701 in the past, have been poor vehicles for substantive input into decisions, because the issues at stake are really policy issues rather than factual ones. A formal evidentiary hearing, conducted orally by lawyers and presided over by an administrative law judge, with full cross-examination of witnesses, and formal findings of fact and law on the record introduced at the hearing, is an awkward way to consider whether it is wise policy to ban a drug acknowledged to cause cancer in animals or to set up an emergency permit system for tomato canning. As Kenneth Culp Davis, perhaps the outstanding expert in administrative law, has stated: "A trial is designed for resolving issues of fact, not for determining issues of law, policy or discretion. In rulemaking, the method of the trial has no place except where specific facts are at issue, and even then it should seldom be used when the disputed facts are legislative." "The Requirement of a Trial-Type Hearing," 70 Harv. L. Rev. 193, 1977 (1956), as quoted in Laden, 736.

Mr. ECKHARDT. Chairman Byington was raising the question. As a matter of fact, he suggested that the chronic hazard authority of CPSC be shifted to EPA. What do you think about that?

Mr. RAUCH. Mr. Chairman, we at this point would not favor such a move, although I want to say that that judgment is conditioned upon the Commission getting itself together very quickly on a good cancer program, which they certainly have not done up to this point.

To be quite frank with you, we do have generally more confidence in the Environmental Protection Agency than we do in the Commission. In fact, earlier this year, or rather, this past year, when the Commission appeared unwilling to act on fyrol after repeated requests from EDF, to use the authority in 27(e) which you referred to this morning, we finally gave up and said, we will go to EPA and talk to Mr. Costello about using section 6 of TSCA.

As it turned out, EPA was reluctant to do it because the Commission was already so deeply into it, but nevertheless the fact remains that we still think the primary responsibility should be with the Commission.

Now, let me say that if the Commission's performance does not drastically improve within the next 1 or 2 months on this issue, we would favor such a proposal.

Mr. ECKHARDT. Let me talk about this a little. When we originally considered passing the Toxic Substance Act, and thus granting authority to EPA, we were concerned with two issues. First, there was the question of filling certain interstices of existing laws which did not cover an area in which damage might be done directly to a person or the environment, either by direct emissions, by creating hazards in the workplace, or by putting dangerous things in the hands of consumers.

Second, we felt that there were other ways that danger could occur,

[2] From Laden, "FDA Rule-Making Hearings," George Washington L. Rev., 40, 4 (May 1972) 726, 733.

as, for instance, in the case of freon. There is no direct danger to people working with it or to those who buy the product, but danger to the environment in its waste. As a result, we gradually recognized that there was another and perhaps more important purpose, and that is to cut off the main valve, so to speak, with respect to dangers which might enter the marketplace, and largely those with chemical dangers.

As it turned out, EPA was reluctant to do it because the Commission was already so deeply into it, but nevertheless the fact remains that we still think the primary responsibility should be with the Commission.

Now, let me say that if the Commission's performances does not drastically improve within the next 1 or 2 months on this issue, we would favor such a proposal.

Mr. ECKHARDT. Let me talk about this a little. Aside from the question of the performance of the two agencies, when we originally considered creating or passing the Toxic Substance Act and thus granting authority to EPA, we were concerned with, first, the question of filling certain interstices of existing laws, which did not cover an area in which damage might be done to a person by an environment, either by direct emissions, by creating hazards in the workplace, or by putting dangerous things in the hands of consumers.

We felt that there were other ways that danger could occur, as, for instance, in the case of freon. There is no danger to people working with it or those who buy the product, but danger to the environment in its waste. We gradually recognized that there was another and perhaps more important purpose, and that is to sort of cut off the main valve, so to speak, with respect to dangers which might enter the marketplace, and largely those were chemical dangers.

Mr. RAUCH. Right.

Mr. ECKHARDT. And we felt that this was very closely related to the other purpose, and that to put such authority in an agency to develop chemical expertise with respect to what is inherently dangerous was a desirable way to do it.

Product safety has generally been regarded as relating to mechanical dangers, rather than long-term chemical hazards. As a result, the Commission may not have the kind of expertise EPA does in this area, and it may not have the resources to adequately develop the expertise.

Mr. RAUCH. Let me comment on that because I think you have raised a very good point. I think performance is not the only issue we should look at clearly. Let me just say we think that EPA currently is developing more expertise in the area of chronic hazards just as a result of implementing TSCA than probably any other agency, although OSHA has certainly made considerable strides in the last couple of years. However, at this time EPA quite honestly is still bogged down in the initial phases of getting TSCA going. In fact, representatives of EDF just had a meeting with Mr. Jellenek about the need to get something substantive going under section 6 a few days ago.

I think what you are suggesting is that EPA, because of its growing expertise and its greater knowledge of chronic hazards, probably should get this authority. As a general principle I think I would agree with you. I think from our too short-term view we tend to look at tomorrow and the next day.

We have brought the Commission and when I say we, I mean the public interest community as a whole, and also the industry to a point now where I think they are finally ready to do something in this area. It has been a long, arduous, difficult process, but I think to sort of snatch the authority away from them without giving them one last opportunity to prove themselves would be a little unfair despite the fact that we have been so critical of them. I agree with your principles in terms of logic. Maybe it should be with EPA and we should certainly support that judgment if something doesn't change in the next couple of months.

Let me also add to this, Mr. Chairman, that there has been a lot of discussion as I am sure you are aware in the White House and elsewhere about abolishing the Commission altogether. I think the unhappiness has reached such a point now with the Commission's performance that there are some people who think its functions should be simply given to other agencies, perhaps of the type you are mentioning now. One is the possibility of giving its toxic functions at least to EPA.

Once again we are not at the stage where we think the Commission should be disbanded, but we think you have a unique opportunity right now, because you are at the reauthorization stage of exerting some really effective pressure on the Commission to do something. It is amazing how an agency suddenly begins to respond when it is in a "sunset" situation. We have been through countless hearings before Congress in this past year where oversight has taken place and where, despite the best intentions and some very good hearings, not a great deal has happened in the way of doing better as a result of those hearings and it has frustrated us.

But your committee is in a unique position now. We think you can exert some genuine pressure, some pressure needed on the Commission and what we would like to propose to you, if I can take the liberty, is that you ask the Commission, if you share our concerns about this cancer policy in the area of chronic hazards, to produce something for the committee which you would deem acceptable within a specific timeframe, say within the next month or so. Chairman Byington made a commitment this morning to have something in the Federal Register by the end of March. Let us put them to the test on that. Let's indicate the committee's interest in their meeting that deadline and indicate to the Commissioners that should they fail to meet that deadline, or alternatively should they fail to produce a policy that has a chance of doing some real good, that you will expect to see them back up here again to discuss whether, in fact, the Commission should be reauthorized at all.

Mr. ECKHARDT. You have been talking, particularly in your formal statement, and I think the Commission has been more or less talking in terms of initiating a banning process. I am not sure how much progress that calls for. I would like to be sure it is not just a suggestion, an informal suggestion, but rather some motion toward establishing a program.

Mr. RAUCH. I would agree with you and I think the minimum you should ask them to do is to have published it in the Federal Register. We would favor, and I would like to get into this later, a proposed rulemaking rather than just a policy for public comment, but a pro-

posed rulemaking which would incorporate a policy which closely parallels that which Commissioner Pittle has already suggested. Hopefully this rulemaking proposal would follow the outline of the policy which we have described in detail in our own testimony. We have gone in this testimony very explicitly into what we think should be in there and we have given it is a lot of thought. But I would suggest you hold them at least to publication in the Federal Register, hopefully of a rulemaking notice.

The real difficulty we have had with the Commissioners on this issue is they all have different ideas and they all don't want to agree with each other and it is like pulling teeth. We have met individually now with both Commissioner Franklin and Commissioner Pittle trying to get some type of resolution of this. We thought we might have a resolution last week and we thought some commitments were being made particularly by Commissioner Franklin, but it now appears that we have been too optimistic. We are disappointed, quite frankly.

Commissioner Franklin has been out front as you know on this policy. She has had her name in the paper. She has been lauded in the Washington Post in the editorial section for being a leader, and yet when you look at the substantive record of what Commission Franklin has proposed and/or agreed to it is rather sorry. We don't mind people taking credit for what legitimately they have done, but we do object to them taking credit for things which they have done very little to move forward.

Mr. ECKHARDT. You do suggest the Commission be given an explicit grant of general rulemaking authority in your present statement. Don't you think they actually have that authority? I think they have inherent authority to issue rules necessary to address their purpose. I think that position is supported by Kenneth Culp Davis' writing with respect to Commission authority and also supported by *Gibson Wine* v. *Snider* and other cases.

The thing that troubles me a little bit about writing rulemaking authority when in fact it exists, is the problem of saying that the Commission may define the terms of its jurisdiction. To a certain extent this may give too wide an authority or may imply that Congress is simply giving the agency a bootstrap lifting power, and I think that would be an unfortunate thing.

Mr. RAUCH. I completely agree with you. Let me say as far as EDF's position goes if you are interpreting our testimony to mean that we think the Commission does not have general rulemaking authority implicit in the existing statute then either we have poorly written our testimony, or you are misinterpreting it. I hope for our sake it is the latter, but if we have not written it properly let me make it very clear. We think the Commission does have implicit general rulemaking authority in the statute now. We think it is supported by the cases you have cited as well as by the Administrative Procedure Act itself.

However, let me just add that as a precautionary measure it might not be a bad idea for this committee to explore further the possible need to bolster that interpretation possibly with specific language.

Mr. ECKHARDT. I have already suggested to you some of the dangers involved there, such as trying to describe with precision the jurisdictional mandate of the Commission and how that may be affected by giving authority to interpret language of statute. You know I am a

little bit inclined to leave a bit more to the courts than legislative counsel are frequently inclined to do, because I sometimes think when we try to spell things out to the extent of crossing every "t" and dotting every "i" we imagine ourselves too omniscient in foretelling what will happen when the real factors develop.

Mr. RAUCH. As a practicing attorney there are times I wish Congress had been more explicit. I am involved in some litigation right now where I wish that were the case.

Mr. ECKHARDT. That gives you an option for practice.

Mr. RAUCH. Yes; but you see I don't get paid on a per hour basis. I get paid a salary. For a private practitioner that would be true.

Let me just say I think what we have in mind is not a very broad statement. Clearly, there is a danger just in terms of the delegation doctrine. There is a danger in terms of sending the Commission out on fishing expeditions. There are all kinds of dangers, but we think there are general rulemaking provisions in other statutes that might be used as a model. For example, there are some provisions of course now in the Federal Hazardous Substances Act. There are some provisions in the Food Drug and Cosmetic Act under which FSA is modeled which have been sustained by the courts. As you probably recall there was a huge battle many years ago whether FDA had authority under section 701(a) of their act to issue substantive rules pursuant to their rulemaking authority. It was finally resolved that they did have substantive authority under that general grant and it was upheld as I recall by the Supreme Court. I could be wrong; it may have been a circuit court. But in any event the courts have upheld some of the provisions which have been litigated. So I think you could find a model which has already been judicially tested and allow us to avoid some pitfalls you are addressing.

Mr. ECKHARDT. Yes. We had an interesting situation with the Federal Trade Commision because at the time we were working on legislation that granted rulemaking, the octane rating case was in process. Before it was decided, the Federal Trade Commission was very interested in us giving rulemaking authority and really pushing the bill and willing to provide all kinds of due process in the rules procedure. But when the octane rating case came out and said they had that authority inherent in the statute, the FTC Chairman called me just before we went into conference and said this rulemaking procedure you have provided will tie us up for 7 years. And I told him, well I think you are a little too late to raise that question with me and besides I don't believe that it will.

Mr. RAUCH. You are describing a situation with which I am not familiar so I could make few substantive comments. I will take your word on it that this can backfire.

Let me say that if you were to ask me directly, would it be a wise idea at this time for the committee to propose additional general rulemaking authority, I would probably say no. I think you ought to study the problems somewhat more. I think you might ask your staff to look into it. In the meantime, we would hope that you would urge the Commision to adopt your view and our view that they do have that rulemaking authority and that they will propose this cancer policy as a substantive proposed rule.

Just our experience recently on tris with the horrors of interpretive rulings, I can assure you illustrates the need for substantive rules.

We have just been through a nightmare in which I have been personally, rather heavily involved unfortunately and it is still going on. So I think it is a very important provision. I think you recognize the importance of it and I hope you would persuade the Commission that they have that authority and would hold them to proposing actual rules as part of the cancer policy.

Mr. ECKHARDT. Are there any questions by staff? Thank you very much for your testimony. It has been most helpful to us.

Mr. Jerry Hogan, Consumer Federation of America. Thank you Mr. Hogan for letting Mr. Rauch go ahead of you. I understand he had a tight transportation schedule.

Mr. HOGAN. You are very welcome.

Mr. Chairman, considering the brevity of my statement I think it might be in order and I think it deserves to be read certain parts, I will try to summarize where possible and to elaborate where necessary. Due to these departures I wish with your permission that the entire statement be included in the record.

Mr. ECKHARDT. Without objection it will be so ordered.

STATEMENT OF JERRY F. HOGAN, LEGISLATIVE DIRECTOR, CONSUMER FEDERATION OF AMERICA

Mr. HOGAN. The subject of this morning's hearing is of great importance to the Consumer Federation of America. It is no secret that one of the more distressing aspects of the CPSC's record in terms of consumers' expectations has been the failure of the CPSC to develop an appreciable number of mandatory product standards. Therefore, CFA welcomes any opportunity to participate in any discussions dealing with the resolution of this situation.

We feel, therefore, that the main issue before us this morning is to modify in some manner a workable form for the offeror process. Too often too much attention is directed toward obtaining an ideal arrangement and by this I mean the ideal arrangement that originally was proposed and ultimately enacted having industry, consumer groups, and Government combine in the developments of standards. Too often this ideal arrangement results in expediency, proficiency, and productivity being sacrificed.

This could not have been more clearly demonstrated than during the 5 years of the Consumer Product Safety Commission for certainly the elation of consumers would have been tempered at the time the CPSC was established had one been able to predict that 5 years of its existence would generate just three product safety standards. Clearly then there is inherent in the offeror process built-in elements that only serve to defeat its purpose. That is, the objective of promulgating acceptable minimum standards for the countless products that have been introduced into our daily lives has hardly been served by the issuance of merely three standards in 5 years.

Therefore, CFA favors slight modification of the offeror process and strongly endorses any legislation which would provide the requisite flexibility that would result in the implementation of standards at a greater frequency. The Eckhardt bill, in my view and CFA's view, clearly reflects an effort to accomplish that end and appears on its face to be a supportive response to Commissioner David Pittle's original proposal to allow greater flexibility.

However, CFA would stop short of full endorsement of the bill as currently proposed for three esential reasons. First, CFA is not satisfied that the language as drafted would adequately preserve the right of consumers to participate at an early stage and to retain the magnitude of clout that they presently would hold when acting in the role of offeror. That is, in the event that the Commission should decide not to invite proposals from prospective offerors and otherwise qualified offerors, participation could very well be reduced to that of an advisory role.

CFA strongly recommends provisions for insuring that interested representatives of consumers and consumer organizations be given sufficient opportunity for meaningful participation of the development of such standards. The language as drafted fell short of such assurances.

Second, the circumstances which would authorize the Commission to develop a consumer product safety standard without making invitations to prospective offerors are not clearly delineated and this would be in some way an amplification of what Commissioner Franklin expressed and we share her viewpoint that the word "or" could very well create a problem.

Mr. ECKHARDT. What do you think about the language that I proposed as a possible substitute? It seems to me that the language as it appears in the bill is a little bit artificial because each of the elements is really, at least the first three elements, are factors for consideration, rather than something that must be determined. If, on the other hand, we require that they all be found conjunctively, that would seem to me to be too restrictive.

Mr. HOGAN. I would certainly be more in favor of "or" than the use of the word "and," but I would be more comfortable with the language you suggested——

Mr. ECKHARDT. The language I suggested would simply call for these matters to be taken into account and that the ultimate decision would be based on what would be the best and most expeditious method of standard development.

Mr. HOGAN. We would be more comfortable with that. Still, the only danger that I would see would be to delineate the guidelines in such a way that there would be no possibility of a qualified offeror in one case being rejected and an unqualified offeror in another case being accepted.

Mr. ECKHARDT. Is that not a danger that always exist and one which really cannot be avoided by language? What I am getting at is this, the offeror process cannot by its very nature be a means of protecting every interested party because there has to be some degree of selectivity in participation. Section 9 is what we impose upon the Commission to protect the rights of all interested parties. If perhaps there is not enough assurance in section 9 that a consumer group will be entitled to participate in the rulemaking process. Then that is the place we ought to address to insure protection of that right.

Mr. HOGAN. That could be.

Mr. ECKHARDT. The effectiveness of the public participation in either the offeror process or H.R. 10819's proposal is always going to be based upon the goodwill of the Commission. Of course, section 9 does not just leave it to the goodwill of the Commission. It requires a publication of the rule and that persons affected by the rule be permitted to partici-

pate in presenting evidence to the Commission. Further, it includes rather liberal provisions for review and even for hearing additional facts in a court proceeding. So may be the place where you need protection or where you would use the language in the act for your protection would be section 9 rather than section 7.

Mr. HOGAN. I view the proceedings this morning more as testing the winds on the possible amendment of section 7 and I did not look at section 9 as a focus for our attention this morning, but that could be a viable alternative.

I raise the first objection, and I wouldn't even use such a strong word as "objection" to the bill because I would not want it to be misinterpreted that we are against the Eckhardt bill. In fact, we do endorse it. We just stop short of full endorsement and I only raise the initial contention with the word "or," and I believe it is 2(a) that could possibly permit the Commission too wide a degree of latitude in whether or not to choose to use the offeror process, if they needed simply to make one of those standards. But again I am comfortable with the language you suggested and I feel that Commissioner Pittle was in accord that the word could be deleted and some acceptable modification of what was originally proposed could replace it. Unless more definitive prerequisites are drafted, the Commission would be afforded an undue degree of latitude.

I am reiterating. CFA recognizes that there will be instances when the Commission would be more efficient and effective than any outside offeror which is why we favor this flexibility. But the vagueness of 7(b)(2)(a) which we just discussed would provide CPSC with the power to reject qualified offerors, accept unqualified offerors, and defend either action. I believe again that if substituted language were used, that could clear it up and we would be comfortable with it.

Finally, a full endorsement of the Eckhardt proposal could be interpreted as an admission by CFA that circumstances would rarely exist when a consumer group could be a successful offeror. CFA firmly believes that when adequately funded and given sufficient direction, consumer groups cannot only serve successfully as offerors but can produce standards genuinely reflective of consumers' views. CFA urges the committee not to lose sight of this value in deciding upon the degree of flexibility it wishes to provide to CPSC. In some way then CFA would support any change that would increase the frequency of mandatory issue standards being issued. Indeed, any change would probably increase the frequency, but CFA continues to believe that standards developed with sufficient consumer input should be the rule and not the exception. It is our position that adequate measures be taken to preserve the opportunity for consumers to be offerors and when not acting as offerors, that it be provided the opportunity and incentive to participate in a meaningful manner.

Thank you.

[Mr. Hogan's prepared statement follows:]

STATEMENT OF GERALD F. HOGAN, LEGISLATIVE DIRECTOR, CONSUMER FEDERATION OF AMERICA

Consumer Federation of America is a federation of 225 national, state and local non-profit organizations that have joined together to espouse the consumer viewpoint. CFA and its member organizations represent more than 30 million consumers throughout the United States. Among our members are: 53 state and

local consumer organizations; 17 cooperatives and credit union leagues; 66 rural electric cooperatives; 27 national and regional organizations ranging from the National Board of the YWCA to the National Education Association; and 16 national labor organizations.

The subject of this morning's hearing is of great importance to Consumer Federation of America. It's no secret that one of the more distressing aspects of the CPSC's record in terms of consumers' expectations has been the failure of CPSC to develop an appreciable number of mandatory product standards. Therefore, CFA welcomes any opportunity to participate in any discussions dealing with the resolution of this situation.

Too often when too much attention is directed toward obtaining an ideal arrangement it later becomes evident that expediency, efficiency and productivity have been sacrificed. This could not have been more clearly demonstrated during the first five years of the Consumer Product Safety Commission. For certainly the elation of consumers would have been tempered at the time the CPSC was established had one been able to predict that five years of its existence would generate just three product standards. Clearly then there is inherent in the offeror process certain built-in elements that only serve to defeat its purpose. That is, the objective of promulgating acceptable minimum standards for the countless products that have been introduced into our daily lives has hardly been served by the issuance of merely three standards in five years.

Therefore, CFA favors slight modification of the offeror process and strongly endorses any legislation which would provide the requisite flexibility that would result in the implementation of standards at a greater frequency. The Eckhardt bill, in my view, clearly reflects an effort to accomplish that end and appears on its face to be a supportive response to Commissioner David Pittle's original proposal to allow greater flexibility.

However, CFA would stop short of full endorsement of the bill as currently proposed for three essential reasons:

First, CFA is not satisfied that the language as drafted would adequately preserve the right of consumers to participate at an early stage and to retain the magnitude of clout that they presently would hold when acting in the role of offeror. That is, in the event the Commission should decide not to invite proposals from prospective offerors, an otherwise qualified offeror's participation could very well be reduced to that of an advisory role. CFA strongly recommends provisions for ensuring that interested representatives of consumers and consumer organizations be given sufficient opportunity for meaningful participation in the development of such standards. The language as drafted falls short of such assurances, in our view.

Second, the circumstances which would authorize the Commission to develop a consumer product safety standard without making an invitation to prospective offerors are not clearly delineated. Unless more definitive prerequisites are drafted, the Commission would be afforded an undue degree of latitude in exercising its option to make an invitation. CFA recognizes that there will be instances when the Commission would be more efficient and effective than any outside offeror. But the vagueness of 7(b)(2)(A) would provide CPSC with the power to reject qualified offerors, accept unqualified offerors and defend either action.

Third, a full endorsement of the Eckhard proposal could be interpreted as an admission by CFA that circumstances would rarely exist when a consumer group could be a successful offeror. CFA firmly believes that when adequately funded, and when given sufficient direction, consumer groups can not only serve successfully as offerors but can produce standards genuinely reflective of consumers' views. CFA urges the committee not to lose sight of this value when deciding upon the degree of flexibility it wishes to provide to CPSC.

In summary, CFA would support any change that would increase the frequency of mandatory standards being issued. Indeed, any change probably would increase the frequency. But CFA continues to believe that standards developed with sufficient consumer input should be the rule and not the exception. It is our position that adequate measures be taken to preserve the opportunity for consumers to be offerors and, when not acting as offeror, that it be provided the opportunity and incentive to participate in a meaningful manner.

Mr. ECKHARDT. I hope that we have drafted these amendments broadly enough to provide the opportunity to consumer groups to be offerors. In some instances, this bill will lift the burden from consumer

groups because, even assuming that consumer groups are adequately remunerated for their work, they have relatively limited resources. It would seem to me to be desirable to create a situation that when technical questions are too exhausting of consumer group's resources, then the independent regulatory agency has the option of proceeding on its own without necessarily having to go to industry. And that I think is the concept I had concerning this legislation.

Mr. HOGAN. I would concur with that. There is not an abundance of available consumer groups who ever could qualify or would be willing to offer to occupy the role of offeror. Again, this would be one of the reasons why we would support any change that would provide the Commission with the flexibility to operate in the role of an offeror, provided again that the consumers not only be encouraged and invited but that measures be drawn up that perhaps stop short of making it mandatory that they participate, but make it very attractive and provide incentives for them to participate so that it would not be drawing on their income or their small funds with which they operate, but that they would be reimbursed and given technical support should they desire to hire their own technical experts, for example, and just basically assure that their participation would be in existence.

Mr. ECKHARDT. Ms. Nord?

Ms. NORD. I have no questions.

Mr. ECKHARDT. Staff questions?

Mr. MCLAUGHLIN. No thank you.

Mr. ECKHARDT. Thank you so much for your testimony and your patience.

Mr. HOGAN. Thank you.

STATEMENT OF HARRY A. WRAY, CONSULTANT, FLAMMABILITY OF LIQUIDS, HARRY A. WRAY ASSOCIATES

Mr. WRAY. Mr. Chairman, I thank you for the privilege of presenting my testimony this morning. I appreciate the fact that as a private citizen I have an opportunity in this country to present my concerns to a legislative body such as this and I certainly do appreciate it.

I am not going to say too much against the Consumer Products Safety Commission at the present time because some things which I have asked for and suggested to them they have done for me. So I cannot very well say anything about it. However, one of the most important things in which I have been involved, they have not been able to do anything about even though they would like to. I have before me a copy of their comments and regulations banning contact adhesives of the extremely flammable type.

Monday, December 19, 1977, in the Federal Register they state that they would like to go to the closed cup procedure for determining flash point of flammable liquids and combustible liquids, but they are prevented by law from doing so. If they were to use the Consumer Product Safety Commission Act to ban the extremely flammable contact adhesives they would still have to use the Federal Hazardous Substances Act, for labeling them. Therefore they would have to require the open cup that is specified in the law.

Our concern is that the law be amended to remove the requirement for the Consumer Product Safety Commission to use the open cup

and to permit them to use the closed cup which is now being established as the standard procedure for both the Department of Labor and the Department of Transportation. The closed cup has been established by many countries all over the world. It is now being considered by people in the European Common Market, etc., as the standard method of determining the flammability characteristics of flammable material.

You might ask how I am related to this. I am the chairman of the ASTM, Ad Hoc Committee on Flashpoint Methodology and Government Response and you have a listing of the things with which I have been associated. I would like at this time, to offer my written report and testimony as a part of the record. I will not go ahead with reading the rest of the document, except to summarize some of the things I would like for you to consider.

Mr. ECKHARDT. You would like to have your whole statement placed in the record?

Mr. WRAY. That is right.

Mr. ECKHARDT. Without objection it will be so ordered.

Mr. WRAY. Thank you. In the amendment that has been proposed by Congressman Edgar, the first two paragraphs proposed that the Commission be empowered to define flammable and combustible liquids. The third paragraph states that it is the intent of Congress to make sure that the regulations are in terms compatible with all other agencies.

The reason for the closed cup method is that they are more accurate and more reproducible. It represents the true condition of flammability, because the closed cup is the temperature at which the lower flammable limits of a material is reached. The open cup methods are much more expensive. The closed cup is much more economical. One company has said it would cost $75–100 to run an open cup test and only $30–$50 to run a closed cup test.

The current administration is committed to greater cooperation between agencies. This amendment would make that cooperation possible. The definitions of flammable and combustible liquids now enforced in DOT and OSHA regulations require greater safety in handling liquid consumer products because it increases the number of things considered flammable and thus you would be considering them in a more hazardous condition. It makes the regulations of the commission compatible with the other agencies and other regulations including those of muncipalities and states. It prevents confusion.

A consumer product manufacturer may have to label a bottle of his material as combustible and then when he ships it or stores it, it has to be considered as flammable which leads to confusion.

Some manufacturers have had experience with users of these materials being confused. They will say, here comes a carton of material which has a red label saying it is flammable, it is dangerous. Then the bottle has on it 'combustible' which is not too dangerous. That is a confusing thing. It produces an unnecessary cost to the United States business because it requires them to make a second test on something they have already tested for DOT and DOL. It creates costs in addition to that of duplicate testing, costs of preparing duplicate lists of test data, additional instructions and also for increased surveillance of workers to insure compliance with all of the regulatory agencies.

The Commission has indicated their approval of this through the Product Safety Advisory Council in a letter which I received in September and which I believe your committee has received a copy.

In reply to the testimony which I gave before the Commission, they indicated they would like to go to the closed cup method but are unable to because of the law. This again indicates the dilemma the Commission is in which we have actual instances where the Commission and the Government are saying that a substance is both flammable and combustible.

I would like also one thing else to say in relation to something that has been said this morning in regards to voluntary consensus standards organizations, such as ASTM. I think that one of the greatest things that can be done in regulating the safety of products in the United States would be to have greater cooperation in these types of organizations with Federal regulatory agencies.

My association with the Ad Hoc Committee on Flashpoint Methodology has indicated that industry members, consumers and Government agencies can sit down together in a nonadversary context and talk about our different problems and therefore come out with some mutually agreeable things which will produce reliable test procedures for the safety of the American public, at the same time at an economical cost to the producers.

An example of what we have been doing is in the Federal Register I mentioned before. In it there is a definition which our ad hoc committee prepared and which has been accepted apparently by the Commission. We have prepared a definition of what is a liquid and a solid for the Department of Transportation. The Department of Transportation people sat in with us when we were doing it. We knew what they wanted us to say and what they wanted us to be doing, and we told them what we were interested in and we came to a mutual agreement. It offers that this will be eventually an ASTM society definition which will be for Federal agencies to use in any regulation they may see fit.

Thank you again for the privilege as a private citizen of coming before this group.

[Mr. Wray's prepared statement follows:]

STATEMENT OF HARRY A. WRAY, CONSULTANT FLAMMABILITY OF LIQUIDS, HARRY A. WRAY, ASSOCIATES

I. THE ISSUE

The Federal Hazardous Substances Act Amendments of 1975. Sec. 2 Section 1261(1) of title 15 United States Code specifies that "extremely flammable", "flammable" and "combustible" liquids be defined by their Tagliabue Open Cup Flash Point values.

An "extremely flammable" substance is defined as one with a flash point at or below 20° Fahrenheit; a "flammable" substance as one with a flash point above 20° Fahrenheit to and including 80° Fahrenheit; and a "combustible" substance as one with a flash point above 80° Fahrenheit to and including 150° Fahrenheit.

However, since 1970, the Occupational Safety and Health Commission, through their regulation 29 CFR, Chapter XVII, Part 1910. 106, defines combustibility and flammability in terms of closed cup flash point values. "Combustible" means any liquid having a flash point at or above 100° Fahrenheit and "flammable" means any liquid having a flash point below 100° Fahrenheit.

Furthermore, on January 1, 1977, similar definitions became a part of the Department of Transportation regulation 49 CFR 173.175. These regulations specify similar closed cup flash point values in defining "flammable" and "combustible" liquids.

Thus, manufacturers of consumer products are required to conduct duplicate testing of materials for the same property and face the possibility of having to label a product both as a "combustible" and as a "flammable" liquid.

The amendment HR 5768 removes the requirement for open cup testing and permits the Consumer Product Safety Commission to specify closed cup tests similar to the other agencies thus removing the necessity for duplicate testing by industry.

II. STATEMENT OF INTEREST

I am Harry A. Wray, residing at 1428 Michigan Avenue, Swarthmore, Pennsylvania, representing myself before this Subcommittee as a consultant.

I am a retired chemist with 30 years service in the Fabrics and Finishes Department of E. I. du Pont de Nemours & Co., spending the last ten years in preparing, revising and editing test methods and technical practices for the control of paint. During this time, I was involved with flash point testing as it relates to the regulations of the U.S. Departments of Transportation and Labor.

While employed by du Pont, I became active in the American Society for Testing and Materials and have continued so in my retirement years.

At present, I am Chairman of the ASTM ad hoc Committee on Flash Point Methodology and Government Response, an organization that includes representatives from 10 active technical committees of ASTM and of the major organizations in the Unitd States involved in flammability hazards of liquids. One of its aims is to promote uniform or compatible methods for specifying the flammability of liquids. I am also the Chairman of subcommittee 22 on Health and Safety of ASTM D–1 on Paint and Related Coatings and Materials. I am a member of the ASTM Board of Director's committee on Terminology and its coordinating group on Fire Terminology and of other ASTM Committees involved in the flammability of liquids. I am also a member of the International Standards Organization TC–35 on Paints and Varnishes and have association with personnel from other nations' standards organizations working in the field of flash point testing.

My association with these organizations, along with persons from industry and business, has led me to spend my retirement in promoting safety in handling hazardous substances at an economical cost. It is my firm belief that this amendment to the Federal Hazardous Substances Act will promote safety at the same time reduce costs to U.S. industry.

III. INTENT OF THE AMENDMENT

The first two paragraphs of the proposed amendment permit the Commission to establish definitions and test methods related to the flammability and combustibility of liquids through the Commission's rule-making procedures. We believe that it is to the best interest of all citizens that this be permitted so that the expertise available to the Commission can be used effectively to establish proper test methods. Thus, the Commission can utilize superior methods as they are developed to better define the hazard characteristics of a liquid and provide maximum safety to the consumer.

The third paragraph states that it is the intent of Congress that "The Commission shall consider the existing definitions and test methods of other Federal agencies involved in the regulation of flammable and combustible substances in storage, transportation and use; and, to the extent possible, shall establish compatible definitions and test methods". Since the Departments of Labor and Transportation specify closed cup methods in their regulations, the Commission should be permitted to specify these methods also.

IV. CLOSED CUP FLASH POINT METHODS VS. THE TAG OPEN CUP FLASH POINT METHOD

There are a number of reasons for the use of the closed cup methods rather than an open cup.

1. The closed cup methods are more accurate and reproductible than the Tag Open Cup. It is now recognized that it is necessary to have an equilibrium temperature throughout the material within the flash point cup at the time of the application of the test flame to obtain an accurate flash point result. An equilibrium condition is almost impossible to achieve with the open cup method. However, when properly conducted, the closed cup methods can approach equilibrium conditions.

2. One of the major causes of home fires involving flammable or combustible liquids is the evaporation of sufficient liquid to produce the lower flammable

limit (sometimes referred to as the lower explosive limit) of its vapor in a partially or completely closed room or home. The closed cup flash point approximates the temperature at which the concentration of the vapor in air above a liquid equals its lower flammable limit.

3. The closed cup methods are most reproducible than the Tag Open Cup method. The Bureau of Mines in their Report No. S–4131, April 29, 1970, Recommendations of Flash Point Method for Evaluation of Flammability Hazard in the Transportation of Flammable Liquids, recommended closed cup methods because they are more reproducible than the Tag Open Cup method.

4. To compensate, in part, for the reproducibility problem, the open cup requires three determinations in comparison to two for the closed cup methods. In spite of this technique, two laboratories, testing materials such as paint or contact adhesives, would have to have a difference in their flash point determinations of 24°F. before it could be stated statistically that one of the results is in error. Comparing the three test methods on the same basis of the mean of two determinations, one closed cup method is one and two thirds times and another, three times as reproducible as the Tag Open Cup.

5. The Tag Open cup is more expensive to run than the closed cup method. The Open Cup method requires more time to make a determination, more determinations and greater care and attention than the closed cup methods. One paint company estimates that it costs them $75–$100 to run an open cup test versus $30–$50 to run a closed cup test.

V. REASONS FOR UNIFORMITY OF REGULATIONS

The basic reason for permitting flexibility in the definition of flammable and combustible substances is that it gives the Commission the authority to investigate, propose and establish superior methods and procedures for the control of these liquids. This would promote greater safety in handling hazardous liquids by the general public.

The current administration has stated that it is committed to a greater cooperation between agencies. With this amendment the Commission could cooperate to a greater extent by providing compatible safety regulations.

The use of the definitions for flammable and combustible liquids now in force in DOT and OSHA regulations would provide greater safety in handling liquid consumer products. The closed cup method flash point values are generally lower than open cup values. The DOT and OSHA regulations raise the flammable liquid classification limit from 80°F. to 100°F. The combination of these two actions increases the number of products in the flammable or greater hazard category. In addition, the use of DOT definition for combustible would increase the number of combustible liquids as it would require some products not now classified to be classed as combustible. This is because DOT definitions define combustible liquids as those which have a flash point of up to 200°F. while the maximum specified by the Federal Hazardous Substances Act is 150°F.

The use of closed cup methods by the Commission will make these regulations compatible with the agencies mentioned previously. In addition, the regulations will be compatible with regulations of many states and municipalities which use the National Fire Protection Association's Code No. 30, Flammable and Combustibility as the basis for local statutes and codes. The International Standards Organization specifies only closed cup methods in their list of standards. International regulatory agencies such as the Inter-Governmental Maritime Consultative Organization, require the use of the closed cup methods. The European Common Market is presently proposing the establishment of closed cup methods similar to those now specified by DOT as a standard for use in all European Common Market countries.

The use of a uniform method of test and definition of flammable and combustible liquids will prevent confusion in conforming to the regulations of both CPSC and DOT. At the present time a product having an open cup flash point of 82°F and a closed cup of 90°F would be classed as combustible by the Commission and as flammable by DOT and OSHA. A consumer product in this category would have its container—a can or bottle—labeled "combustible" while the carton in which the containers are packaged and shipped would require a red label designating it as "flammable". Furthermore, it would be required to be handled or stored in the manufacturer's plant or warehouse as a flammable liquid. This could raise a question in the minds of a warehouse worker as to how he should label the package for shipment.

Manufacturers and shippers have had experience with users who were confused by these different labels and have questioned how the liquid should be classified—flammable or combustible. This confusion on the part of users could lead to improper use and storage of the material and to possible accidents. It could also lead to citations by OSHA for improper storage since consumer products are frequently purchased and used by industrial customers.

Finally, the different definitions for flammable and combustible liquids produce an unnecessary cost to U.S. business and industry. As stated previously, it costs one paint company to conduct the open cup test between $75–$100. Multiply this by the number of products a paint company manufactures and the number of paint companies in the U.S.A. and the cost to the paint industry is considerable. Furthermore, there are other consumer industries which have the same problem. These include producers of soap, polishes and cleaning products, car care products, cosmetics, adhesives and other home maintenance products. Thus you can see that the cost to the consumer industry is more than considerable.

In addition to the cost of running the test, there is an additional cost of preparing duplicate lists of test data and the additional instructions for and surveillance of workers to assure compliance with CPSC, DOT and/or OSHA regulations.

VI. CONSUMER PRODUCT SAFETY COMMISSION OPINIONS

As your committee is aware, the Product Safety Advisory Council in September, by a unanimous vote, supported the regulatory flexibility provided by H.R. 5768 and the objectives of achieving Federal-wide compatibility as to test procedures.

Furthermore, on August 17, 1977, I testified before the Commission proposing the use of the closed cup flash point methods in their proposed regulations to ban extremely flammable contact adhesives in containers larger than half-pint capacity. My proposal was based on the Commission's use of the Consumer Product Safety Act of 1972 for their authority for banning their packages of extremely hazardous contact adhesives. My comments were similar to those presented here today.

In their reply to my comments and others, recorded in the Federal Register of December 18, 1977, the Commission stated:

"Although the Commission believes that the observations by the commentors concerning the Tagliabue open-cup test method and the closed cup test methods may be accurate, at this time the Commission declines to adopt the change suggested by the commentors. If the Commission adopted the suggestion of the commentors, then the Commission would be employing a different method for determining the flash points of volatile flammable materials under the Federal Hazardous Substances Act and Consumer Product Safety Act. The FHSA, at section 2(1), 15 U.S.C. 1261(1), defines degrees of flammability in terms of testing by the Tagliabue open-cup test. Since even with issuance of this ban under the CPSA cautionary labeling is still required under section 2(p) of the FHSA for certain contact adhesives, the Commission believes that it would be confusing to require testing under a different method to determine whether extremely flammable contact adhesives are banned under the CPSA."

This illustrates the dilemma the Commission is in with the present Federal Hazardous Substances Act. While the requirement of a closed cup method would have required double testing of adhesives, industry is now continually faced with the necessity of double testing their products if they are sold to consumers. For the same reasons given by the commission, industry should not be required to do the double testing required by the Federal Hazardous Substances Act.

VII. SUMMARY

I urge the passage of HR–5768 for the following reasons:

1. It will permit the Commission to define flammable and combustible liquids by the best methods available.
2. It will permit them to define the hazards of these liquids by definitions compatible with DOT and DOL (OSHA) definitions and regulations.
3. It will reduce confusion in the safe handling of these liquids and lessen the possibility of the inadvertent non-conformance with differing agency requirements.
4. It will provide a greater amount of safety to consumers and industrial workers in handling and use of these products.

5. It will permit the use of closed cup methods which are more accurate and reproducible in characterizing the true flammability hazards of liquids.
6. It will reduce the cost to industry of testing these liquids and of compliance with the Commission's regulations.

Mr. ECKHARDT. Mr. Wray, we have received letters from the Commission and the Commission's Product Safety Advisory Council in support of your proposal. I want to commend you as an individual for coming and spending your time and money to appear before this committee to give us your very enlightened views. Thank you very much.

Mr. WRAY. I might add one comment. Before I was retired they asked me, are you retired, and I would say no but I'm tired. Now that I am retired they asked me and I say, no I am not tired.

Mr. WRAY. Thank you.

Mr. ECKHARDT. The subcommittee will be in adjournment subject to the call of the Chair.

[Whereupon the subcommittee adjourned at 1:20 p.m. subject to the call of the Chair.]

AUTHORIZATIONS AND OTHER AMENDMENTS TO THE CONSUMER SAFETY ACT

TUESDAY, FEBRUARY 28, 1978

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

The subcommittee met at 9:45 a.m., pursuant to notice, in room 2218, Rayburn House Office Building, Hon. Bob Eckhardt, chairman, presiding.

Mr. ECKHARDT. The Subcommittee on Consumer Protection and Finance will be convened.

Today the Consumer Protection and Finance Subcommittee begins its second day of hearings on amendments to the Consumer Product Safety Act. Today's hearings will focus on H.R. 10637 and S. 2401. These bills establish an interim mandatory consumer product safety standard for cellulose insulation.

Rising energy costs and recent severe winters have resulted in Americans buying and installing home insulation at a record rate. Consumer interest in upgrading homes with additional insulation has been encouraged by the Federal Government. Fuel conservation is a major component of the Administration's energy program and the proposed National Energy Act contains incentives for insulating existing residential structures. Industry and Government sources estimated that as many as 8 million homes will be retrofitted with insulation in 1978.

Presently no Federal mandatory safety standards exist for insulation being sold to consumers and there is considerable concern about the safety of some of these materials. Particular concern has been expressed about the flammability of untreated or improperly treated cellulose insulation. The national fire incident reporting system contains reports of almost 500 fires in which insulation was the first material to ignite. The Consumer Product Safety Commission has reported that it has received numerous reports from fire marshals around the country expressing doubts about the safety of cellulose insulation.

In response to the growing concern about the safety of cellulose, Congressman Moffett and Senator Ford introduced the legislation which is before us today. The bills adopt the existing Government Services Administration procurement standard as the mandatory standard. The interim standard would go into effect 120 days after passage of the legislation. The bills also contain provisions under which amendments by GSA to its procurement standard would become a part of the mandatory standard. Further, the bills require the Consumer Product Safety Commission to do a 1 year study on the

need for safety standards for other commonly used home insulation materials.

I commend my colleague from Connecticut for introducing the bill and for raising the important question as to what should be done to protect consumers from unsafe insulation.

The first witness we have today is Mr. Moffett, sponsor of the House bill.

STATEMENT OF HON. ANTHONY TOBY MOFFETT, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CONNECTICUT

Mr. MOFFETT. Thank you, Mr. Chairman. I am sure that will be good news to some people and not good news to other people, but I am glad to be on the subcommittee.

May I proceed?

Mr. ECKHARDT. You may proceed.

Mr. MOFFETT. I would ask that my statement be included in the record, and I will do my best to paraphrase it.

Mr. ECKHARDT. Without objection, so ordered.

Mr. MOFFETT. I do appreciate the opportunity to testify, Mr. Chairman, on this most critical issue of home insulation. As you have pointed out, the safety problems associated with home insulation are very troubling as is the lack of action on the part of Government to provide the best protection possible. It was because of that inaction that I introduced the Emergency Interim Consumer Safety Rule Act of 1978, H.R. 10637. This act is designed to protect consumers from the dangers of flammability and corrosiveness which characterize some cellulose insulation products. Sponsored by Senator Wendell Ford (D-Ky.), a companion version of this act passed the Senate on January 23 of this year.

The lack of governmental action to protect consumers is especially upsetting since the Government is actively encouraging people to insulate. You will recall that last April 20 President Carter went on national television and asked Americans to insulate their homes, encouraging them to do so with the promise of a tax credit on insulation. Since then dozens of Federal and State agencies have distributed pamphlets on energy conservation, urging people to insulate. Unfortunately, many of these pamphlets do not provide adequate precautions to insure the safe use of cellulose and other conservation devices.

Government encouragement, together with rising fuel costs and several exceptionally severe winters, have created the present national home insulation boom. In 1977 approximately 6 million homes were retrofitted, more than double the number in 1976. Another 2 million new homes were insulated, most of them using 20 percent more insulation than before.

This increased demand has created a shortage of fiberglass insulation, the most established insulating material. At present, most manufacturers of fiberglass and rock wool have placed their customers on allocation and are not accepting many new customers. This means that more and more people will be turning to cellulose insulation, essentially shredded paper treated with chemicals to make it fire retardant.

When cellulose insulation is produced and installed with quality control, the end product can be an effective, comparatively low cost insulator. However, cellulose holds a potential for harm and fraud when marketed by unscrupulous sellers, installed by untrained personnel or handled by unknowing do-it-yourselfers. Largely because of the low investment costs and uncomplicated production technology, the number of cellulosic manufacturers has tripled over the past 2 years. While some are highly competent, many are simply "fly-by-night" conmen hoping to cash in on the insulation boom.

Of the 6 million homes retrofitted last year, approximately 40 to 50 percent of them were insulated with cellulose insulation. This means that almost 3 million homes were insulated with a material for which there are no enforced standards to guarantee product quality. This is the root of our present crisis—that there are no national and no State standards to effectively govern the safety and performance of cellulose insulation.

While it is clear that entry into the cellulose market is fairly easy, the manufacture of a quality insulation product is very difficult. According to a U.S. Department of Commerce study, Boric Acid Market Situation Summary, Interim Report, September 7, 1977),

> . . . substantial knowhow is involved in production of a thermally effective product and in the selection and application of fire retardant chemicals needed to produce a safe product.

It is essential that the paper base be properly fireproofed, but too high a proportion of chemicals can cause serious corrosion hazards. The perfect balance is very hard to achieve.

Further aggravating this situation, producers of cellulose insulation are now being placed on allocation by suppliers of boric acid, the primary flame retardant chemical used to treat cellulose. Together with the rising cost of boric acid, this is creating a strong economic incentive for manufacturers to cut corners by substituting less reliable chemicals, which while adequately fireproofing the insulation create a dangerous potential for corrosion. Chairman Michael Pertschuk of the Federal Trade Commission has testified that this corrosive insulation is "like a time bomb waiting to explode."

You may be familiar with a 1977 study by the Energy Research and Development Administration which found that 11 out of 19 samples of cellulose insulation tested produced excessive corrosion. A report by the Minnesota Energy Agency insulation testing program in November 1977 showed a wide variance of flammability among 15 samples of cellulose insulation tested for fire resistance. Four of the samples tested showed little or no flame retardant properties.

As part of my efforts, I have been in contact with the Governors of the 50 States. The responses I received from the Governors verified my own suspicion that we need to do something nationally, and most of the Governors agreed that we need some national protection. Many of them were astonished that there was no national protection and are going to try in many cases to move on a State level but the answer clearly has to come federally in this case—a State-by-State approach simply won't work.

Many of the Federal agencies, including the Department of Energy, the Federal Trade Commission and the Housing and Urban Development Department are now working to develop such guidelines and

appropriate enforcement programs. The problem is time. These agencies will need many months, and possibly more than a year, to issue permanent regulations.

At the present time only the Consumer Product Safety Commission has the statutory authority to promulgate and enforce safety standards for home insulation. You may know the CPSC has been aware of the fire hazard presented by improperly treated cellulose insulation since June of 1975 when it was alerted to the danger by its Denver district office. Yet today, almost 2½ years later, the CPSC has done nothing. The inaction of the CPSC is inexcusable when one considers their responsibility to insure product safety and the near unanimous support for governmental action.

Senator Ford and I have both been pushing for months to try to force the CPSC into action. Because we have been unable to get results in time to protect the many consumers presently insulating their homes, we feel it is vital to introduce an emergency interim standard. This standard would be effective until more comprehensive ones can be developed.

The legislation we have introduced would help protect the public from the unnecessary risks that they now face. First, the act directs the CPSC to adopt within 120 days an interim mandatory consumer product safety standard for flammability and corrosiveness of cellulose insulation. Second, it directs the CPSC to conduct an interagency study on the various safety aspects of all forms of insulation and to make a final report and recommendations within a year.

The President has set a goal of insulating 90 percent of all homes in the United States by 1985. It would be tragic to reach that goal only to find that we have allowed the public to buy insulation which has exposed their homes to fire and flood and endangered their health and safety. It is the responsibility of Congress to see that consumers who purchase home insulation, at our prompting, can be reasonably sure that it is safe and efficient.

Thank you, Mr. Chairman.

[Mr. Moffett's prepared statement follows:]

STATEMENT OF HON. ANTHONY TOBY MOFFETT, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CONNECTICUT

Mr. Chairman, I appreciate the opportunity to testify before this Subcommittee on this most crucial issue of home insulation. As you have pointed out, the safety problems associated with home insulation are very troubling, as in the lack of action on the part of the Government to provide the best protection possible.

Because of this inaction, I introduced the Emergency Interim Consumer Safety Rule Act of 1978, H.R. 10637. This act is designed to protect consumers from the dangers of flammability and corrosiveness which characterize some cellulose insulation products. Sponsored by Senator Wendell Ford (D-Ky.), a companion version of this act passed the Senate on January 23 of this year.

The lack of governmental action to protect consumers is especially upsetting since the Government is actively encouraging people to insulate. Last April, President Carter went on national television and asked Americans to insulate their homes, encouraging them to do so with the promise of a tax credit on insulation. Since then, dozens of Federal and State agencies have distributed pamphlets on energy conservation, urging people to insulate. Unfortunately, many of these pamphlets do not provide adequate cautions to insure the safe use of cellulose and other conservation devices.

Government encouragement, together with rising fuel costs and several exceptionally severe winters, have created the present national home insulation

boom. In 1977, approximately 6 million homes were retrofitted, more than double the number in 1976. Another 2 million new homes were insulated, most of them using 20 percent more insulation than before.

This increased demand has created a shortage of fiberglass insulation, the most established insulating material. At present, most manufacturers of fiberglass and rock wool have placed their customers on allocation and are not accepting many new customers. This means that more and more people will be turning to cellulose insulation, essentially shredded paper treated with chemicals to make it fire-retardant.

When cellulose insulation is produced and installed with quality control, the end product can be an effective, comparatively low-cost insulator. However, cellulose holds a potential for harm and fraud when marketed by unscrupulous sellers, installed by untrained personnel, or handled by unknowing do-it-yourselfers. Largely because of the low investment costs and uncomplicated production technology, the number of cellulosic manufacturers has tripled over the past 2 years. While some are highly competent, many are simply "fly-by-night" con men hoping to cash in on the insulation boom.

Of the 6 million homes retrofitted last year, approximately 40 to 50 percent of them were insulated with cellulose insulation. This means that almost 3 million homes were insulated with a material for which there are no enforced standards to guarantee product quality. This is the root of our present crisis—that there are no national and no State standards to effectively govern the safety and performance of cellulose insulation.

While it is clear that entry into the cellulose market is fairly easy, the manufacture of a quality insulation product is very difficult. According to a U.S. Department of Commerce study, (Boric Acid Market Situation Summary, Interim Report, September 7, 1977), ". . . substantial know-how is involved in production of a thermally effective product and in the selection and application of fire retardant chemicals needed to produce a safe product." It is essential that the paper base be properly fireproofed, but too high a proportion of chemicals can cause serious corrosion hazards. The perfect balance is very hard to achieve.

Further aggravating this situation, producers of cellulose insulation are now being placed on allocation by suppliers of boric acid, the primary flame retardant chemical used to treat cellulose. Together with the rising cost of boric acid, this is creating a strong economic incentive for manufacturers to cut corners by substituting less reliable chemicals, which while adequately fireproofing the insulation create a dangerous potential for corrosion. Chairman Michael Pertschuk of the Federal Trade Commission has testified that this corrosive insulation is "like a time bomb waiting to explode."

A 1977 study by the Energy Research and Development Administration found that eleven out of nineteen samples of cellulose insulation tested produced excessive corrosion. A report by the Minnesota Energy Agency Insulation Testing Program in November, 1977, showed a wide variance of flammability among 15 samples of cellulose insulation tested for fire resistance. Four of the samples tested showed little or no flame retardant properties.

I have been in contact with the Governors of the 50 States, and I have received dozens of letters from them expressing their belief in the immediate need for Government safety standards. The strong support of the Governors, the insulation industry, the Federal Trade Commission, the Department of Energy, the Consumer Product Safety Commission, and the General Services Administration has confirmed my belief that the consumers in this country are in urgent need of protection through insulation standards.

Many Federal agencies, including the Department of Energy, the Federal Trade Commission and the Housing and Urban Development Department are now working to develop such guidelines and appropriate enforcement programs. The problem is time. These agencies will need many months, and possibly more than a year, to issue permanent regulations.

At the present time, only the Consumer Product Safety Commission has the statutory authority to promulgate and enforce safety standards for home insulation. The CPSC has been aware of the fire hazard presented by improperly treated cellulose insulation since June of 1975, when it was alerted to the danger by its Denver district office. Yet today, almost 2½ years later, the CPSC has done nothing. The inaction of the CPSC is inexcusable when one considers their responsibility to insure product safety and the near unanimous support for governmental action.

Senator Ford and I have both worked for months to try to force the CPSC into action. Because we have been unable to get results in time to protect the many consumers presently insulating their homes, we feel it is vital to introduce an emergency interim standard. This standard would be effective until more comprehensive ones can be developed.

The legislation I have introduced would help protect the public from the unnecessary risks that they now face. First, the Act directs the CPSC to adopt within 120 days, an interim mandatory consumer product safety standard for flammability and corrosiveness of cellulose insulation. Second, it directs the CPSC to conduct an interagency study on the various safety aspects of all forms of insulation and to make a final report and recommendations within a year.

The President has set a goal of insulating ninety percent of all homes in the United States by 1985. We cannot afford to reach that goal only to find that we have allowed the public to buy insulation which has exposed their homes to fire and flood, and endangered their health and safety. It is the responsibility of Congress to see that consumers who purchase home insulation, at our prompting, can be reasonably sure that it is safe.

Thank you, Mr. Chairman.

Mr. ECKHARDT. Your bill provides that the interim standards shall remain in effect until the Commission promulgates a final standard. Would you thereby mandate the Commission to establish a standard other than the GSA standard as it might be changed or altered or might the Commission adopt the revised GSA standard if it found that that were sufficient?

Mr. MOFFETT. It is my thought, and I think the thought of Senator Ford, that the emergency interim standard bill does not provide any kind of panacea to all the problems surrounding insulation products. We plan to introduce and would hope that this committee would work toward a more comprehensive bill that would more fully address the permanent standard and the enforcement problems. Until that time we think it is important to have a CPSC emergency interim standard. The bill provides that if GSA amends or improves its present standard, the CPSC would do so also. Naturally, we would like the best possible standard. If the GSA changes their standard and goes to, for example, 515D, it would be our hope that the CPSC would follow.

Mr. ECKHARDT. Now that raises a question. I understand that the GSA procurement standard that is in 515C is presently to be revised so we can expect the following sequence: The GSA adopts the 515D, the existing GSA standard 515C becomes a mandatory standard under H.R. 10637 and then the GSA revision is adopted by the Commission as mandated in the bill, thus replacing C with D. Given that likelihood, it could occur that the industry would be faced with complying with two very different standards in a relatively short period of time. I mean, of course, sequentially. I understand that the new standard is to be adopted within a matter of a couple months. Would it be desirable then to try to gear this bill, this timing and so forth, to go into effect with the 515D standard rather than with a very short period of time in which it must under 515C?

Mr. MOFFETT. When I first became aware of the hazards involving cellulose insulation, I tried along with others to get CPSC to use existing standards. We held off introducing the bill because there was an implied promise that the CPSC was at least working toward that end. The promise never came true and leads to the conclusion that legislating on the basis of what a Federal agency may or may not do is an unwise path. Although I recognize the improvements in the 515D standard which may well be adopted as you indicate, the fact is there could be some protection right now through the 515C standard. Again,

I don't think it is wise and I am sure you don't think it is wise to legislate according to what might happen within a few months.

Mr. ECKHARDT. No; what I am saying is that perhaps what we ought to do is only time this bill so that we will know what GSA is going to do. The practical matter would be very difficult for this bill to go through very much before that time anyway. We might be able to avoid——

Mr. MOFFETT. Yes; I certainly would favor the 515D standard if the standard could be agreed to promptly. My only fear is that we might put ourselves in the situation where we have an overly burdensome problem for industry which would have to meet two standards, one for Federal contracts and one for non-Federal purposes, if we were to use the 515D standard as the interim standard before it was adopted by the GSA.

Mr. ECKHARDT. That was one of my concerns, too.

There is one other little point here. Your bill specifies that the interim safety standard "shall be enforced in the same manner and to the same extent as the Commission"—and I emphasize Commission—"enforces any other consumer product safety rule."

Now section 24 of the act authorizes private parties to bring private injunctive actions which in effect enforce the bill. It might be wise to say that interim safety standards will be enforced in the same manner that product safety rules may be enforced under the Product Safety Act, so as to also embrace that provision.

Mr. MOFFETT. Yes. As you may know, that language was put into the bill so that the interim standard would be afforded equal treatment with permanent standards, not simply shelved or treated as something temporary that need not receive proper enforcement treatment. Senator Ford and I are well aware that the emergency standard bill does not provide a panacea, as I said earlier. With the staffing difficulties also at the CPSC I think the third party enforcement should also be considered as one of the options.

Mr. ECKHARDT. You want to treat it just exactly as if it were a safety standard issued by the Commission.

Mr. MOFFETT. Yes.

Mr. ECKHARDT. Thank you very much, Mr. Moffett.

Mr. MOFFETT. Thank you, Mr. Chairman. I look forward to working with you on this.

Mr. ECKHARDT. I appreciate your leadership on this.

Mr. MOFFETT. Thank you.

Mr. ECKHARDT. Dr. Maxine Savitz, Director, Division of Buildings and Community Systems, Department of Energy.

Will you please give your name for the record and the person who is sitting with you at the table.

STATEMENT OF MAXINE SAVITZ, Ph. D., DIRECTOR, DIVISION OF BUILDINGS AND COMMUNITY SYSTEMS, DEPARTMENT OF ENERGY, ACCOMPANIED BY IRV BALES, Ph. D. PROGRAM MANAGER FOR MATERIALS PROGRAM

Mrs. SAVITZ. I am Maxine Savitz, Director of the Division of Buildings and Community Systems. I am accompanied by Dr. Irv Bales, program manager for the materials program of the Department.

If I could, I would like to submit my full statement for the record and summarize it.

Mr. ECKHARDT. Without objection, it is so ordered.

Mrs. SAVITZ. I appreciate the opportunity to present the Department of Energy's views on H.R. 10637. As you know, insulation plays a major role in the achievement of our energy conservation goals. It is important not to overemphasize the role of insulation vis-a-vis other conservation investments but we must agree that insulation has been the focus of public attention.

There were two reasons why insulation emerged as the key strategic component to achieve this goal: First, the technology is already available. And second, it is generally recognized that insulation can yield precisely the kind of immediate and substantial results we so badly need. I think we would all agree that the quickness of the payoff is very important.

The interest in insulation began to accelerate following the oil embargo of 1973–74 and the subsequent rise in energy prices. It was heightened by the severe winter of 1976–77. And it received further encouragement in April 1977 when the President's energy plan proposed a tax credit for homeowners who install insulation or other approved conservation measures during the period April 20, 1977, to December 31, 1984. Present estimates are that over 9 million residential units have had additional ceiling insulation installed voluntarily since the oil embargo.

This intense activity has created heavy demand on all insulation materials. As Congressman Moffett has pointed, manufacturers of fiberglass and rock wool are placing existing customers on allocation based on past purchases and are accepting few, if any, new customers. Meanwhile, producers of cellulose insulation are being place on allocation by suppliers of boric acid, the primary fire retardant chemical.

The Department of Energy is actually aware of the problem. We have received numerous complaints from retailers, contractors and consumers that they are unable to obtain the insulation they need. Moreover, in Congress and elsewhere, there is legitimate concern about supply and related price and quality control problems.

As the demand for insulation escalates, the need for standards becomes obvious. It should be noted that over the years many insulation companies have been manufacturing products according to various Federal specifications. There are, however, inexperienced firms beginning to enter the business to capitalize on the increased demand. The availability and prices of critical manufacturing supplies causes problems, especially the shortage of boric acid and borates for fireproofing of cellulose insulation. Because of this particularly difficult problem in the insulation industry, DOE initiated and chairs an interagency committee to closely follow supply and demand trends. Activities of this task force include meetings and briefings sessions to provide a sounding board for the general views of the participants.

Major issues of concern to this committee have included supply shortages and their causes, the impact of boric acid shortages on cellulose supply, the availability and performance of boric acid substitutes and the likely impact of various Federal specifications and labeling programs on insulation supply.

Two public meetings have been held in the past 8 months on August 5, 1977, and December 16, 1977, on insulation. These meetings were at-

tended by manufacturers, representatives of major chemical companies and insulation contractors. Many consumer and public interest groups (for example, Housing Research Group) were represented as were various Federal agencies such as Department of Commerce, Department of Energy, General Services Administration, Federal Trade Commission, Consumer Product Safety Commission, and Department of Justice.

Several sections of NEA require the promulgation of regulations, measures and standards for retrofit materials and equipment and for related efforts to inform and protect the public. The Office of the Assistant Secretary for Conservation and Solar Applications therefore has established a working group in the Division of Buildings and Community Systems to develop residential measures and standards likely to be required under NEA.

DOE cannot issue rules on pending legislation but an early start is essential because some programs have very short implementation schedules. The residential tax credit applies, as I mentioned, to energy conservation measures purchased as of April 20, 1977. DOE and the Internal Revenue Service are already working together to prepare regulations and to provide consumers information on the tax credit as soon as possible.

We believe that the most important single program regarding cellulose insulation is that to our knowledge no safety standard is currently being enforced in most parts of the country. The proposed National Energy Act gives DOE the authority to issue safety standards for use in its legislated programs. The Consumer Product Safety Commission (CPSC) currently has statutory authority to promulgate and enforce safety standards for insulation.

We therefore support the provisions of section 3 of H.R. 10637 which would require CPSC to adopt the existing GSA standard (515C) as an interim consumer product safety standard. Most of the cellulose industry is familiar with this standard, and the testing facilities for certifying compliance already exist. We really believe that the only people to whom this action would be burdensome are the producers of wholly inadequate products who haven't been abiding by it.

Section 3 of the bill would also require CPSC to adopt any revisions to cellulose standards made by the GSA unless the Commission makes one of three enumerated findings. We believe that one purpose of this legislation ought to be to assure unformity in national insulation standards to the extent that Federal rules are more appropriate than State or local action. We also believe that the existing GSA specification needs to be expanded and improved.

The proposed GSA specification HHI 515D on cellulose insulation makes many substantial changes over the present version. The most significant is the replacement of the ASTM tunnel test for flame spread with the ASTM radiant panel test and the addition of a smoldering test. The replacement of the tunnel test with the radiant panel test is necessary. The radiant panel test appears to duplicate the conditions normally found in an exposed attic floor. A smoldering test is a necessary addition to the existing GSA standard as it has been determined that recessed electrical fixtures can cause smoldering with subsequent fire.

Our research in this matter, which is being closely coordinated with CPSC, GSA, and NBS, will allow us to propose a revised standard

within 180 days of the passage of the NEA and to issue a final standard no earlier than 45 days after that time. We believe that section 3 should be changed to allow DOE to propose revisions to the 515C standard for the purpose of national enforcement through CPSC.

Section 4 of the bill would require CPSC, in cooperation with DOE and other agencies, to conduct a year-long study on the adequacy of safety standards for all types of insulation. We endorse this study. We recognize the size of the task, since we are currently investigating the adequacy of both safety and effectiveness standards. We offer to the Commission any help we can provide in the conduct of this study, although we believe that it is appropriate that CPSC prepare the final report to the Congress on the subject of safety.

DOE currently has a materials analysis program underway to evaluate the efficiency and safety of the individual components and total systems of a residence with initial attention being paid to insulation.

In summary, I would like to say that the Department of Energy is actively involved in all aspects of the insulation situation. We believe that we can balance the needs of consumer protection and safety with the demands for insulation. We will continue to work with all of the parties involved—Federal, State, local, consumer groups, insulation manufacturers and installers—to assure an adequate, safe supply of insulation. We will continue to perform research and development to better understand and improve the characteristics of insulation materials.

We agree that CPSC should adopt and enforce the existing GSA specification HHI 515C as an interim national cellulose insulation standard.

I would be happy to answer any questions you may have at this time.

[Mrs. Savitz' prepared statement follows:]

STATEMENT OF MAXINE SAVITZ, DIRECTOR, DIVISION OF BUILDING AND COMMUNITY SYSTEMS, DEPARTMENT OF ENERGY

Mr. Chairman, and members of the subcommittee, I appreciate this opportunity to present the Department of Energy's views on H.R. 10637. As you know, insulation plays a major role in the achievement of our energy conservation goals. It is important not to over emphasize the role of insulation vis-a-vis other conservation investments but we must agree that insulation has been the focus of public attention.

There were two reasons why insulation emerged as the key strategic component to achieve this goal: First, the technology is already available. And second, it is generally recognized that insulation can yield precisely the kind of immediate and substantial results we so badly need. I think we would all agree that the quickness of the payoff is crucial.

The interest in insulation began to accelerate following the oil embargo of 1973–74 and the subsequent rise in energy prices. It was heightened by the severe winter of 1976–77. And it received further encouragement in April 1977, when the President's energy plan proposed a tax credit for homeowners who install insulation or other approved conservation measures during the period April 20, 1977 to December 31, 1984. Present estimates are that up to 9 million residential units have had additional ceiling insulation installed voluntarily since the oil embargo.

As you know so well, this intense activity has created heavy demand on all insulation materials. At present, most manufacturers of fiber glass and rock wool are placing existing customers on allocation based on past purchases, and are accepting few if any new customers. Meanwhile, producers of cellulose insulation are being placed on allocation by suppliers of boric acid, the primary fire retardant chemical.

The Department of Energy is acultely aware of the problem. We have received numerous complaints from retailers, contractors, and consumers that they are unable to obtain the insulation they need. Moreover, in Congress and elsewhere,

there is legitimate concern about supply and related price and quality control problems.

As the demand for insulation escalates, the need for standards becomes obvious. There are inexperienced firms beginning to enter the business to capitalize on the increased demand. The availability and price of critical manufacturing supplies causes problems, especially the shortage of boric acid and borates for fireproofing of cellulose insulation.

Because of this particularly difficult problem in the insulation industry, DOE initiated and chairs an interagency committee to closely follow supply and demand trends. Activities of this task force include meetings and briefings sessions to provide a sounding board for the general views of the participants.

Major issues of concern to this committee have included supply shortages and their causes, the impact of boric acid shortages on cellulose supply, the availability and performance of boric acid substitutes and the likely impact of various Federal specifications and labeling programs on insulation supply.

Two public meetings have been held (August 5, 1977 and December 16, 1977) on insulation. These meetings were attended by manufacturers, representatives of major chemical companies, and insulation contractors. Many consumer and public interest groups (e.g., housing research group) were represented as were various Federal agencies such as Department of Commerce, Department of Energy, General Services Administration, Federal Trade Commission, Consumer Product Safety Commission, and Department of Justice.

The public meetings were a particularly useful means of obtaining an update on the problems facing the insulation industry. Some findings from these meetings were:

1. Traditionally shortages of insulation appear in the fall and winter with a surplus in the spring and summer. The manufacturers indicated that the traditional summer surplus did not develop this past year.

2. The mineral wool and fiber glass manufacturers present agreed that a shortage existed and stated that their old customers were on allocation and further that most of them were not taking new customers. Some contractors verified that they were on allocation and had to "turn away business".

3. The supply of cellulose insulation can be expanded relatively quickly except that it appears to be constrained by the supply of boric acid. Even though imports of boric acid have increased significantly this year, manufacturers indicated that supplies would not be available for rapid capacity expansion.

4. Cellulose manufacturers expressed concern over the proposed GSA revised standards on safety. In particular, some representatives of this industry concluded that only from 10–15 percent of cellulose manufactured in this country could currently meet the requirements of the smoldering test in the recently proposed GSA standard. No comments were made about the ability of the industry to alter its products in response to any new standard.

5. Industry representatives expressed some confusion over the several different proposed federal and state labeling programs they were encountering.

6. Some manufacturers expressed apprehension about possible shortages and allocation of natural gas needed for fiber glass production during the winter and the possible shortages of coke which may constrain the production of rock wool insulation.

7. Concern was expressed over rapid price increases at the retail level, with blame placed upon increases in demand for a relatively fixed supply of insulation. Most manufacturers claimed, on the other hand, that their wholesale level price increases were based on their cost increases.

Several sections of NEA require the promulgation of regulations, measures and standards for retrofit materials and equipment and for related efforts to inform and protect the public. The Office of the Assistant Secretary for Conservation and solar-applications therefore has established a working group in the division of buildings and community systems to develop residential measures and standards likely to be required under NEA.

DOE cannot issue rules on pending legislation, but an early start is essential because some programs have very short implementation schedules. The residential tax credit, for example, applies to energy conservation measures purchased as of April 20, 1977. DOE and the Internal Revenue Service are already working together to prepare regulations and to provide consumers information on the tax credit as soon as possible.

Much of the preliminary work for the working group was accomplished by an energy measures and standards task force initiated in June 1977 under the

sponsorship of the FEA. Input has been obtained and continues to be obtained from other government departments.

The working group is concerned with identifying specific energy conservation measures. In addition, performance, safety and installation standards are being developed as are guidelines that will insure consumer protection and commercial competition.

Concerning insulation, the working group has found that some insulation standards need to be upgraded. As early as August 1977, the FEA presented testimony urging the Consumer Product Safety Commission to review some insulation standards. More recently, the General Services Administration has proposed revised safety tests that appear to be sharply more stringent than existing ones.

The proposed GSA specification on cellulose insulation makes many substantial changes in the present version. The most significant is the replacement of the ASTM tunnel test for flame spread with the ASTM radiant panel test and the addition of a smoldering test. The replacement of the tunnel test with the radiant panel test may be necessary. The radiant panel test appears to more closely duplicate the conditions normally found in an exposed attic floor.

A smoldering test is a necessary addition to the existing GSA standard as it has been determined that recessed electrical fixtures can cause smoldering with subsequent fire. It appears that several fires have been attributed to recessed fixtures which were covered with cellulose by the installer. Although the smoldering test is needed because of a possible hazard with covered recessed electrical fixtures, there is a question as to the validity of the present test.

The data that is available indicates that although some products which meet current standards contain no boric acid, this chemical must be used to pass the smoldering test, and must be increased by 50 percent in those products now using it. This will have a significant impact on the industry due to the present apparent shortage of boric acid. It means that a company on allocation from the boric acid supplier will have to cut his production by one third and increase the cost of his product. It is also not known whether the additional boric acid will increase the corrosiveness of the insulation.

We believe that it is important that a second independent laboratory conduct the proposed new tests to duplicate and substantiate the results found by NBS for GSA. It is also necessary to allow NBS and industry time to add to their rather limited data base.

Due to these concerns, we cannot yet endorse the use of the revised standard 515D but we will consider it for our own conservation programs and the conservation tax credit after review of data from our independent analysis and further information from GSA.

I would now like to provide you with specific comments on H.R. 10637.

We believe that the most important single problem regarding sales of cellulose insulation is that no safety standard is currently being enforced in most parts of the country. The proposed national energy act gives DOE the authority to issue safety standards for use in its legislated programs. The Consumer Product Safety Commission (CPSC) currently has statutory authority to promulgate and enforce safety standards for insulation.

We therefore support the provisions of Section 3 of H.R. 10637 which would require CPSC to adopt the existing GSA standard (515C) as an interim consumer product safety standard. Most of the cellulose industry is familiar with this standard, and the testing facilities for certifying compliance already exist. We believe that the only people to whom this action would be burdensome are the producers of wholly inadequate products.

Section 3 of the bill would also require CPSC to adopt any revisions to cellulose standards made by the GSA, unless the commission makes one of three enumerated findings. We believe that one purpose of this legislation ought to be to assure uniformity in national insulational standards, to the extent that federal rules are more appropriate than state or local action. We also believe that the existing GSA standard needs to be expanded and improved. Our research in this matter, which is being closely coordinated with CPSC, GSA, and NBS, will allow us to propose a revised standard within 180 days of the passage of the NEA, and to issue a final standard no earlier than 45 days after that time. We believe, therefore that section 3 should be changed to allow DOE to propose revisions to the 515C standard, for the purposes of national enforcement through CPSC.

Section 4 of the bill would require CPSC, in cooperation with DOE and other agencies, to conduct a year-long study on the adequacy of safety standards for all types of insulation. We endorse this study. We recognize the size of the task,

since we are currently investigating the adequacy of both safety and effectiveness standards. We offer to the Commission any help we can provide in the conduct of this study, although we believe that it is appropriate that CPSC prepare the final report to the Congress on the subject of safety.

DOE is presently engaged in a number of studies in this area.

The metals and ceramics division of the Oak Ridge National Laboratory (ORNL) is being funded now for basic insulating material studies. The DOE/ORNL cellulose testing program will conduct a systematic examination of the important variables in the smoldering and radiant panel tests, will measure temperature distribution with time in the cellulose during the smoldering test and in a laboratory mock-up of a covered recessed fixture, and will use a presently available computer program to calculate material conditions in the cellulose during the smoldering test. An attempt will also be made to determine a correlation between the flame spread number from the tunnel test and the critical flux measurement in the radiant panel test.

DOE also has a materials program underway. Materials characteristics being studied include those properties of insulation which need to be known to quality design or evaluate the behavior of the envelope system. The widely used materials have different chemical, physical and mechanical characteristics, and knowledge of these properties is a primary goal of this effort. An information center will provide the collection and dissemination point for the knowledge so developed. While the current materials of major interest include mineral wool, fiber glass, cellulose, and foams, the materials program is interested in other components including aluminum foil, loose fills (vermiculite and perlite), vapor barriers, and new products, such as foamed gypsum.

In January 1977, the Energy Research and Development Administration, now part of the Department of Energy, pubished a preliminary evaluation of several samples of cellulose. A comparison was made by testing according to material specifications. The results indicated wide variation in the properties and weaknesses in the testing procedures.

A state of the art assessment of residential insulating materials is being conducted for DOE by Dynatech R/D Company; this study will be published in April 1978. It will provide base line data by establishing the value of particular material properties and the methods used to obtain the values.

A field study, sponsored by DOE, is being conducted by the Minnesota Energy Agency to evaluate residential materials as installed; this study will be published in March. It will provide data on cellulose, urea-formaldehyde foam, and mineral wool as found in twenty-three walls and forty-eight ceilings in selected houses.

In a testing program at Oak Ridge National Laboratory several brands of fiberglass and rock wool batts have been independently purchased from retailers. These batts, of 3½ and 6 inch thickness, have stated thermal resistance values of R–11 and R–19. The effective thermal resistance variations of these production line insulations is being measured using the new ASTM C177–76, guarded hot plate. An assessment is underway to obtain sufficient data to define the variations in properties, including thermal resistance, density, thickness and corrosion. The results are scheduled to be published in May 1978.

A literature review of processes and practices used by the cellulose industry is also underway. This review, being conducted by the Rollins Company will determine what knowledge exists about this product and its potential applications as a building insulation. In addition to the search for information on cellulose fiber, there will be an emphasis on the search for information on flame retardants, fire and flame treatments for all cellulose based materials used as building materials, paper products, fabrics, and other consumer products.

A presentation of the results of the Dynatech and Minnesota Energy Agency studies will be made at an open one day session. This will provide an opportunity to draw together the various segments of the insulation industry for a frank and open discussion of the research, development and demonstration needs.

The Rollins Company review of cellulose will be followed by an industrial symposium in late May 1978. It is anticipated that it will be co-sponsored by the National Cellulose Association and that related industries will take part.

The cellulose symposium will focus attention on available data, state of the art research, particularly as it realtes to fire retardants, and classification of test materials and standards. Presentations will be made by representatives of the paper, fabrics, and forest products industries.

One half day will be devoted to workshops on heat loss and moisture and ventilation control. A review of the new Federal specification on cellulose, HHI–

515D will be held with a question and answer period. ASTM/DOE interactions will continue with a jointly sponsored thermal insulation conference in Tampa, Florida in October 1978. This meeting will encompass all aspects of thermal insulation performance especially installed characteristics of building and industrial systems.

In summary, I would like to say that the Department of Energy is actively involved in all aspects of the insulation situation. We will continue to work with all of the parties involved. Federal, State, local, consumer groups, insulation manufacturers and installers, to assure an adequate, safe supply of insulation and to perform research and development to better understand and improve the characteristics of insulation materials. We agree that CPSC should adopt and enforce the existing GSA specification HHI 515c as an interim national cellulose insulation standard.

I would be happy to answer any questions you may have at this time.

Mr. ECKHARDT. H.R. 10637 requires the Consumer Product Safety Commission to conduct a study on the need for safety standards for all kinds of commonly used home insulation. The study must also look at the methods for testing the safety of home insulation and methods of enforcing home insulation standards. What, if anything, is the Department of Energy doing in this area?

Mrs. SAVITZ. Most of our effort concerns the testing of the material and developing of testing procedures and reference materials. In cellulosic insulation there are two major safety issues for the material: fire and corrosion. There are two regarding the insulation of it—recessed lighting systems and the effects on the wiring system.

In the first case we need tests for flame spread, fuel contribution, smoke generation, information concerning the properties that cause flaming, and some understanding about what is happening when insulation covers wires and any subsequent raising of the temperature and its effect both to the wire and to the insulation. We have several studies in process with the National Bureau of Standards looking at developing fire tests.

We will be inaugurating soon development of a corrosion that will allow for comparable tests with all material. We are looking at the proposed GSA standard. We are also doing some preliminary work about finding out just what are some of the characteristics of insulation from a fire point of view and what standards exist to get us background for the NEA.

On the third one, the matter of enforcement, we are currently not doing any analysis.

Mr. ECKHARDT. Do you feel that you have sufficient resources to do the studies on these questions?

Mrs. SAVITZ. For the studies that we are doing for NEA we are using existing resources. When that legislation passes we may need some additional ones to meet the time frames and develop all the material and installation standards. We have some in-house technical people.

Mr. ECKHARDT. The Consumer Product Safety Commission has testified that doing such a study could put a strain on their resources. Is there any way that there can be cooperation between the two?

Mrs. SAVITZ. We would work very closely with them in doing a study and doing parts jointly. In fact, we are working currently with CPSC now as we are developing our standards which will be needed when NEA passes.

Mr. ECKHARDT. You mention that the National Energy Act gives DOE the authority to issue standards for use in its legislated programs. What kind of authority would you have under the NEA to enforce the standards?

Mrs. SAVITZ. We have no authority to enforce the standards under NEA. It is purely to recommend to the utilities and those who will be implementing the program who are to maintain lists of contractors. We will be putting out rules as to requirements for what these contractors must meet and if the contractor does not meet it, he will not be on the list. That is the only penalty re standards.

Mr. ECKHARDT. You touched in your testimony on criticisms of the Steiner tunnel test, which as I understand it measures how quickly material will burn but does not show whether or not a material will burn under conditions which are likely to occur in a home. Given this fact, how much safety are we really providing consumers by mandating that cellulose insulation be in compliance with 515c?

Mrs. SAVITZ. Well, you still have to have flame retardants on the cellulose material for it to pass 515c. There are two classes of material depending on what their flame spread is. Those materials that are called class I would be relatively safe and would really clean up any of the fly-by-nighters and make a big step toward safety.

Mr. ECKHARDT. You may stop the fly-by-nighters and the extreme violators, but I understand that recent tests by the National Bureau of Standards have shown that material with a spread classification of 0–25, which is a good STT rating, will burn readily under conditions simulated in a hot attic.

Mrs. SAVITZ. One of the things we are looking at are the radiant panel tests to see how much does that actually simulate the attic. We are trying to get some more test data from an independent group to validate the NBS results.

Mr. ECKHARDT. Well, even if we do place into effect 515c, subject to amendment as this act proposes, do you not feel it necessary to require some kind of warning to purchasers that dangers yet exist? What I am worried about is that we may indicate by having a standard that there is a degree of security which may not actually exist.

Mrs. SAVITZ. I think we should do that and we should also put warnings on the installation because even if you have a good material, and it is installed improperly, you can still have fire hazards.

Mr. ECKHARDT. Most of the fires I understand with insulation have been due to installation.

Mrs. SAVITZ. Yes; that is right.

Mr. ECKHARDT. The placement of insulation too close to an electric light bulb or something of that nature.

Mrs. SAVITZ. That is correct.

Mr. ECKHARDT. Now actually the manufacturers frequently install the insulation, do they not?

Mrs. SAVITZ. It varies. The smaller ones do; the larger ones do not. They will just ship out to contractors that are in various parts of the country.

Mr. ECKHARDT. Would it not be desirable then that the manufacturers supply both the contractor and, through the contractor, the purchaser information concerning the potential dangers involved in installation?

Mrs. SAVITZ. Oh, yes; very definitely they should provide the information to the consumer and should also give instructions to the contractor as to how to install it properly.

Mr. ECKHARDT. You state that DOE feels it is important that a second independent lab conduct the new tests proposed by 515D to show that test results can be duplicated. Why is this important?

Mrs. SAVITZ. Well, 515D proposes two new tests that have limited past data, and have not been tested widely by the industry. We want to give some verification that the tests are reproduced and that the tests are good tests for fire and for smoldering. It is not a technique that has been used years and years by many manufacturers. It is also a fairly lengthy procedure. One test takes 28 days. So we want to really see what are the best parameters for such a test to be similar to what is in an attic situation and to put the best test forward, we don't want to have to come out 3 months later on some other data and say we have to change it again.

Mr. ECKHARDT. Are you aware of any tests or studies that show that the test method specified in 515C produces reproducible results?

Mrs. SAVITZ. No.

Mr. ECKHARDT. How much does it cost to purchase a Steiner Tunnel? Do you have any idea about a ball park figure?

Mrs. SAVITZ. Mr. Bales thinks $75,000.

Mr. ECKHARDT. How about the equipment for the radiant panel test?

Mrs. SAVITZ. $15,000. It is less expensive.

Mr. ECKHARDT. Much less expensive.

You recommend that section 3 be amended to allow DOE to propose revisions to the 515C standard for purposes of national enforcement through CPSC. Would you be more specific on this.

First, would you eliminate the requirement in the bill that any GSA revision will be incorporated in the interim standard unless CPSC makes certain findings?

Mrs. SAVITZ. We feel that these certain findings are necessary and we are required to be consulted with. We feel that, if possible, we would like to have one standard and if the NEA does pass we will be proposing a standard for insulation material and would then want that one to be incorporated.

Mr. ECKHARDT. What mechanism would be in place to assure that DOE's amendments and GSA's amendments are in conflict or in some respect duplicative?

Mrs. SAVITZ. Well, we are working closely with the other agencies to see they don't conflict. Part of it is taken care of in the review process, part of it is taken care of by working together. We have to look at the technical evidence to see what standards may be best if two different ones are proposed.

Mr. ECKHARDT. Why couldn't DOE simply adopt GSA standards as revised by the Commission?

Mrs. SAVITZ. We may do that. That is one of the options that we are looking at. That is one of the reasons we have asked GSA to delay their standard until we have finished with the independent testing that we are doing. We would like to move toward one standard.

Mr. ECKHARDT. Can you say when DOE will have a revision ready?

Mrs. SAVITZ. Late summer is our target.

Mr. ECKHARDT. Does this mean that consumers would have to wait until DOE's final proposal is ready before they would be protected?

Mrs. SAVITZ. We feel 515C an an interim would help to protect the consumer for that interval.

Mr. ECKHARDT. You are running into a very close time.

Mrs. SAVITZ. The time comes one against the other.

Mr. ECKHARDT. You would be coming out with your revision and the D standard would be ready to go in place very shortly after we

would have put into effect presumably a law mandating 515C. Do you see any problems in that?

Mrs. SAVITZ. One of the problems with our timetable is that it is dependent on when the NEA passes.

Mr. ECKHARDT. If the GSA procedure could be stepped up a bit, the law could adopt what would be the revised standards in the beginning. I would think this would certainly be an easier thing on the manufacturers.

Mrs. SAVITZ. I would agree. The problem with us stepping up beyond the summer is that we need to wait for these independent tests, and the fact that one of the tests takes 28 days. There is not much acceleration one can do in that period of time. We are trying to get our technical results in May and June and then be able to evaluate them.

Mr. ECKHARDT. Now GSA, I understand, intends to have its tests done in a couple of months.

Mrs. SAVITZ. Yes.

Mr. ECKHARDT. Now would you preclude CPSC from adopting any revisions of its own which it felt necessary to adequately protect the public? Say we put this 515C in effect. Shouldn't CPSC perhaps adopt revisions after the GSA revision and before the conclusion of your test that you run?

Mrs. SAVITZ. We would hope they would consult with us so that we could see how divergent they were.

Mr. ECKHARDT. I would hope we would not have a sequence of regulation following very close on the heels of each other.

Mrs. SAVITZ. Yes.

Mr. ECKHARDT. Which would be somewhat different and require perhaps different equipment.

Mrs. SAVITZ. I think we are talking about only 2 or 3 months. We are talking about June or July versus something like August so they are coming all in a very similar time frame. It is not 6 months or a year after one another.

Mr. ECKHARDT. I think we get into one question here that is perhaps a question of policy or philosophy. Essentially, DOE is concerned with the question of conserving energy. Of course it does not want to press conservation to the point where it creates dangers or antisocial effects in other fields.

Now the Product Safety Commission ideally is concerned with public safety. We have had considerable oversight hearings on product safety, that actually this has been I think lamentably slow. Perhaps that is one reason why we began to look toward boosting it a bit by legislation and perhaps also shifting some responsibility to DOE but philosophically it seems to me that the role of the Product Safety Commission is probably one to protect the public from dangers of products in the marketplace and DOE's function is really not in that field.

It would seem to me that essentially the ultimate decisions with respect to safety matters should rest with the Product Safety Commission. DOE, of course, has an interest in speeding up the process in order that energy can be conserved, and I think there is a balance that we have to strike somewhere.

Would you care to comment on that?

Mrs. SAVITZ. Energy is our main mission but safety is very important and high-priority item for any kind of energy policy that we have and particularly in this retrofit area. Consequently even the legislation proposed by the Administration asked not only for material standards but installation standards. Safety is a prime concern in energy conservation and we would agree that the Consumer Product Safety Commission has a statutory authority for safety matters and the responsibility for those. We are responsible for energy but we are very much concerned with the safety aspects.

Mr. ECKHARDT. Certainly we don't want to set up various departments of government to stymie each other. With that consideration in mind it does seem to me that it is quite necessary to keep the two functions somewhat separate because in a sense you are driving as fast as you can toward saving energy, and that creates to a certain extent the conflict with the safety requirements. I am not here to say that your agency would ignore safety, certainly your testimony indicates that you are very concerned with it. I think we probably have the proper structure of government in having the safety function reviewed by the agency separate from that which has the major responsibility of pushing for energy conservation.

Mr. SAVITZ. I agree that is the case. Their prime responsibility is safety and we need to consult with them, and we are consulting with them on the retrofit standard to make sure that the safety is built into them.

Mr. ECKHARDT. Can you estimate how much of the cellulose industry can meet the 515C standard and what percentage can meet the 515D standard?

Mrs. SAVITZ. Our estimate on the 515C standard is that roughly about 80 percent of the industry can meet it and has been doing the testing. On the 515D we don't have any numbers now. We have heard numbers from 10 to 30 percent. As part of the task force's work that is looking into supply of insulation, they are looking at the question of what percentage of the industry could meet 515D. Those results will be available at the end of March.

Mr. ECKHARDT. Well, are these percentages in terms of the numbers of companies or the total percentage of the cellulose product?

Mrs. SAVITZ. Product.

Mr. ECKHARDT. Does the staff have any questions?

Mr. GREENE. No questions.

Ms. KINNEY. Yes.

Dr. Savitz, you mentioned that about 80 percent of the industry could meet the 515C standards; 515C has two classifications for flame spread category 1 and 2. Some witnesses have suggested that if the committee does mandate 515C, that it clarify as to whether both category 1 and 2 insulation would be in compliance. The Commission recommended that only category 1 be in compliance. Would you agree with that?

Mrs. SAVITZ. I would agree that category 1 is the appropriate one.

Ms. KINNEY. You just stated that 80 percent of the industry could comply with 515C. Would you revise that downward if we limit the standard to the category 1 material?

Mrs. SAVITZ. I don't know the answer to that.

Ms. KINNEY. Is there any way of determining that? You mentioned studies that will be done in March.

Mrs. SAVITZ. We will be looking at 515D specifically. I don't know whether some of the insulation trade associations would know. Many companies put out both class 1 and 2 rather than all just one or the other. We would try to find that.

Ms. KINNEY. I also would like to clarify something you said earlier in your recommendations on the amendments to section 3 of H.R. 10637. You recommended that section 3 be revised to allow DOE to adopt a final standard and then have that adopted by the Consumer Product Safety Commission as its final safety standard. In doing that, were you suggesting that the committee eliminate the provision that requires the GSA revision to be adopted automatically. The Commission would then have to wait for DOE to come up with its final study and then go with the DOE final version?

Mrs. SAVITZ. That is what we are saying.

Ms. KINNEY. Why would you do that?

Mrs. SAVITZ. Part of it is so that we get one standard out to the consumer.

Ms. KINNEY. Right, but if you do that you may delay considerably the time in which a meaningful standard can go into effect. If the Commission is told in the legislation not to adopt the GSA provision if it is unnecessary or if it will have an undue burden on the industry, it would seem to me that that would protect certain of the goals of the DOE. Would it not perhaps make more sense to require DOE to then adopt that revised standard as its standard under the National Energy Act when it is ready to mandate standards that for all intents and purposes are solely voluntary anyway?

Mrs. SAVITZ. I guess we see 515C that can go a long way to help protect the consumer and we don't know how much different ours is going to be than GSA's. GSA's is meant for Government purchases. There can be different criteria than what the DOE one will be coming out with. Ours is for the consumer to be the NEA retrofit legislative requirements. The consumer product safety is aimed also to the consumers. We would like to have consistency.

Ms. KINNEY. Consistency is your main goal, not necessarily DOE being the final decisionmaker as to what the standard should look like?

Mrs. SAVITZ. That is right. That is my opinion.

Ms. KINNEY. So long as there is a consistent standard, you would have no objection to how that standard were achieved?

Mrs. SAVITZ. Right.

Mr. ECKHARDT. We will take a 5-minute recess.

Thank you very much.

Mrs. SAVITZ. Thank you.

[Brief recess.]

Mr. ECKHARDT. The subcommittee will resume its hearing.

Mr. Charlie Donaldson, the Housing Research Group.

You may proceed, Mr. Donaldson.

STATEMENT OF CHARLIE DONALDSON, ON BEHALF OF THE HOUSING RESEARCH GROUP

Mr. DONALDSON. My name is Charlie Donaldson. I am with the Housing Research Group, one of the Ralph Nader organizations.

I would ask that my prepared statement be entered in the record so I may make a few comments.

Mr. ECKHARDT. Without objection, the written statement will be inserted in the record.

Mr. DONALDSON. Before getting into the substance of H.R. 10637 I would like to comment on the Product Safety Commission. I understand that your subcommittee has held extensive hearings on the Product Safety Commission and made a rather abysmal record not only last week but at earlier times. What I will have to say about H.R. 10637 is to a great extent influenced by the incompetence of the Product Safety Commission and the fact that they probably will be able to become an effective agency any time soon.

Earlier Congressman Moffett pointed out that not only Members of Congress but various consumer groups have urged the Consumer Product Safety Commission to act swiftly to bring under control a totally unregulated insulation industry. Nothing has happened even though the Product Safety Commission has known for years that there was dangerous insulation out there, especially flammable cellulose.

I would urge this subcommittee, although it is probably not within your jurisdiction, to consider taking the upper levels of the CPSC out from under civil service. Perhaps if some at the CPSC were faced with the possibility of getting fired if they did not do their job, then there might be some movement. But that is a little farther down the pike. For now there needs to be quick section to protect consumers first from flammable cellulose and then from the other possible dangers from insulation.

Quick action is necessary because we are insulating approximately half a million homes a month. If we wait until, say, the end of summer when the Department of Energy standards will be out, we may be talking about an extra 3 million homes insulated with products that are totally unregulated. I don't think we can wait that long. We should not have waited as long as we have. However, there is little that can be done at this point about the insulation that is in homes; all we can do is worry about what is going to happen next week, next month, and the month after that.

One of the problems is deciding what tests should be used to determine out whether or not cellulose insulation is in fact safe. Now we have heard the Department of Energy endorse the C standard and at one point our organization thought that mandating C would be a proper interim step until a better standard came along. I think we have now moved away from that.

I do not believe that the Steinner tunnel test incorporated in HH–I–515C the existing GSA product specification for cellulose is adequate. Congressman Moss held hearings last week in which the standard tunnel test did not fare too well, and for that matter the better known cellulose manufacturers did not fare that well.

Congressman Moss subpenaed the data from test run by cellulose companies used to test their competitors' products. Also, it appears from NBS tests, that even those products certified as passing 515C in fact burn. Perhaps you can discuss this with the panel of cellulose manufacturers who will follow me.

I have been out to the National Bureau of Standards, seen their test results, talked to their people, had some discussion with the people at the General Services Administration and the bottom line is that 515C is simply not adequate to protect the consumer. We there-

fore urge that H.R. 10637 be amended to require the Product Safety Commission to come up with a flammability standard, a fire resistant standard, band on the proposed GSA modification of the cellulose.

I understand that at this point the General Services Administration does not have the D modification in effect. This produces certain problems under the Consumer Product Safety Act because the CPSC is allowed to use only existing standards as the basis for issuing a CPSC standard. However, if allowed to use an Administrative Procedure Act proceeding, they con then use anything they want as the basis for creating their standard. I would urge that this be done as opposed to mandating the CPSC.

You questioned Dr. Savitz earlier concerning the cost of the Steinner Tunnel. My understanding is consistent with hers that the tunnels cost anywhere from three to five times as much as the radiant panel test equipment here is a potential problem HH–I–515C mandate is and there are not enough testing tunnels. Testing labs will order the tunnels. The tunnels coming in just about the time you come up with a standard based on HH–I–515D is issued. There with them are many extra Steinner Tunnels laying around.

At that point there will be pressure to delay coming in with the D standard and if the C standard is no good to begin with that is going to be that many more months delay in which consumers are not in fact protected. So I just don't see the purpose of coming out with C when we are going to be shifting over to a better standard shortly thereafter.

Mr. ECKHARDT. Well, I think we have a time problem there and I rather agree with you that it would be a pity to put into effect the C standard if we would in that way falsely assure the public that a standard is in place which is supposed to protect them from dangers. I believe that at the present time the public is beginning to feel that there is governmental protection in these areas, probably also because you have a good many standards set yet by the Product Safety Commission.

Practically speaking a bill of this nature probably would not pass through the conference stage before the standards were virtually ready to be put in place or perhaps put in place so it might be well for us to proceed with the bill instead of keeping these matters intact, keeping flexibility between the Senate and the House. We have Senate and House sponsors of virtually the same bill to give us room in conference to put in place the standards of D in the first instance.

For instance, if either the House bill or the Senate bill did not specify the standard but gave authority to the Product Safety Commission to set one and the other body had C, I think it would be germane and within the scope of the conference to put in the D standard as a compromise. What I am concerned about, I don't think we have really as great a problem practically as would have been indicated by this question of possible sequential standards being set into effect.

Now I would like to ask you a question. Were you through with your statement?

Mr. DONALDSON. No, sir, I had additional remarks.

Mr. ECKHARDT. Proceed.

Mr. DONALDSON. I will go next to enforcement. One of the points made at Congressman Moss' hearings was the need for some kind of

third party testing. Also brought out was the inadequacy of existing third party testing organization such as Underwriters Laboratories. What was brought out was if you want to be UL listed you could sign up and have one sample of your product tested and then for 2 years you would continue to be listed even though you did not subscribe to their testing program or they would come by and pick up a sample and take it in. There apparently are some problems with the sampling program as well.

It is my understanding that UL comes by at predetermined times to pick up the sample which means it would be quite easy on the day they come to put in the product extra fire retardants and when they left the plant cut down on what you are using. It wold be quite easy to fake that test.

Going back to the Product Safety Commission, not only are they demoralized, they are a rather small Federal agency which means that they simply are not going to be able to go out and inspect on a regular basis the 750-odd cellulose manufacturers the Federal Trade Commission says exists which means that some of them need a much larger agency with much more resources to actually determine whether or not the products are in fact being manufactured in a safe manner.

Since the Department of Energy is going to have its own standards assuming the National Energy Act or something like it is passed, the logical place to put that responsibility as a matter of first instance would be the Department of Energy. Now DOE is going to incorporate more than safety. It would include quality, it would include terminal resistance or whatever, so if DOE were given the responsibility not only to set standards and because DOE is setting them we are going to assume they are being protected but also to enforce those standards either through a direct inspection or better probably a third party situation where DOE regulates the labs.

Now that does not mean that CPSC should be left off the hook. Since CPSC has as its mandate consumer safety, they should be there essentially to sort of check up on DOE so if there is any conflict between the two if it cannot be resolved between the two agencies then CPSC could inform Congress as to a possible conflict.

That is all I have, sir. I would be happy to answer questions.

[Mr. Donaldson's prepared statement follows:]

STATEMENT OF CHARLIE DONALDSON, ON BEHALF OF THE HOUSING RESEARCH GROUP

Mr. Chairman, Members of the Subcommittee, thank you for the invitation to testify today on the performance of the Consumer Product Safety Commission and the adequacy of the legislation administered by the Commission. The Housing Research Group has closely followed the Commission's handling of proposed standards for home insulation and upholstered furniture and has previously testified before this Subcommittee on the object failure of the Commission to perform the work necessary to develop and issue safety standards for these two consumer products despite clearly demonstrated need for mandatory safety standards. Much of the cause for the Commission's failure can be traced to the present Chairman S. John Byington and his predecessor but some of the problems are due to defects in the Consumer Product Safety Act, 15 U.S.C. 2051 et seq., or in the interpretation of the CPSA. Little would be added to the deliberations of the Subcommittee by reiterating the specifics of the Commission's sorry record but a brief comment on recent statements by Chairman Byington is in order before examining the CPSA.

Recently Chairman Byington announced his resignation from the Commission effective June 30, 1978. Prior to his resignation Mr. Byington was quoted in the

media as saying that the demands for his resignation both from Capitol Hill and from the public were motivated by partisan considerations. Nothing could be farther from the truth. The mounting pressure for the removal of Mr. Byington was based on the incompetence of the CPSC under his leadership and numerous violations of the letter and the spirit of the Civil Service law and rules under his administration. Hopefully the public record will prevent any success in Mr. Byington's effort to paper over the facts of his term as Chairman of the Consumer Product Safety Commission. The Civil Service Commission and the Congress should pursue the violations discovered at the CPSC by the Civil Service Commission both to correct the injury done and to insure that Mr. Byington's record does not undergo a sea change into something wonderous and strange at the hands of his friends in the public relations business.

In the tradition of the ill wind that blows some good, Mr. Byington did raise one issue worthy of consideration when he complained of the difficulty of replacing personnel at the CPSC, either by removing incompetents or by hiring persons to fill vacancies. There appears to be some truth to his complaint. The difficulty of removing anyone under the Civil Service as it is today is well known. What originated as a reform intended to improve the services of the Federal government has become an impediment. We therefore respectfully urge Congress to remove the upper levels of the CPSC from the Civil Service. All personnel at or above GS–14 should be placed in an Executive Service similar to that at the Department of Energy. If this is done Mr. Byington's successor will have one less excuse for failure. The GS–14 level is suggested because that level is the lowest covered by the conflict of interest provision in Section 4(g)(2) of the CPSA.

Exposing the well paid staff of the CPSC to the possibility of removal for incompetence will not by itself speed up the development of consumer product safety standards. The failure of the CPSC to develop more than four standards in five years is due in part to the cumbersome offeror process set forth in Section 7(b) of the CPSA. Some will no doubt argue that the offeror process has not received a fair trial under the present Chairman or his predecessor but the process is inherently inefficient. Three of the four mandatory consumer product safety standards developed by the CPSC have required far more than the time contemplated in the CPSA. The last standard issued, miniature Christmas tree lights, did finish within the limits but this product is unusually simple and the domestic Christmas tree light industry viewed the standard as some protection from imports. Also, the CPSC departed from their former policy of refusing to allow the CPSC liaison with the standard developer to give guidance during the development process. Providing greater CPSC guidance during the standard development process will speed up the work and will reduce the amount of work the CPSC must do to put the developer's product into a form that can be issued in the Federal Register, but will not remove the delays involved in finding an offeror, negotiating a contract and managing the development by an agency independent of the CPSC. For example, the CPSA requires development of a detailed notice for offerors to respond to. Proposals submitted in response to the notice must be judged and a contract negotiated with the offeror selected. This assumes that an acceptable proposal is received. If not, the CPSC must publish notice and may begin to develop a standard on their own—but not until 60 days after the original request for proposals was published. Two months are lost just waiting to find out that no one is interested in doing the job.

The Section 7(b) offeror process should be replaced with rule making under the Administrative Procedure Act. This will eliminate the extra step and will also obviate the ambiguities in Section 7(c). There is disagreement about the extent to which the CPSC can modify an existing standard and issue it under Section 7(c). One school holds that any existing standard can be used as the basis for the development of a CPSC standard while the other extreme believes that only minimal clerical changes can be made. Replacing both subsections with an APA procedure under which the CPSC can go to whatever sources it wishes to develop the proposed regulation sent out for comment removes the barriers to sources for possible standards. It would also answer the question of whether the CPSC must go through the offeror process to modify or revoke a standard once it is published in final form.

Elimination of the offeror process effectively removes the possibility of consumer groups participating in standards development. The danger is that consumer comment on a proposed standard after it is published in preliminary form is too late to affect the standard significantly. Consumers must have a say in the initial standard development. This can be accomplished by requiring that at least one consumer representative participate in every standard setting process. The

consumer representative may or may not be compensated but should be selected by the Commission according to objective criteria and should have access to sufficient staff support and technical assistance to insure active participation in the standard setting process.

Section 8 of the CPSA, "Banned Hazardous Products," is the source of additional theological quibbling. It is not clear how a ban differs from a standard, except where the product is so inherently dangerous that the product can not be allowed on the consumer market. Also, it is not clear what constitutes a "feasible" standard. For most products it is possible to imagine a possible standard even though many of the models of the product are highly dangerous. One possible solution would be to allow the CPSC to issue certificates of necessity, based on established criteria, which would allow the CPSC to dispense with a public hearing before issuing a final rule. The question then would be how immediate the threat was from the product rather than whether any standard could be developed. Any standard would, of course, be open to challenge in the courts.

Section 10 of the CPSA, which provides for consumer petitions for rule-making, has at least two defects. The CPSC appears to be faced with only two options when faced with a petition—grant it and proceed with rule making or deny it. This interpretation led to the famous first CPSC rule—home swimming pool slides. The CPSC should be given the authority to accept a petition as having medit but not warranting use of scarce CPSC resources at that time. Otherwise the CPSC will proceed to full development of standards on many petitions without considering the priorities on CPSC staff and funds. Granting the CPSC authority to defer action on petition should be coupled with an extension of the time allowed petitioners to sue under Section 10(e)(1). The present 120 days is far too short, especially since a petitioner is often fearful of antagonizing the very body which must consider the petition.

The CPSC should be given the authority to sue without clearing litigation with the Justice Department. The 45 day delay written into the present law could allow the manufacture or sale of millions of dangerous products or otherwise jeopardize enforcement actions. Also, the CPSC as a branch of Congress should be independent of the Executive Branch to the extent practicable. However, criminal prosecution for violation of the CPSA should remain with Justice and Justice should be allowed to cooperate with SPSC to extend the Commission's resources.

Amendments to the CPSA will be welcome but immediate action is needed to protect the Nation's home from dangerous insulation, especially flammable and corrosive cellulose. The Department of Commerce estimates that eight million homes were insulated in 1977, of which 2 million were new homes and 6 million were retrofits in existing buildings. What percentage of the market is cellulose is not clear nor is the rate of growth of cellulose production. What is clear is that the demand for insulation is growing, the rate of cellulose production is increasing and the Federal Trade Commission is the only agency doing anything to protect the consumer from dangerous cellulose insulation.

The facts, if the educated guesses published by the Department of Commerce, the CPSC and other Federal agencies can be so ascribed, are that the number of new home starts went from 1.55 million in 1976 to 2.0 million, while retrofits (insulation) increased from 2.6 million in 1976 to 6.0 million in 1977. At the same time cellulose manufacturers increased in number from an estimated 100 in 1976 to over 750 in February 1978. And the number of new entrants is around 7–15 per month. The share of the retrofit market falling to cellulose is said to be between 2.4 million and 4.8 million homes. Some new homes may be insulated with cellulose but the conventional wisdom is that most new homes are insulated with mineral wool. In any event the number of homes being insulated with cellulose is large and will increase if present trends continue. No significant decrease is predicted until mineral wool production begins to increase significantly in the early 1980's.

Despite the need for rapid and decisive action the CPSC sat on its collective hands even though petitioned by the Denver District Attorney in October 1976. Faced with continued inaction by the CPSC Senator Wendell Ford of Kentucky introduced and shepherded through the Senate S. 2401, a bill to legislate a minimal safety standard for cellulose and to increase the CPSC's study of other potential dangers from home insulation. This bill was introduced in the House by Congressman Moffett of Connecticut as H.R. 10637. The CPSC still gives no evidence of moving quickly to establish standards to protect consumers from dangerous cellulose insulation. The need is just as acute as when Senator Ford originated the bill.

What has changed is our knowledge of the cellulose insulation industry. Congressman Moss of California held three days of devastating hearings on February 21–23, 1978. What emerged was a picture of an industry out of control and unconcerned with the interests of consumer. Even some of the so-called responsible cellulose manufacturers fail to ensure that their product meets even the existing voluntary standard for cellulose insulation. Nor is that standard any significant protection for consumers. What is needed is a reliable standard and effective enforcement. Unfortunately a half-million homes are being insulated each month as the engineers search for the elegant solution for the need for a cellulose insulation standard. And an adequate standard will not be self-enforcing.

The situation is exacerbated by our limited knowledge of cellulose insulation and the inadequate testing facilities for the product. Neither deficiency can be corrected quickly, yet rapid action is necessary. Senator Ford recognized the need for rapid action and incorporated the existing General Services Administration purchase specification for cellulose in his bill. This specification, HH–I–515C, is now known to be inadequate and should not be the basis for a CPSC mandatory consumer product safety standard. The National Bureau of Standards scientists can expalin the technicalities but HH–I–515C is defective because the flame resistance test used does not realistically duplicate the conditions likely to be found in a fire igniting in cellulose, because 515C contains no test for resistance to smouldering fires (the most likely type of cellulose fire) and because the corrosion test used is not rigorous enough. The proposed GSA specification HH–I–515D is generally conceded to have a superior test for flame resistance and corrosion and does contain a test for resistance to smouldering fires. Unfortunately 515D is not yet issued and the smouldering test is controversial.

The smouldering test in 515D consists of placing a lighted cigarette burning end uppermost in a metal container filled with cellulose insulation. The belief is that the cigarette test replicates the most likely ignition source for cellulose insulation—an overheated recessed light fixture. The cellulose industry and apparently some persons at the Department of Energy dispute this. Whatever the validity of the objections, the fact is that eight out of ten samples tested at NBS failed the smoulder test. The other side of the smoulder test controversy is the claim that the smolder test is too easy to fool and that the burning cigarette does not accurately duplicate the heat buildup from a recessed light fixture. Here the fear is that dangerous cellulose will pass the cigarette test if the density of the material is manipulated just so. In its favor the cigarette test is cheap and quick.

The open flame test in 515D is not opposed but the testing equipment may be in short supply. At least count there were only 26 of the radiant panel testing machines equipped for insulation. A crash Federal program may be necessary, at least to determine if there are enough of the machines available should the radiant panel test be adopted for cellulose insulation. There is also the question of whether there are enough humidity cabinets for the corrosion test conducted under 515D. The cabinets are common laboratory equipment but the test requires leaving the testing materials in the cabinet for 28 days under 515D rather than 7 days (and potentially longer) under 515C. The inventory of laboratory test equipment should not delay development of a safety standard for cellulose but the perfect standard is worthless if there is no way to test for it. A concomitant to the need for adequate test facilities is technical skill on the part of cellulose manufacturers. Many of the new entrants into cellulose insulation manufacturing clearly lack the technical skill to comply with any standard issued by the CPSC.

Development of an adequate cellulose safety standard is made somewhat easier by research now underway at the Department of Energy or under DOE contract. The DOE studies involve more than safety and more than cellulose, since DOE must prepare comprehensive insulation standards for the National Energy Act, should it pass. The CPSC will benefit from the DOE research and should not duplicate what DOE has already done. However, DOE is concerned with saving energy and therefore has a conflict of interest between the wish to increase insulation production to save energy and the need to protect the Nation's homes from fire and corrosion. The CPSC has no such conflict.

Standards enforcement is another issue entirely, DOE has a budget in the billions of dollars and several different insulation standards to enforce even now (low income weatherization, etc.). DOE should therefore be the lead agency in enforcing insulation standards but not the sole enforcing agency. DOE is vigorously promoting the use of insulation; DOE should have the primary responsi-

bility for insuring that the public receives a quality product. But no institution is perfect. This means that the CPSC should retain jurisdiction over insulaton safety and the Federal Trade Commission over insulation advertizing. Obviously there should be coordination among these three agencies and any others involved with insulation (for example, the DOC voluntary labeling program).

Any DOE enforcement of insulation standards must include some form of third-party testing with no loopholes like those in the existing Underwriters' Laboratory program. UL picks up test samples on predetermined days and allows manufacturers to be listed with UL for almost two years even though the manufacturer drops out of the testing program. Insulation testing may be done by private laboratories but DOE should be given responsibility for the accuracy and honesty of the testing by those laboratories. The enforcement mechanism incorporated into the National Energy Act is a fine on utility programs not using materials conforming to DOE standards and the denial of tax credit for products that do not meet Treasury regulations. Neither mechanism will be very effective nor does either stop the manufacture or sale of dangerous insulation. However, the National Energy Act is not yet law and may not be for some time. And dangerous insulation is going into homes now.

The following changes in H.R. 10637 should start us toward insuring that the insulation going into the Nation's homes is safe and of good quality.

1. Delete all mention of GSA specification HH–I–515C and instead direct the CPSC to consult with the Department of Energy, the National Bureau of Standards and any other interested Federal agency, develop and publish a proposed mandatory safety standard for cellulose insulation based on the fire resistance and corrosion standards in GSA specification HH–I–515D within thirty days and promulgate a final safety standard for cellulose insulation within one hundred and twenty days after this bill becomes law.

2. Limit judicial review of the standard to whether the standard has a foundation in fact based on the record as a whole.

3. Authorize enforcement of the rule under the CPSA in the same manner as any rule issued under Section 7 of the CPSA.

4. Direct the CPSC to amend its standard for cellulose insulation to conform to each GSA cellulose specification as issued, unless one of the three findings mentioned in the bill is made.

5. Retain the requirement that GSA inform CPSC of any changes in the GSA specifications.

6. Allow the CPSC to use 5 U.S.C. § 553 to issue the original cellulose standard and any amendment thereto.

7. Delete the reference to a study of other forms of insulation.

8. Make sale or offer to sell any cellulose not conforming to the CPSC standard an unfair and deceptive trade practice within the meaning of the Federal Trade Commission Act, 15 U.S.C. § 45.

These changes will not produce the perfect standard for cellulose insulation but will provide a vital protection for our homes while the technicians develop a better one. Not a neat solution but there is no time to wait for the perfect answer.

Thank you.

Mr. ECKHARDT. You state that any DOE enforcement in its installation standards must include some form of third party testing. I would like to explore what you mean by third party testing. Section 14 of the Consumer Product Safety Act requires each manufacturer of a product subject to a mandatory standard to give the consumer a certificate certifying that the product complies with the safety standard based on a "reasonable testing program." The provision also permits the CPSC to spell out what is meant by a "reasonable testing program."

Now what beyond that are you looking for with respect to third party?

Mr. DONALDSON. If that were actually enforced by the Product Safety Commission, sir, I think that would be adequate but it is not and it is not likely to be any time soon, given the present personnel and leadership of the Product Safety Commission.

Mr. ECKHARDT. Yes, but the leadership is going to change.

Mr. DONALDSON. Yes, sir, I understand that Mrs. Barksdale, Sloan, and King passed the Senate Commerce Committee this morning but their being appointed to the Commission will not automatically improve the quality of the people working under them. It is going to take years I am afraid to get the Product Safety Commission up to anything resembling efficiency.

Let's go back to the DOE situation a minute.

Mr. ECKHARDT. Now the points you are making don't go so much to the question of third party testing but to the qualifications of the Product Safety Commission to carry out its mandate. I am not making the case either for one or for the other, but you heard the last witness from DOE recognizing that the safety area was properly in the jurisdiction of the Product Safety Commission.

Now I wonder if we might not make a mistake if we simply make determinations with respect to authority granted to one agency or another based on specific failures of one agency which undoubtedly relates largely to personnel rather than statutory mandate. Your argument that DOE has greater capability because it is a bigger agency and of course it has gotten more attention governmentally in the last year or so has to be considered against the fact that it also has a very wide range of responsibility other than safety.

Mr. DONALDSON. Yes, sir, what I am saying is this: That the National Energy Act as it presently exists mandates that the Department of Energy come up with certain standards for what they call energy conservation measures which includes insulation. Those standards not only include both safety quality requirement, for example, thermal resistance.

The only enforcement mechanism written into NEA, other than denial of tax credit if the products do not comply with the standards is a $10,000 a day, or even penalty against the utility operating a residential energy conservation program. This is too remote a mechanism to have any enforcement effect. The Department of Energy must show some real authority to enforce their standards.

Mr. ECKHARDT. In other words, if they could enforce their standards in the same manner as the Product Saftety Commission, standards would be enforced either by action by the Commission itself or by an individual seeking an injuction?

Mr. DONALDSON. Yes, sir, the mechanism could be worked out in many different ways but the Department of Energy should be out there testing to see that the material meets their own standards. Hopefully the DOE safety standards will be the same as those of the Product Safety Commission.

Mr. ECKHARDT. What would you then propose? Would you propose that this committee—and I am not speaking here of this subcommittee because again you have a jurisdictional question here. The Energy and Power Subcommittee deals with the energy agency and this committee deals with the product safety question. But those jurisdictional issues ought to be very much resolvable considering the fact that we all are members of the same committee.

Would you suggest then that the Energy Department be given the authority to enforce the standards in the same manner as a rule of the Product Safety Commission? Really these are kinds of different points. I consider safety as more immediately important and calling for more

immediate and stronger penalties if violated than the effectiveness standards.

Mr. DONALDSON. Yes, sir. An inspector going into a plant can inspect for both quality and safety. That does not in any way mean that the Product Safety Commission would have their responsibility or authority diminished.

Mr. ECKHARDT. Of course in the Product Safety Act we have a $10,000 civil penalty against the utility—no, excuse me. Under the Energy Act we have a $10,000 civil penalty against the utility for noncompliance with an approved residential energy conservation plan but not compliance with insulation standards.

Mr. DONALDSON. Yes, sir.

Mr. ECKHARDT. Now we could extent that, I suppose.

Mr. DONALDSON. Yes, sir.

Mr. ECKHARDT. At least the full committee could extend that to insulation.

Mr. DONALDSON. My understanding, sir, is that noncompliance includes using materials that do not meet DOE standards. DOE will set certain regulations which include standards for insulation. The utility must operate within those, which means that allowing the use of nonstandard insulation would be a violation.

That does not get down to the real critical point with dangerous insulation; the stuff should never be made. The Department of Energy will not have under the National Energy Act the ability to go to a plant and halt production.

The Department of Energy inspectors, assuming such ever come into existence, would be going to the plants and looking to see if products have quality. Why can't they also inspect for safety, and alert the Product Safety Commission? CPSC could then go shut down the production line.

Mr. ECKHARDT. Well, why couldn't you utilize the structure of the present Product Safety Commission and at the same time achieve these objectives you are talking about? For instance, if DOE has to set standards with respect to quality, I can see a very good reason why it ought to consider safety at the same time, since these things may affect each other. I cannot see any reason why the ultimate recommendation cannot then be referred to the Product Safety Commission with respect to its safety aspects.

Mr. DONALDSON. It should be.

Mr. ECKHARDT. It would seem to me that this would achieve really the most protection a person concerned with consumer matters could possibly get, and that is the development of the standard including consideration of safety, but the requirement that the Product Safety Commission actually received this information and put into effect that standard or an alternate one which would undoubtedly, or should I think, lead toward a greater level of safety rather than to a lesser. The standard would then be enforced as a product safety standard. I think you are suggesting here that some of the enforcement or inspection duty with respect to safety should be taken on by DOE people because they are having to inspect with respect to quality.

Mr. DONALDSON. Yes; but perhaps one mechanism would be to have the CPSC deputize the DOE inspectors.

Mr. ECKHARDT. Would it then be necessary to give DOE enforcement power? It seems to me not.

Mr. DONALDSON. No; I don't see where it would be necessary to have DOE do any enforcement, as opposed to inspection. DOE could simply collect information for the CPSC and the CPSC would then act.

Mr. ECKHARDT. Now Mrs. Harrison, full committee counsel, has worked in the area of all these acts, and perhaps she would like to comment on how they overlap and what conceivably could be done.

Mrs. HARRISON. Thank you, Mr. Chairman.

Mr. Donaldson, you raise the issue of DOE setting quality requirements as well as the language of the act which will require DOE to set standards for the safety and effectiveness of residential energy conservation measures. They are also required to set standards for the installation of these measures. These are standards which a manufacturer of various conservation measures will have to meet and the enforcement in the act at this point goes not to a manufacturer not complying with those standards but to a utility which fails to implement an approved residential conservation plan. Now those standards are not necessarily an element of that plan. Conceivably under the statute I think DOE could make them a requirement of the plan but they are not now specifically spelled out that way.

Now is your understanding different from mine? If so, maybe we can clear it up.

Mr. DONALDSON. I don't believe the Department of Energy could tell a utility to implement a residential energy conservation plan but allow the utility to ignore DOE standards for insulation. That seems inconceivable to me.

Mrs. HARRISON. Those standards must be compiled with by the manufacturers of the products and the installers of the products, not by the utilities. The civil penalty section runs against the public utility.

Mr. DONALDSON. My understanding is the utility has to publish an approved list of materials to be used but that the manufacturers are not required under NEA to comply with any standards. The NEA has nothing to do with the manufacturing.

Mrs. HARRISON. There is another element in here and that is that the State Governor could be drawing up the plan and it will not be the utility which makes the final judgment as to who is a qualified contractor or supplier, it could be done under existing State law.

Mr. DONALDSON. Yes; effectively the consumer has no protection under the National Energy Act.

Mrs. HARRISON. Yes.

Mr. DONALDSON. It has no protection for the consumer written in the National Energy Act and something should be done.

Mrs. HARRISON. You are speaking to this specific issue, the safety issue.

Mr. DONALDSON. As it relates to insulation.

Mr. ECKHARDT. The question is whether the facilities of that Department should be called into play with respect both to the development of the standards and inspection and the enforcement. The rules should be promulgated ultimately by the Product Safety Commission and enforcement.

Mr. DONALDSON. Yes, sir.

Mr. ECKHARDT. I would suggest that might be the best way out of this thicket.

Mr. DONALDSON. The overlap among these acts, especially when some of them are not in existence, plus the sort of fluid situation with the safety standards makes this area particularly hard to pin down. As soon as you pin something down, something else moves.

Mr. ECKHARDT. Trying to pin it down in this respect by a specific statute.

Mr. DONALDSON. Yes, sir. I support what I am saying is I don't think that the Department of Energy should set insulation safety standard.

Mr. ECKHARDT. You do not think so?

Mr. DONALDSON. I do not. The CPSC should set safety standard but there is a role for both the Department of Energy and the CPSC in enforcing safety standard.

Mr. ECKHARDT. Then as I understand it you would like to see us take basically the structure of the Moffett bill before us, but be assured that in that bill there can be the utilization of the full resources of the Energy Department with respect to standard making and with respect to inspection.

Mr. DONALDSON. Yes, sir, because what I am worried about is that the Department of Energy will reject responsibility for enforcing any safety standard.

Mr. ECKHARDT. And secondly you are saying that we should try to avoid an interim measure of putting into effect 515C, that in whatever manner we should put in something like the contemplated 515D.

Mr. DONALDSON. Yes, sir.

Mr. ECKHARDT. I think other witnesses have indicated to us that it is most desirable that the ultimate GSA standard be uniform with the general sandard, and I have suggested that this might be taken care of by the timing of the bill.

Mr. DONALDSON. Yes, sir, but there is an urgency to this. We are insulating half a million homes a month, so every month you delay there are that many more homes that may or may not have safe insulation.

Mr. ECKHARDT. Of course what we heard about the timetable, this does raise very difficult questions.

Mr. DONALDSON. Yes, sir.

Mr. ECKHARDT. We have those standards due in about 2 months, but the Energy agency's study is to be completed by the end of summer as we hear it. However, whatever occurs, it would seem desirable to get this bill on its way.

Mr. DONALDSON. Absolutely.

Mr. ECKHARDT. So that we could fashion the bill in accordance with better developed standards it seems to me.

Mr. DONALDSON. Yes, sir, but I don't think the Department of Energy or the GSA or the NBS are the only sources of information. If, as I have suggested, there is an APA rulemaking by the Product Safety Commission, industry, Government, and consumer groups can provide data during the process.

Mr. ECKHARDT. But if we wait for that, we are calling for even more.

Mr. DONALDSON. I don't think so, sir.

Mr. ECKHARDT. It has been the history of product safety rulemaking that it is a very tedious and lengthy process.

Mr. DONALDSON. Yes, sir, but that is why I am proposing using the APA as opposed to the Consumer Product Safety Act.

Mr. ECKHARDT. Are you suggesting an alteration for this purpose?

Mr. DONALDSON. Yes, sir, we are not discussing the Product Safety Act per se but I would also like to see the Product Safety Act altered the same way. I don't think the offeror process has proved effective.

Mr. ECKHARDT. We have been discussing that question, and I think we have got something of a consensus amongst the Commissioners that there ought to be an alternative.

Mr. DONALDSON. But in this specific bill produce a fire and corrosion safety standard for cellulose installation. I would definitely urge you to use the APA and give CPSC only 120 days to produce a standard.

Mr. ECKHARDT. Mr. Broyhill.

Mr. BROYHILL. You have already hit on the questions that I was going to ask or at least expressed the dilemma that we are in. To come up with a new standard is even going to be more delay but if you adopt the present standard as you already pointed out there will be some problem that will develop along the way. Of course I have felt that the Commission could have used more aggressively the authority in section 7(c) and I think I mentioned that in the hearing last year as I recall.

Mr. DONALDSON. Yes, sir, you did.

Mr. BROYHILL. It is still a mystery to me why they have not moved more aggressively so they would have a standard in place already.

Mr. DONALDSON. That to me is an unresolved mystery. When the Denver region alerted the Washington headquarters in June of 1975 that there were problems with cellulose installation, why the CPSC did not act then is totally beyond me.

Mr. BROYHILL. Thank you, Mr. Chairman.

Mr. ECKHARDT. Thank you very much. I think your testimony has been fruitful, though provoking, and very useful to the committee.

Mr. DONALDSON. Thank you.

Mr. ECKHARDT. We next have a panel. Mr. L. A. Barron, managing director, National Cellulose Insulation Manufacturers Association, Inc.; Mr. Charles D. Mesigh, president, Society of International Cellulose Insulation Manufacturers; and Mr. Robert W. Anderson, director of product development, Diversified Insulation, Inc.

Mr. METCALFE [presiding]. Mr. Barron, would you lead off?

STATEMENT OF LESLIE A. BARRON, MANAGING DIRECTOR, NATIONAL CELLULOSE INSULATION MANUFACTURERS ASSOCIATION, INC.

Mr. BARRON. Thank you, Mr. Chairman.

Mr. METCALFE. Do you have a prepared statement?

Mr. BARRON. Yes, indeed, Mr. Chairman. With your concurrence I would ask that our formal statement be entered into the record of these hearings but I would like to paraphrase a supplemental statement of some items that have come to our mind since the preparation of our formal statement.

Mr. METCALFE. Without objection, so ordered.

Mr. BARRON. Thank you.

I would like to file with your committee copies of wires that I received from four trade associations in the cellulose industry; that is, the National Cellulose Insulation Manufacturers Association; Manu-

facturers Association of Cellulose Insulation International; the Society of American Cellulose Insulation Manufacturers; and the Insulation Industries Association.

These associations, representing approximately 70 percent of the tonnage of the industry, have agreed to form one association to be known as Cellulosic Insulation Manufacturers Association. Their wires generally state complete support of CIMA and also affirm their intention to join in forming a new association to support certain matters that will be expressed to you in the statement.

We submitted our formal statement. May I offer these comments.

It is hoped, gentlemen, that the recommendations that have been set forth in this supplemental statement will indeed be not only imposed upon the cellulosic industry but also upon those agencies of the Federal Government who do buy insulation in the open marketplace. As we set forth in our previously prepared formal statement, there are agencies in the Federal Government that do not require that cellulosic materials purchased conform to the now existing Federal specification HH–I–515C. We feel that this standard should be impartially mandated to the entire country.

My thanks to you, Mr. Chairman.

[Mr. Barron's prepared statement follows:]

STATEMENT OF LESLIE A. BARRON, MANAGING DIRECTOR, NATIONAL CELLULOSE INSULATION MANUFACTURERS ASSOCIATION, INC.

Good morning, Gentlemen. I am L. A. Barron of National Cellulose Insulation Manufacturers Association, Inc. out of Elk Grove Village, Illinois. NCIMA, as we call it, is a national trade association supported by twelve manufacturers of cellulosic insulation located essentially all across these United States. We are a trade association organized early in 1960 and have been quite active in standards and regulation sectors of our industry including committees of the American Society for Testing and Materials, activities of the American Society of Heating, Refrigerating and Air Conditioning Engineers, the model building code groups of our country as well as many other activities.

We have been asked to state our opinion regarding mandatory Federal standards being contemplated for home insulation possibly to be coupled with a mandatory third party follow-up inspection program. I assume that the Federal standard being contemplated is that as expressed in legislation offered by Senator Ford from the Senate side and Congressman Moffett on the House side that would establish HH–I–515C, the now existing Federal standard implemented by the General Services Administration, as a national mandatory standard. I would recommend that if such were done, that it be made explicitly clear that Section 2.2 of the now existing Federal standard, HH–I–515C be modified to make it precisely clear that the C–739 test method referred to is the 1977 version of that standard which was issued in November of 1977. Additionally, I would recommend to you that the E–84 test method referred to in Section 2.2 of the standard be stated as E–84 as modified in ASTM specification C–739–77. The ASTM C–739–77 version makes mandatory the inclusion of a correction factor for the influence of galvanized steel screen used to support the specimen in the ASTM E–84 modified tunnel test. Underwriters Laboratories of Northbrook, Illinois does use this method and does use a correction factor for the influence of the galvanized steel screen. We in NCIMA, support that method of determining the flame spread. We feel it is the best way to measure the flame spread of materials. This tunnel test method has been used over the last twenty-five years and is recognized by every building code across the United States and Canada as the method to determine the flame spread of building materials.

There is, of course, language in the proposed legislation that would permit the Federal sector, and more specifically, the Consumer Product Safety Commission, to adopt a later standard, presumably the proposed HH–I–515D as the national standard in the area of cellulosic insulation. We are, at the present time, involved in a discussion with the General Services Administration-Federal Supply Service

in details associated with the proposed HH–I–515D and take exception to the immediate implementation of the Flooring Radiant Panel Test method as well as the Smoldering test referenced in that proposed Federal specification. We understand that the data base for these two proposed methods is just eleven tests. We further understand that only now is the National Bureau of Standards implementing round-robin tests with funds from the Consumer Product Safety Commission to ascertain the reproducibility of these tests methods. We feel that this should have been done some time ago before these two test methods were ever contemplated for use in such an important specification. Obviously, more work needs to be done on these two test methods to assure that we trade off the problems suggested with the E–84 test method for the same sort of problems with these two proposed test methods.

If you will check the the testimony that was taken by the Consumer Product Safety Commission at their public hearing on August 22, 1977 relative to the insulation industry, you will note that NCIMA, at that time, recommended no additional standards and that the industry could clean itself up. You will also note in that same testimony, that there was a recommendation made that if that body, that is the Consumer Product Safety Commission, would adopt one of the three nationally recognized standards in the area of cellulosic insulation, that is either HH–I–515C, ASTM C–739, or our own NCIMA specification, N–101 and make it a national mandatory standard, that a great deal would have been accomplished in straightening out the dilemma the cellulosic insulation industry faces at the present time. We in NCIMA recognize the inevitability of a national standard and against that backdrop it is interesting to note, that just today, seven months after that occurrence before the Consumer Product Safety Commission, is the Federal sector considering making mandatory the implementation of HH–I–515C.

While the Federal government, and really, people call me day in and day out and ask me what the Federal government is going to do in the area of cellulosic insulation and I would submit to you gentlemen, that I just don't know what the term "Federal government" means. At the present time, we have your Committee as well as other committees in the Congress, other committees in the Senate as well as the General Services Administration, the National Bureau of Standards, the Department of Energy, the Federal Trade Commission, the Consumer Product Safety Commission and undoubtedly others, all intently investigating the insulation industry. Goodness knows, whether this group of government activities will come up with a single version of a standard or whether there will be several standards recommended for implementation, but I fervently wish, that there was just one agency that was handling this entire problem with whom we could discuss the matter.

One facet of the Federal government that amazes me is that on the one hand, the Federal government is apparently raising questions about the expertise in the cellulosic insulation industry relative to quality control methods, etc., and yet at the same time, other sectors of the Federal government are funding the entry of relatively inexperienced groups into the cellulosic industry. Recently, I had the occasion to review an article that appeared in the St. Charles Chronicle, that is St. Charles, Illinois, on February 1, 1978, about the insulation industry. That article said in essence, that a Mr. Kelly from the Batavia office of the Kane County Community Agency said that he is investigating the possibility of getting Federal grants for building a recycling plant in his area. He went on to say that money is available from the Federal Community Services Administration in the Department of Commerce for the purpose and said such a facility is in operation in Remsen, Iowa.

Mr. Kelley said a corporation would have to be formed to operate the business. He did go on to say that they don't like to use cellulose, but it may be the only material available to take care of the many requests they have.

He further said that the operation will not compete with private suppliers of insulation because of costs. The production will be for economically deprived families who would not be buying from private dealers in any case.

Kelly said the plant could be operated with professional and volunteer help. Any program undertaken by his office must have at least 30% local sources of operation. Volunteer help meets the requirement. He went on to say that he had discussed the possibility of members of a local service club helping out in the current insulation program.

It is amazing that at this point in time when the Federal government is so concerned about the quality of cellulosic insulation in the market place, that such "less than professional" activities are still being implemented.

We have been asked to express ourselves relative to a mandatory third party follow-up program and our general feeling is that if a mandatory follow-up program, well thought out, was implemented by the Federal government, NCIMA would support that position.

It is hoped that if a national standard is implemented, that this industry will be able to get on with the job of building itself and to be disassociated from the harassment from all sectors raising innuendoes and questions about the creditability of cellulosic loose fill insulation. I trust that you gentlemen are all aware that competitive interests are having a field day wtih the dilemma confronting the cellulosic insulation industry today. I believe that the American business climate was built upon competitive aspects and I think it is to the well being of our national insulation programs that we do have a strong cellulosic industry competing with other forms of thermal insulation for the market.

I previously mentioned to you the thought that there should be a single agency involved in this entire insulation dialogue to endeavor to harmonize the regulations. I would remind you gentlemen, that Public Law 93–383 passed by the Ninety-third Congress on August 22, 1974, established the National Institute of Building Sciences to adjudicate such a problem as we now confront. I would suggest to you gentlemen, that this institution which is now beginnnig to move, might be drawn into this dialogue in the hope that they, with their particular expertise in construction related problems, might be given the opportunity to harmonize the regulations being considered in the Federal sector.

And finally, to reiterate again, gentlemen, as to the feelings of NCIMA towards Federal mandated standards, against the backdrop that it is inevitable that a Federally mandated standard will be imposed upon the insulation industry that NCIMA would support such a program with third party follow-up services for inspection provided that it was well thought out and administered to all sectors. By that I mean, at the present time, the Federal standard covering cellulosic insulation, is as you know, HH–I–515C. I would feel that any agency in the Federal sector purchasing cellulosic insulation would have to buy against that standard. It is my understanding that there is product purchased by the Community Action Programs under the jurisdiction of the Department of Energy that does not conform to the present HH–I–515C. Therefore, it's all well and good to have specifications and to endeavor to improve an industry by the mandatory imposition of such standards, but I would say to the Federal sector, if you do implement such standards, insist that they be applied impartially to the entire country and above all to your own Federal agencies.

Thank you.

Mr. METCALFE. Thank you very much, Mr. Barron.

I prefer that we hear all the members of the panel and then we will ask the questions.

Mr. Mesigh, would you care to make a statement at this point?

STATEMENT OF CHARLES D. MESIGH, PRESIDENT, SOCIETY OF INTERNATIONAL CELLULOSE INSULATION MANUFACTURERS

Mr. MESIGH. Mr. Chairman, for the purpose of the record I would like to point out that SICIM which is the Society of International Cellulose Insulation Manufacturers does not necessarily take part in the same position of that of NCIMA which is proposed to be CIMA. We are a separate trade organization with different views.

I would like also for the record, if possible, to be held open for further comments regarding specificities arising as a result of this hearing.

Mr. METCALFE. The record will remain open for any additional information you wish to submit.

Mr. MESIGH. Thank you, Mr. Chairman.

Mr. METCALFE. Without objection, so ordered.

Mr. MESIGH. Mr. Chairman, members of the Subcommittee on Consumer Protection and Finance, I am Charles D. Mesigh, president of SICIM, the Society of International Cellulose Insulation Manufac-

turers, an established trade association concerned with the production and utilization of cellulosic insulation materials.

At the time ERDA published its now well known report, the SICIM group of manufacturers, aware of the growing energy crisis, and the many problems connected with other forms of insulation, decided to join together as a functioning body (early 1977) with primary interest in the following:

Nationwide manufacture of quality cellulose insulation products;

Establishment of governmental standards to provide unmistakable demands for safe, reliable, stable cellulose insulation products;

Consumer education concerning energy conservation in such areas as insulation and R-values, weatherization and products available;

Assistance to code bodies in their responsibilities concerning insulating materials and building practices;

Advising on the national need to train insulation installers, and license if need be, to eliminate the hazard of misapplication;

And last, but not least, promoting education of our own members as to public responsibility and product performance.

Our original concerns, as well as our present determinations, remain the same; that is, education, quality control, consumer protection and continuing professionalization of our own manufacturing membership. We realize that the rapid growth of the industry has brought with it many problems—primarily too many inexperienced people led to believe that the cellulose insulation industry is a profitable business in which to engage.

The results were predictable—faulty materials produced by some because of a lack of nationally mandated standard; overdemand on limited manufacturing materials—newsprint, borax/boric acid, other chemical additives—produced serious escalation of raw materials costs; violation of installation practices created unnecessary hazards for certain owners/consumers; and of greatest importance the erosion of credibility that cellulose insulation has unfairly suffered because of the confusing and/or overlapping actions of various Federal agencies—CPSC, GSA, DOE, DOC, FHA and FMHA. The consumer reaction to these recent Government actions has been a catastrophic drop in purchasing—and all of this coming at a time when the United States has experienced its worst two winters in living memory.

Unfortunately, we in SICIM cannot regulate the industry or we would without hesitation or uncertainty. As we see it, the entire matter concerns the function of cellulose insulation which should be defined as follows:

1. The insulation should provide predictable and controlled thermal resistance of a permanent nature when installed per the manufacturer's recommended practice.

2. The insulation should not increase the hazard due to fire for the occupants, structure, or firefighting personnel beyond that of an uninsulated structure.

3. The insulation should not adversely affect the structure or decrease the useful life of the structure and utilities.

4. The insulation should not adversely affect the health or well being of the occupants.

With reference to HH–I–515C and 515D, any adequate specification for cellulose insulation should address these four functions in terms of defining measurable qualities that relate to these functions:

1. Fire hazard: combustibility, fire spread, and total fuel contribution during a fire determined under the use conditions.
2. Permanency of the fire retardant treatment.
3. Thermal resistance under the use conditions.
4. Moisture absorption.
5. Corrosiveness.
6. Odor.
7. Fungal growth suspectibility not exceeding that of standard building materials.

To keep our statement brief and to avoid an extremely technical dissertation at this point we will provide for the committee's consideration and use earlier comments to Consumer Product Safety Commission and General Services Administation:

SICIM letter dated June 14, 1977, addressed to Mr. Byington, Consumer Product Safety Commission.

SICIM memorandum dated August 22, 1977, addressed to Consumer Product Safety Commission.

SICIM letter dated December 2, 1977, addressed to General Services Administration.

We will also furnish for your careful study and use the letter just received from the American Home Lighting Institute dated January 19, 1978, and our letter to the National Cellulose Insulation Manufacturers Association dated February 9, 1978.

SICIM is more aware now than ever before there are many problems in this industry crying for solution. At our annual meeting in New Orleans, January 26–27–28, 1978, we presented to the 200 plus registrants attending a comprehensive updating of the marketplace, the hazards, the Federal/congressional interest, and the corrective actions which could be taken. Our speakers were among the most expert in the Federal Government on the subject of insulation, testing, standards development, and enforcement. [Copy of speakers appended.]

SICIM during the past week attended the hearings conducted by the Subcommittee on Oversight and Investigations under Chairman John E. Moss. We would be less than candid if we did not note our very real appreciation for the extensive, indepth, and factual revelations brought out by the chairman, members of the committee, and an obviously very capable staff. We in SICIM now have more reason than in times past to insist on improvement—and where necessary we will modify our procedures to achieve same. I am confident that through Chairman Moss' work that a great deal of order will evolve in this industry.

SICIM, as a consumer conscious, energy conscious, conservation conscious association, has certainly had its motivation strengthened by recent events. We know that the innocent consumer cannot identify good insulation from bad, whether by looking, or feeling, or smelling or, if you'll permit, me, by kicking the side of the bag. Our absolute need is for a Federal standard, and for an effective method of concurrent enforcement. Without these safeguards the ethical manufacturers will continue to suffer because of the damage being done by some incompetent, inexperienced, and unethical manufacturers or installers.

This industry has no answer of its own that would get rid of bad products. The quickest remedy is pre-emptive national legislation.

The Moffett-Ford proposal—H.R. 10637/S. 2401—is known to most of the industry and is an immediate first step we would recommend. While we would hope for, and would support, a fail-safe set of specifications, we cannot delay any longer or the economic chaos that now exists in this industry will be irretrievable. The continuing waste of energy would be staggering and indeed unconscionable.

We would therefore strongly recommend the passage of H.R. 10637/S. 2401. If energy conservation and consumer safety is as paramountly important as we proclaim, we have no other choice. And the time to act is now or congressional credibility suffers a serious blow as well.

Mr. Chairman, that concludes my statement and I would be very happy to answer any questions that you or any member of the committee would care to ask. In closing we would note the happy circumstance that this proposed bill offers an immediate acceptable remedy. We would also note that there are areas in the bill that could be improved or strengthened and we would be happy to explore them with the committee.

Thank you.

[Testimony resumes on p. 222.]

[The following material was received for the record:]

SOCIETY INTERNATIONAL CELLULOSE INSULATION MANUFACTURERS,
Washington, D.C. June 14, 1977.

Reference: Briefing paper on petition CP 77–1 on home insulation.

Mr. JOHN BYINGTON,
Chairman,
Consumer Product Safety Commission,
Washington, D.C.

DEAR MR. BYINGTON: We have inadvertently come across data on subject report which makes us feel very strongly that we should make a statement regarding our position on the subject.

First, the Society of International Cellulose Insulation Manufacturers represents numerous independent manufacturers of cellulose insulation materials. They are earnestly trying to forestall massive insulation shortages and are constantly striving to improve the quality and the overall performance of the material. This Association requires that its members produce material as designated by the appropriate federal specification, HH–I–515c, and recommends that all insulation materials under the proposed legislation relate to the applicable federal specification—as to manufacturing processes and quality control, thus, ensuring proper safety measures and effective thermal R-values in actual installations.

We have read the complete brief and feel that there are numerous inconsistencies. We have read the statement that the National Cellulose Insulation Manufacturers presented on the subject and, as far as what they say in the text of their statement, we would like to go on record as supporting their views entirely. However, NCIMA restricts their approach to that of dealing with only cellulose fiber insulation products. We feel that as an international trade association, we should assume the broader issue. We feel that the problems in the insulation industry are many and diversified and that the briefing (CP 77–1) only speaks in specifics pertaining to a small, localized Denver, Colorado area and really does a great disservice to the entire cellulose insulation industry. The manufacturer who actually caused the Denver cellulose problem has been defunct for over a year and it appears the Denver situation has been completely rectified. In all fairness to the Denver manufacturers and applicators alike, the small fires that did occur could have occurred very easily with other types of insulation materials because there was a flagrant mis-application which involved insulation usage over recessed light fixtures. This is recommended against by the two trade associations and by all manufacturers of the material. The national electric code requires that all insulation be installed no less than six inches from a light fixture nor less than two feet above same. We hasten to add

that if a Kraft-faced mineral wool blanket of either type were installed in the same manner, that the situation would indeed be far more hazardous.

This Association also feels that there should be considerably more emphasis made in investigating the fire hazards of any type of kraft or foil-backed vapor barrier blankets, regardless of type. Contrary to views by some of the staff investigators, there have been numerous fires in many places throughout the country that involved flammable paper-faced blanket insulations. This material definitely should be included in any investigative process to determine its actual installed fire resistance. It is almost impossible to install a vapor barrier insulation of this type and leave the product in a safe condition within any open attic space. If actual inspections of blanket type applications are made within an attic space, serious safety violations will be found, which would be many times worse than any possibility of defective cellulose insulations. Any further investigation of this type will clarify that all insulation materials should be subjected to strenuous fire hazard tests. To this end, we would suggest that a review be made of antiquated building, testing, and electric codes which will speak to the subject of construction that now requires much higher R-values in the national interest in conserving energy.

Industry test data should be developed on other items than fire safety. Specifically, corrosion has become an issue in many areas which is alleged to affect the safety of a structure. Various competitive insulation industries have downgraded cellulose materials because of this and have neglected to get their own house in order. Corrosion is a problem with mineral types of insulation, as well as cellulose. SICIM and NCIMA both subscribe to the federal specification HH–I–515c and actively urge and require its members to produce quality cellulose insulations.

Thermal efficiency is another questionable practice which was brought out within the petition. To this end, we must affirm that in re-insulation of buildings, it is extremely important to use the most economical, thermally efficient, loose-fill type insulation material available, one that will flow easily into all cracks and crevices and will provide a monolithic, high thermal value in ceilings, walls, and other hard-to-get-at places. A blanket type insulation, of whatever composition, is almost impossible to properly install in the preponderance of attic type re-insulation jobs. We have found in the past that poorly executed blown-in insulation jobs are far superior to better executed blanket type jobs. Blanket type installations have to be very restrictive in application for many reasons. In many instances, adding blanket insulation over blanket insulation has no additional value whatsoever. The problem is only compounded.

This Association feels that there is far less potential for exploitation of the consumer by the use of a quality blown-in cellulose material, than with blankets of any type, whereas no degree of professionalism is required. The insulating values of cellulose fiber insulation materials have been found to be thermally efficient and safe after many years of installation—certainly, much more so than blankets with the high fire hazard vapor barriers and installation with the normal massive voids associated with ordinary building construction problems.

We feel that the leaking of news releases pertaining to this briefing has done the insulation industry, and most specifically, the cellulose insulation industry, irrevocable harm, and it is a disservice to the national goal of "conservation of energy" through insulation. There has been a series of serious, harsh accusations and innuendos directed against small insulation manufacturers, because they are small. There have been other equally harsh accusations against the cellulose insulation industry because of the nature of the product itself. We call attention to the articles distributed by the Mineral Fiber Association (Denver press releases), which were also included within the report.

We call your specific attention to the fact that government agencies of all types should recognize the importance of a strong cellulose fiber re-insulation program, with priorities established within our goal of conserving our natural resources as mandated in the Federal Register, dated January 15, 1976, part B–1, Environmental Protection Agency, which sets forth guidelines for Federal agencies in procurement policies, that "recycled products should be used whenever possible", which have so emphatically been overlooked in governmental priorities. We need the government to tell the vast needs of the recycling story to the public. Ours is a first-rate, dynamic, and rapidly expanding insulation industry, and we resent implications of inferiority by self-serving, competitive groups or by government sectors that variously have imposed unwarranted constraints on the use of our products. It must be remembered that most of the allegations and complaints set forth within the context of the report were generated by self-serving, competitive industries, which are acknowledged to be very big business.

It must be remembered that it costs only a fraction of the amount of dollars to assemble a complete cellulose manufacturing facility as it would require to establish a manufacturing plant for mineral fiber products. It must also be remembered that this is a very energy-conserving process. It requires only one-tenth the energy to manufacture cellulose insulation products as compared to mineral products, and we also conserve our natural resources at the same time! Because of the low capital investment, the larger manufacturers of mineral fiber products are extremely concerned with regard to losing the current monopoly on insulation products.

We feel that the two trade associations involved are making giant strides in improving the manufacturing and installation processes involving our products at minimal risks to consumers and government alike—and, we are getting the job done! We feel, though, that we do need to make further improvements and we are continuing our efforts.

As an aid to achieving better standards in the industry, we suggest very strongly that any energy legislation now currently being considered before Congress, contain requirements that any and all insulations in any type of energy conservation program, be mandated to comply with the applicable federal specification for that particular product. We feel that the issue now is to proceed with getting strong energy conserving legislation enacted.

We respectfully request that this petition as presented, be denied. This investigation has completely whitewashed some segments of the industry, it is inconclusive, and it is filled with undocumented erroneous accusations, and is not representative of the insulation industry.

Yours very truly,

CHARLES D. MESIGH,
Vice President.

* * *

STATEMENT OF THE SOCIETY OF INTERNATIONAL CELLULOSE INSULATION MANUFACTURERS

SUMMARY

The Society of International Cellulose Insulation Manufacturers (SICIM) presents this paper to assist the Commission in determining whether or not to grant a petition for the issuance of consumer product safety rules with regard to manufacture and installation of home insulations as filed by the Metropolitan Denver District Attorney's Consumer Office. The discussion is limited to production and use of cellulose insulation loose fill as supplied to the consuming public for insulation of attics and end-wall installations. The cellulose installation covered by this discussion consists of, but is not limited to, recycled newsprint and other paper products to which chemicals have been added for the purpose of providing long term predictable thermal properties designed to provide no greater hazard or risk to an occupant of a building in case of a fire; to provide an innocuous effect on the structure in which the insulation is installed; and to provide no refuge or food value for rodents or pests. The insulation concerned is covered today by two basic specifications. The predominant specification under the cognizance of General Services Administration is Federal Specification HH–I–515c. The Associated concensus standard for the American Society for Testing Materials is ASTM C739–73. These two specifications, as currently being revised, provide adequate definition of the qualities and controls for manufacturing of cellulose insulation to assure the consuming public of long-term performance characteristics and permanent safety through the use of this insulation. Two organizations representing manufacturers of cellulose insulation; namely, SICIM and the National Cellulose Insulation Manufactures Association (NCIMA) have been formed specifically to self-police the manufacturing of the insulation. In addition, these two associations have established standards of performance and liaison with the various code development and specification organizations within the United States and Canada to assist in up-grading the definition of this insulation and the performance requirements thereof.

To date, these two organizations represent twenty-two corporations and thirty-two manufacturing plants dealing with the manufacture of cellulose insulation. The total production of these member plants represents approximately two-thirds of the production of cellulose insulation in the United States. The subject petition concerns itself with the question of fire hazard safety and of the wide divergence of performance claims published by the various manufacturers and installers of cellulose insulation. These are justified concerns and subjects to

which the two trade associations have addressed themselves in the past to revise the existing specifications in order to minimize the occurrence of false claims and substandard quality performance of insulations produced in the United States and Canada.

The progress made to date since the occurrence of the Denver problem two years ago demonstrates that the cellulose insulation manufacturing industry can self-police and control in the marketplace the qualities and the performance of its product line to satisfactorily assure the public of a safe and reliable product and that the existing revised specifications adequately define the properties of this insulation and through the on-going training and education of code administration bodies that a self-policing industry and the marketplace will effectively control a product line to assure the consuming public of complete satisfaction and protection in performance.

DISCUSSION

The most effective means of controlling product quality and the assurance of public consumer satisfaction of products has been clearly demonstrated through the use of concensus standards developed by the producing industries in response to the requirements of the marketplace. Specifications HH–I–515c and ASTM C–739 have been developed along these lines. The NCIMA organization has been well defined, the qualifications of which are presented in another paper. SICIM organization, which was formed approximately one year ago in response to questions generated by ERDA and the City of Denver, is detailed in the by-laws and brochures included in Attachment 1.

In summary, SICIM operates on a very fundamental quality assurance premise. All members are required as a condition of membership to conform to the Federal Standard HH–I–515c. Each member is required to implement a quality assurance program designed to assure continued conformance to this specification. In addition, each member is required to contract a labeling and follow-up service by a third-party organization, such as Underwriters Laboratories, for fire hazard classification and for testing in accordance with ASTM C–739. An additional, and equally important, function of SICIM is to develop and implement training programs and education programs for code administrators and inspection bodies so they will more clearly understand the installation and performance requirements of cellulose insulation. In order to adequately discuss the safety and performance characteristics of insulation, we should first define the primary functions of cellulose insulation. These are defined as:

1. To provide thermal insulation to a structure at predictable values;
2. To be capable of being installed to achieve predictable values without post measurement of R values;
3. Does not decrease the evacuation time for occupants in the dwelling in case of fire;
4. Does not increase the toxicity of the end-item products of combustion;
5. Does not increase the spread-of-flame rate or intensity beyond that of an un-insulated structure;
6. Does not create fire or health hazard for the structure or occupants;
7. Does not adversely affect the structure during the normal life of the structure;
8. Provides no food or encouragement for rodents;
9. Promotes no greater fungal growth than the exposed surfaces of material in un-insulated structures.

Within the framework of these defined functions, there have been previous problems in industry. The primary problems have related to testing and reporting of performance characteristics; namely, fire hazard classification as determined by ASTM E84, thermal properties as defined by ASTM C–177, C–236, C–518, coverage and density, corrosion and fire retardant chemical permanency.

The primary reasons for these problems have been due to differences in test techniques and differences in interpretation on the part of technicians responsible for the testing. Corrective actions have been initiated through revisions to Federal Specification HH–I–515 to clearly identify a number of the problem areas. Fire hazard classification, which is commonly referred to as flame-spread rating, has been a primary problem in correlation of test data within the various laboratories having Steiner tunnel facilities. The greatest discrepancy is inherent in the definition of test procedures within ASTM E84. In testing loose-fill material, the loose-fill material to form the roof of tunnel, must be supported

by a wire screen basket. The presence of this wire screen on the burning surface of the test sample reduces the test area exposed to the flame and, in addition, provides a heat sink to remove some of the energy impinged on the sample. Test ASTM E84 does not specifically require a test technician to correct for the effect of the wire screen material supporting the loose fill insulation test specimen. Consequently, a large number of tunnel operators have reported values without this correction. The result has been a reporting of flame-spread ratings that are significantly below the actual rating had the correction been made for the screen. An additional problem in the operation of a Steiner tunnel and rating of fire hazard classification through the use of the Steiner tunnel has been a lack of definition within the specification as to which density or what density the materials should be tested. These specific corrective actions included in the D revision of HH–I–515 will be to require fire hazard classification utilizing E84 at the applied density of the insulation. In addition, there will be a specific requirement instructing tunnel operators when performing the fire hazard classification test in accordance with ASTM E84 to determine conformance to HH–I–515 to apply the full correction factor for the support screening.

The second major area of discrepancy in test results is in the reporting of thermal properties of the insulation itself. Part of this difference is due to a lack of experience on the part of test technicians. A second problem that influences the thermal properties is that the density at which the thermal properties are measured may or may not be the same as the density at which material eventually will be installed in one's attic or in one's sidewall. The characteristics of cellulose insulation, as manufactured in this country and Canada, taking into consideration chemical composition and density, infer a theoretical minimum value for the thermal conductivity coefficient of .25 BTU-inch per square foot degree Fahrenheit hour. This equates to maximum R value per inch of 4. The proposed Revision D of HH–I–515 recognizes two characteristics:

1. There is a theoretical maximum for R's per inch or, in turn, a theoretical minimum of K factor, but also does not want to stifle innovation and development in industry.

2. The revision will require that if a reported K factor for a cellulose insulation is less than .25 BTU-inch per degree Fahrenheit hour square foot, this test data will have to be supported by tests from two independent test agencies testing in accordance with ASTM C–236, which is the guarded hot box, an absolute test method.

A third area, which is probably the major concern of a consumer relative to possible energy savings, is coverage of insulation. This simply raises the question on the part of the consumer, "How many bags of material do I have to buy to yield a certain R value in my attic or sidewall". The thermal resistance of R value of a final insulation is dependent on two major characteristics: First, the thermal conductivity of the material, and second, the density as applied within the structure itself. With the above correction made within HH–I–515, revision D, this leaves only the problem of density. Cellulose insulation being a relatively fine fiber is more difficult to inflate the thickness through the use of blowing air into it on installation. However, through special application techniques, it is possible to achieve unrealistically low densities which would infer a greater coverage per number of bags of material. To correct this situation, Revision D of HH–I–515 will require that the density reported in calculating the total coverage of a bag of material will be based on the settled density test. In turn, the thermal conductivity of material will be determined at this settled density. Since density is a critical requirement in determining the end R value of an installation, it was recognized by the Bureau of Weights and Measures that this was germane to the labeling requirements on units of products of cellulose insulation. At a conference held in Dallas several weeks ago, it was concurred by the committee that weight should be included as a minimum requirement in the labeling of a bag of cellulose insulation.

A fourth concern on the part of the consumer is how permanent is the fire retardant system utilized in the insulation that is put in his house. There are many existing formulas for fire retardancy associated with the manufacture of cellulose insulation. The majority of these formulas that are utilized in producing a major part of the insulation in this country are excellent. The current requirement in the HH–I–515 specification consists of determining the fire hazard classifications and fuel contributions determined in tunnel testing before and after severe humidity and temperature cycling of the material. These test conditions are adequate to detect changes in fire hazard classification of materials

subjected to extreme cycling through widely varying humidity ranges and temperature. Substandard or questionable materials are readily detected through the use of the existing test. In addition, these tests correlate readily with the performance in the field on insulations that have been subjected to environments in homes for up to 22 years.

The fifth and probably most concerning aspect of cellulose in terms of the consumer is what is its safety. To date, there has not been one documented fire, injury, or death that was due to cellulose insulation itself. On the contrary, there are many instances documented that indicate cellulose insulation has retarded a fire that has started in an attic area. The key problem in cellulose insulation as in any insulation, is unsafe installations. The two areas are: coverage of recessed lights; and, installation of insulation immediately adjacent to exhaust flues that conduct products of combustion from such things as a furnace. Existing codes clearly define the warnings and the requirements so as not to cover recessed lights with any insulation and to stay minimum distances away from flues or exhausts conducting exhaust gases or combustion gases that exceed certain temperatures.

Installation of any good thermal insulation in violation of the existing codes, that is, coverage of recessed lights or direct contact with flues conducting combustion gases will automatically increase the temperature of the surrounding areas insulated by the insulation. If the structure in question is of timber construction, which represents the majority of the residences in this country, then the obvious effect of violation of the existing codes would be to increase the temperature of adjacent wooden structures possibly even to the ignition point. This then becomes a paradox. The better the insulation, the more hazardous the condition if a violation in code installation occurs. Fortunately, the instance of these violations has been very small. In addition, the extreme efforts of public utilities and local code bodies such as, International Conference of Building Officials, State of California, State of Oregon, the Salt River Project, just to mention a few, have been very extensive in alerting installers and the consuming public to these code requirements. Current requirements included in labeling of units of products include a warning to the consumer not to cover recessed lights and to stay a minimum distance away from flues conducting combustion products. The two trade associations previously mentioned, have a campaign to alert the public and installers as to the adequacy of safety measures in the existing codes.

CONCLUSION

In conclusion, the general insulation industry and, specifically, the cellulose insulation manufacturing industry through the two predominant trade associations, have exhibited a continuous recognition of the needs of the consuming public for assurance of safety and performance through continuous revision and liaison with the various code officials and such government agencies as ERDA, CPSC, ICBO, Southern Building Code Congress, BOCA, Public Service Company of Colorado, and the Canadian Government. The specification revisions being implemented to Federal specification HH–I–515 will adequately assure the consuming public of continued quality performance and production of materials of insulation for installation in homes, multi-family residences, and public buildings. Ths assurance has been implemented through probably the most adequate way of controlling an end item products. That being controlled by concensus standards on the part of the industry responsible for production. The best interest of the consuming public will be served through the continuing efforts of the cellulose manufacturing industry through association activity in concert with government research agencies such as ERDA, and through the implementation of existing specification requirements through the various code development bodies such as International Congress of Building Officials, the Southern Building Code Congress and BOCA. It is the final opinion of the Society of International Cellulose Insulation Manufacturers that adequate specifications and controls are available to assure the consuming public of a long term safe product that will perform its intended function as projected by the manufacturer. It is our opinion that mandatory controls are necessary in assuring proper manufacturing quality controls and consumer and contractor education as to proper field applied safety measures. Specifically, these are sufficient standards. We now need enforcement!

SOCIETY INTERNATIONAL CELLULOSE INSULATION MANUFACTURERS,
Washington, D.C., December 2, 1977.

Mr. ERNEST C. FREEMAN,
Commodity Standardization Specialist,
Federal Supply Service, FMEH,
Washington, D.C.

DEAR MR. FREEMAN: The proposed specification revision HH–I–515d has been reviewed with respect to adequacy of definition of qualities of cellulose loose fill insulation. In order to fairly evaluate the proposed revision, the function of cellulose insulation should be defined as follows:

1. The insulation should provide predictable and controllable thermal resistance of a permanent nature when installed per the manufacturer's recommended practice.
2. The insulation should not increase the hazard due to fire for the occupants, structure of fire fighting personnel beyond that of an un-insulated structure.
3. The insulation should not adversely affect the structure or decrease the useful life of the structure and utilities.
4. The insulation should not adversely affect the health or well-being of the occupants.

An adequate specification for cellulose insulation should address these four functions in terms of defining measurable qualities that relate to these functions.

The important qualities then are:

1. Fire hazard: combustibility, fire spread, and total fuel contribution during a fire determined under the use conditions.
2. Permanency of the fire retardant treatment.
3. Thermal resistance under the use conditions.
4. Moisture absorption.
5. Corrosiveness.
6. Odor.
7. Fungal growth susceptibility not exceeding that of standard building materials.
8. Food value insufficient to support life or provide a home for rodents.
9. Labeling sufficient to permit the consumer to make a rational decision regarding the use and installation of the product.

Based on the above functions and qualities, the following recommendations are made:

1.2.1 Add:

Class 25—Flame spread 25 or less.

Class 50—Flame spread over 25, 50 or less.

Reason for change:

Fire hazard classification using the relative values of the Steiner 25 foot tunnel has provided the building code authorities and fire fighting community with a usable measure of relative burning characteristics of building materials. The problems that have existed in the past relative to testing loose fill insulations have been due to inadequate definitions of laboratory techniques in measuring this characteristic of loose fill insulation. The technique is definable such that well correlated data can be achieved by the Steiner Tunnel Test. The proposed radiant flux test may very well be a useful addition to classification of loose fill attic insulations. However, it would be irresponsive to the industry, the fire prevention community, the code development authorities, and the consuming public to arbitrarily institute the radiant flux text and delete the Steiner Tunnel Test based on the extremely limited data generated by the National Bureau of Standards and South West Research to date. It is also extremely naive and presumptive to assume that existing building codes can be readily modified based on the meager supportive data for the proposed change. The Steiner Tunnel Test should be retained as an integral part of HH–I–515 together with the technical improvements previously proposed (Jan. and July 1977) and detailed in recommended new paragraph 3.2.4.

2.1 Add:

----------sacks/bags, shipping, packaging, plastic.

Reason for change:

Polyethylene bags have been demonstrated as acceptable methods of packaging loose fill insulations and should be included in HH–I–515.

Par. 3.1.3 Add as written in HH–I–515c.

Reason for change:

This paragraph was apparently inadvertently omitted in the proposed revision.

Par. 3.1.6 Add sentence.

If the thermal resistance claimed exceeds 4 R/inch, then the resistance value shall be confirmed by the one independent testing agency testing in accordance with ASTM C–236.

Reason for change:

The vast majority of data and theoretical computations indicate that the maximum thermal resistance of cellulose insulation typical of current production is 4/inch. Innovative breakthroughs should not be prohibited but should be substantiated by a method that is much more independent of technical errors.

Par. 3.2 (3) Change to: "Net Weight of Insulation per bag".

Reason for change:

To be consistent with the requirements of Bureau of Weights and Measures (Refr. State of Calif. and Colorado).

Par. 3.2 (i) Add:

Note: Conditions required by 3.2 f-h may be satisfied by a separate attic card containing the same information.

Reason for change:

Plastic bags are used by a large number of manufacturers. Writing on plastic proposes problems in the field.

Par. 3.2.1 Critical Radiant Flux. Change to read:

_____The critical radiant flux shall be determined for information only.

Reason for change:

As discussed above in Par. 1.2.1 the data made public to date is statistically insufficient to warrant established acceptance criteria at this time.

Par. 3.2.2 Smoldering. Delete.

Reason for change:

The test as defined consists of subjecting the insulation to the conditions of a well insulated tube furnace, the interior of which has been measured (using No. 46 platinum 13 percent—Platinum Rhodium Thermocouples) at 2700–3000 °F for a period of 30–60 minutes. Fire conditions of this intensity and duration under actual in-situ situations would indicate that the primary structure was already consumed by fire and the residence of the insulation at this point would be academic. An actual burning ember resulting from a fire is not loosely packed as in a cigarette, thus an actual ember does not obtain the same combustion oxygen that a cigarette does. In addition, an actual ember does not contain an oxygen generator such as a cigarette does to enhance its burning characteristics. In addition, the test is also extremely sensitive of test densities making it non-reproducible.

Par. 3.2.4 Add new paragraph:

Flame Spread Rating. Type I loose fill thermal insulation covered by this specification allows Class 25, and Class 50 flame spread ratings, when tested in accordance with ASTM E–84. When applications are made requiring higher flame spread resistance, it is recommended that Class 25 loose fill thermal insulation be used. Reported flame spread ratings shall include a correction for the insect screen used to support the test specimen.

Reason for change:

See above discussion on function and quality criteria.

Par. 4.5.2 Thermal Resistance. Add condition.

The thermal resistance shall be determined at the in-use density. Also see note under 3.1.6.

Par. 4.5.5 Corrosiveness. Change to:

Humidity chamber capable of maintaining 120±0.5° F. (Dry bulb temperature) and 119±0.5° F. (Wet bulb temperature) for a relative humidity of 97±1.5 percent.

Test specimens.

(4) Change to:

_____ rolled steel with 0.9 ounce per _____.

Procedure. Change to:

_____ vapor degrease using a heat sink clamp, test coupons_____.

Reasons for change:

The humidity definitions should be consistent with the industry standards and NBS Bulletin 77. The weight of zinc on standard galvanized steel is 0.9 oz/ft^2 instead of 9 oz/ft^2 Immersion cleaning whether rinse or ultrasonic, provides high probability of contamination of solvent.

Par. 4.5.5 Corrosiveness. Add:
"Presaturate 20 gms of sample with 100 cc of distilled water."
Reason for change:
This paragraph was omitted from the procedure.
Par. 4.5.5 Last paragraph. Change to:
_____ the 0.003 inches _____.
Reason for change:
Clerical error.
Par. 4.5.6 Add sentence:
Test a piece of construction grade douglas fir lumber under the same conditions as a control.
_____ comparison of fungal growth with the control specimens.
Reason for change:
The referenced test procedure has clearly demonstrated through tests in this country and Canada that most building materials will support some degree of fungal growth. Because of this, insulation should be compared with building materials that have proved in the past to provide no problem relative to fungal growth even though they produce a positive result in the test.
Par. 3.1.10 Change to read:
"The material shall show a maximum fungal growth not exceeding construction grade douglas fir lumber".
In regard to the above, we would like to note that these remarks represent the views of the SICIM Technical Committee and its general membership, which is composed of sixteen members operating more than thirty-five plants at this time. Our proclaimed subscription to compliance with designated Federal Specifications, as a pre-condition to membership, is well known to the cellulose manufacturing industry and is our desire to cooperate fully with GSA in establishing meaningful specifications defining the functional qualities of our product lines.

Respectfully submitted,

HARRY RICHARDVILLE,
President,
GREGORY FITZGERALD,
Executive Director,
NOEL W. LANE, Jr.,
Technical Committee,
ROBERT P. BUCCO,
Technical Committee.

AMERICAN HOME LIGHTING INSTITUTE,
Chicago, Ill., January 19, 1978.

Mr. ROBERT BUCCO,
Society of International Cellulose Manufacturers,
Washington, D.C.

DEAR MR. BUCCO: We should like to call your attention to the attached memo that we mailed recently to all members of the American Home Lighting Institute.

Please note that the warning label we recommend is already incorporated in the National Electric Code. We should like to suggest that you create a similar warning label for your members to attach to installing instructions and to the packaging of their products to conform with the Code.

This precaution, we feel, will protect consumers who live in heat-insulated homes against any fire hazard and will protect your members as well as ours against legal hazards that might result from faulty installation of insulating materials.

We believe our mutual efforts will work to both our advantage.

Sincerely,

ARNOLD W. RODIN,
Managing Director.

Enclosure.

Memo to: AHLI Manufacturer members.
From: Arnold W. Rodin, managing director.
Subject: Warning label on recessed fixtures regarding insulation.
Date: January 18, 1978.

At a recent meeting the AHLI's Special Committee, chaired by Albert Cherry, President of Virden Lighting, adopted the following recommendation for members regarding the installation of recessed fixtures in insulated ceilings:

1. Attach a warning label in 3 places: a.) on the installation instructions, b.) on the carton and c.) on the housing of the recessed fixture. The warning should read as follows:

WARNING (Fire Hazard)
Do not insulate on top or within 3 inches of the fixture enclosure, wiring compartment, or ballast.

2. Communicate this warning to all AHLI members and to trade associations of insulation materials manufacturers.

Finally, the staff will send a copy of this warning to the National Electrical Contractors Association, to the National Bureau of Standards (which is the agency acting on this problem), and to the regional code bodies of building inspectors.

SOCIETY INTERNATIONAL CELLULOSE INSULATION MANUFACTURERS,
Washington, D.C., February 9, 1978.

Mr. NILE BUCHER,
National Cellulose Insulation Manufacturers Association,
Elk Grove Village, Ill.

DEAR NILE: Your letter concerning a meeting scheduled for February 21 and 22, 1978, at the O'Hare Hilton, Chicago, was received today.

As you know, SICIM's Annual Meeting, held in New Orleans, January 26, 27, 28, 1978, gave us the opportunity not only to listen to the Federal-Technical Industry experts, and to update our information banks, but also to improve our position vis-a-vis others in the industry. In this connection, I have enclosed a copy of our Press Release dated January 29, 1978, which will give you the salient details.

Concerning the Chicago meeting (February 21 and 22, 1978) SICIM's attendance would be conditioned on an in front assurance that whatever association is formed, (1) it will mandate for compliance the current Federal HH–I–515 specification for loose-fill insulation; (2) it will mandate third party laboratory testing, labeling and follow-up services from approved laboratories; (3) it will agree to comply with ASTM C–739 test requirements; (4) members of the "One Association", i.e., the Association that may evolve, will agree to manufacture Class I loose-fill cellulose insulation only.

These caveats must be cited if there is to be any real accomplishment. The Federal Government has made abundantly clear its intention to establish high standards, and to enforce. We, in SICIM, cannot ignore the warnings, or the consequences of "business as usual." The industry's credibility is on the line, and the only way to go is product compliance. An expanded, or unified association, without our cited four points as prerequisite, would exacerbate an already bad situation. Numbers, though important, will not cure the ills of this industry; quality controls set forth in our four points will.

The ethical manufacturers should not continue to be the whipping boy for maverick manufacturers whose disregard for the innocent consumers has given the industry an undeserved bad reputation. The continued toleration of the mavericks will lead to economic chaos in the industry unless curtailed.

In closing, I would add that SICIM has participated several times before in inter-association conferences trying to produce a viable merger; and that we would participate again provided there would be no obligation in advance to accept a simple majority decision based on the vagaries of parliamentary mechanics, completeness of discussion and understanding, and varying levels of expertise among the members of the conference. Roberts Rules of Order is not the means by which we improve our industry's image and establish credibility. Improved product through compliance with our (your) "Point Four Program" is the surest way to Federal, Consumer, and news media acceptance. Any emerging group as a result of the Chicago meeting, having less than these four points could never speak for the entire industry.

Sincerely,

GREGORY J. FITZGERALD,
Executive Director.

Mr. METCALFE. Thank you very much, Mr. Mesigh.
We will hear from Mr. Anderson next.

STATEMENT OF ROBERT W. ANDERSON, DIRECTOR OF PRODUCT DEVELOPMENT, DIVERSIFIED INSULATION, INC.

Mr. ANDERSON. Thank you, Mr. Chairman.

My name is Robert W. Anderson, director of Product Development of Diversified Insulation, Inc., Minneapolis, Minn. I am grateful to have the opportunity to testify before you on an issue that affects not only the integrity of the cellulose industry but also the well-being and safety of the American people.

Diversified Insulation, Inc., is one of the largest manufacturers of cellulose insulation in this country, having some five manufacturing plants in operation and two others under construction. Additionally, our product is manufactured under licensing arrangements in four other facilities. Our product is manufactured nationally and bears the Underwriters Laboratory label of classification and followup service for the characteristics set forth in the American Society for Testing Material for standard specification C–739.

Last week, Mr. Chairman, I testified on behalf of Diversified Insulation, Inc., before the Oversight and Investigations Subcommittee chaired by the Honorable John Moss of California. Those hearings amplified the seriousness and the complexity of the problems facing our industry and further demonstrated the need for the implementation of an interim standard while detailed studies of the whole home insulation industry are being made. The hearings demonstrated, much to my own and my company's frustration, the difficulties inherent in developing adequate standards for cellulose insulation.

The hearings conducted by Congressman Moss were important because a number of basic questions were raised for public debate. For example, the question of variable quality of product in terms of flame spread and corrosiveness and the inadequacies of existing specifications. The hearings also pointed out the existing confusion about how independent testing laboratories can perform realistic and reliable services if there is no agreement on the specifications.

Mr. Chairman, we are well aware of the problems facing the cellulose industry today and we are fully supportive of efforts to develop better standards for the manufacture of cellulose insulation. At the present time, the size and output of the cellulose industry cannot be adequately determined. A ball park figure is that there are some 350 manufacturers producing cellulose insulation of a variety of qualities.

The Department of Commerce, as you may know, estimates that some 10 new cellulose manufacturers enter the market each month. Some of these products have high corrosive and low flame retardant properties due to poor manufacturing. There is no way to tell the extent to which the American consumer is being sold an inferior product.

Until recently, manufacturers could make unwarranted claims for their product, including conformance to certain specifications, without fear of prosecution. At the present time, notwithstanding the recent FTC interim ruling, a poor quality product can still be sold to a large portion of the market, provided the manufacturer makes no claims as to the quality or conformance to specifications.

The American consumer, Mr. Chairman, must rely solely upon his own knowledge of the product or what he is told by the manufacturer. The size of the industry, plus the fact that it is continuing to grow very rapidly, as well as the lack of national standards, has given the cellulose industry a bad reputation. High quality cellulose insulation, however, can be manufactured—insulation that can meet the standards presently used by the GSA and insulation that will give the customer adequate satisfaction that the product is both safe and efficient.

The existing standards have proved difficult to responsible manufacturers and purchasers. It is my opinion that a perfect standard will never be written. Ambiguities within the present specifications have led to the reporting of questionable test results. Laboratories performing similar tests have quite often arrived at different test results and it is difficult to determine which laboratory was correct and which one was wrong.

The difficulties and problems which I have just generally elaborated upon demonstrate why Diversified encourages and supports the development and promulgation of improved standards. The reputation of the cellulose industry and its ability to produce a safe and effective product is being seriously undermined by certain manufacturers who produce a poor quality product. The magazine Consumer Report, for example, recently stated that cellulose insulation should be the last choice of a consumer when purchasing insulation for his home needs. This, Mr. Chairman, is not the case.

We are pleased to support then H.R. 10637, the Emergency Interim Consumer Product Safety Rule Act of 1978. This legislation, Mr. Chairman, will go a long way in insuring that energy resources can be conserved through the insulating of American homes and businesses with a product which is both safe and effective.

The legislation directs that cellulose insulation be manufactured in compliance with GSA standard HH–I–515C which provides the best current methods for testing the flammability and corrosiveness of this product. Although we are fully aware that these existing standards are not the answer to the serious crisis confronting our industry, we see it as an effective interim measure while studies are being conducted to determine the best ways of developing and implementing more adequate and effective standards. We, therefore, support the bill's provision which further instructs the Consumer Product Safety Commission to provide the Congress with an interim report within six months and a final report within one year on various safety aspects of all home insulation products including cellulose.

I would like to recommend to the chairman and this subcommittee that they encourage the General Services Administration to defer promulgation of the proposed revision of HH–I–515D until such time that the new test requirements contained therein have been adequately evaluated and proved to be an improvement over existing test requirements.

Mr. Chairman, if I may add to my statement, the problems for the cellulose industry are twofold: One is the lack of a national standard and two is the confusion in the use of the existing specifications. What the industry and what the consumer needs now is not more confusion with respect to specifications.

We have a number of Federal agencies that are working on specifications directly and indirectly. In fact, the Federal Trade Commis-

sion is preparing a de facto specification in terms of their requirements. Likewise, the Department of Commerce is preparing a de facto specification in terms of its labeling requirements. In addition, many of the states are preparing their own standards because of the lack of a national standard. The industry, and the consumer, do not need 50 additional standards to be lived with. That only creates confusion.

Therefore, we urgently support and request that the interim standard be implemented as soon as possible and that the new standards be properly evaluated, and, at such time as they are properly evaluated, that these be implemented.

Thank you, Mr. Chairman.

Mr. METCALFE. Thank you very much, Mr. Anderson.

I think the panel for their very expert testimony. Certainly you gentlemen appear to be in unison with your request for standards.

I would like to ask Mr. Barron and Mr. Mesigh a couple of questions here.

How many manufacturers belong to the association that you represent and what percentage of the total U.S. production of cellulose insulation do they produce? In other words, how many of these manufacturers?

Mr. BARRON. Yes; NCIMA, the National Cellulose Insulation Manufacturers Association, has at the present time 12 member companies. It is our best estimate, based on advice from the Department of Commerce, that those companies probably put into place about 30 percent in their general area of the cellulose sold in these United States.

Now the new association that I have revealed to you, CIMA, it is our best estimate, Mr. Chairman, that that association and the members subscribing to it will represent about 70 percent of the tonnage of cellulose sold in the United States. We think that there will be about 150 companies supporting that activity.

Mr. METCALFE. What is CIMA?

Mr. BARRON. CIMA has just been organized, Mr. Chairman. Just in the last week representatives from the boards of directors of the four associations that I have named have agreed to coalesce their viewpoints into one voice so instead of five voices clamoring with our colleagues in SICIM at least four of the associations are amalgamating into one association to be called Cellulosic Insulation Manufacturers Association.

Mr. METCALFE. Mr. Mesigh, how many organizations that produce the cellulose insulation do you represent?

Mr. MESIGH. We represent 20 companies.

Mr. METCALFE. What percentage is that generally?

Mr. MESIGH. It is 35 percent of the industry.

Mr. METCALFE. There has been a great deal of adverse publicity recently about the safety of cellulose home insulations. Have you or your members noticed any lessening or demand for cellulose installations as a result of that adverse publicity?

Mr. BARRON. Yes.

Mr. MESIGH. That is correct.

Mr. METCALFE. Appreciably?

Mr. MESIGH. Appreciably.

Mr. METCALFE. Could you be specific as to how much of this loss have you had? What percentage of your business has it affected?

Mr. BARRON. That is day to day, Mr. Chairman. We don't monitor company statistics that closely but it is a seat of pants if you will excuse the phrase. It is a seat of pants that there was a downturn just about coincident with the end of January, first of February. I believe just about the time the consumer's report that Mr. Anderson referred to hit the marketplace.

Mr. METCALFE. Could you be a little more definitive and give us some idea as to a ball park figure as to what that loss has been in terms of your own industry?

Mr. BARRON. No, Mr. Chairman, I cannot speak to that except to paraphrase comments that my colleagues have made to me that they have noticed a softening of the marketplace.

Mr. METCALFE. May I further point out the softening could be 1 percent, it could be 2 percent, it could be 35 percent. I would like to get a little more definitive answer if you could. We are asking for ball park figures, we are not holding you strictly to your answer.

Mr. BARRON. Mr. Chairman, with all respect to the Chair, and I appreciate your pressing for an answer, I cannot answer that in all honesty. All we can say is that there has been a softening and I would rather imagine that might be rather significant.

Mr. METCALFE. Mr. Mesigh.

Mr. MESIGH. It is the opinion of SICIM after polling our members which are spread from the east coast to the west coast that production is off 45 to 55 percent and as much as 80 percent in certain areas.

Mr. METCALFE. Give me some other ideas about it. Does the testing method specified by the existing GSA 515C standards in any way stimulate the home use conditions? If so, why then would the mandating compliance with the 515 provide any assurance of safety to consumers? I further go on by asking might it not simply lull consumers into a false security thinking that their product must be safe because it complies with the Federal standard?

Mr. BARRON. May I speak to that, Mr. Chairman?

Mr. METCALFE. Please.

Mr. BARRON. In order to answer that I would like to pose to you the spectrum that exists across the country at the present time. The building codes of the United States who generally adjudicate problems associated with materials have established the use of the so-called Steiner tunnel. Furthermore, the building codes of the United States have established three categories of flame spread 0 to 25 being class 1, 26 to 75 being class 2, and 76 to 200 being class 3.

Now against that backdrop you should remember that 0 in the tunnel is cement asbestos board and 100 is select dry red oak. Framing lumbers that we find in the welding markets are in the category of 150 in the category of flame spread. Plywood paneling is around 150 to 200. Cellulose insulation is required at the present time in my interpretation to be not in excess of 50 in the present standard HH–I–515C and we are advocating that the top end not be more than 40. You should remember I spoke to the mineral fiber vapor barrier which was that the vapor barrier so frequently found with that type of insulation in the same tunnel over 2,500.

I think that the tunnel test has been in use since 1952. It is a well established test method. These are 1,700 tunnel operators across the country who have run all sorts of flame spread tests on all sorts of material that it is indeed a viable test method properly used.

Mr. METCALFE. The tunnel method is presently a viable method?

Mr. BARRON. Absolutely, sir. It is a viable test method.

Mr. METCALFE. Mr. Mesigh.

Mr. MESIGH. Since we are representing two associations, and I certainly don't mean "go to war," our association has an entirely different approach to this. One, with respect to the Moffett-Ford bill we would recommend that the E–84 tunnel be mandated with this bill and that the E–84 or UL 723 with a flame spread not greater than 25.

The particular purpose of that is we can test untreated newspaper and get a class 2 material in the E–84 tunnel. We are not proposing that the E–84 tunnel is in fact the answer to the question lessening the credibility of the radiant panel, critical flux test. We are suggesting this: That there is a problem at the grassroots level if one should happen to be in Yipswitch, Wyoming, or small area of our country. Just because legislation is enacted in Washington, it could be 25 years before they are aware of that change. They are accustomed to class 1, class 2 materials. They are accustomed to certain terminology, et cetera, and for a temporary period we would suggest that again the E–84 and the UL 723 be mandated along with the smolder test and the radiant panel.

Mr. METCALFE. I yield to counsel.

Mr. ANDERSON. I would like to amplify on that if I may, Mr. Chairman.

Mr. METCALFE. Yes.

Mr. ANDERSON. I think it is important to note that I agree with the position as stated by Mr. Barron. I think though that it is necessary to state that I do not object to the radiant panel testing or the test provisions within the new Federal specifications HH–I–515D.

My concern is simply this: That they do have confusion with the use of the existing specifications at this time. The existing specifications are not perfect, they are being improved upon. The new ASTM specification, C–739–77—the new existing specification does improve upon the flame spread requirements as performed by the tunnel. This should go a long way to eliminate confusion about the test data now being developed in the industry. With respect to the radiant panel the test may very well turn out to be a marked improvement over the existing Steiner tunnel. This may very well be.

The position that our company takes is that we would like to have this demonstrated and shown and we would also like to see that the industrial capability for the use of this test if it turned out to be an improved test procedure and be available within the marketplace. I would see tremendous confusion developing if the test were to be imposed at this time or within the near future without adequate testing facilities available throughout the country. This takes time.

My position is simple: That if the new test procedures are viable, let's use them in a reasonable, timely manner.

Thank you.

Mr. METCALFE. Thank you.

I am going to ask counsel, Ms. Kinney, if she has any questions.

Ms. KINNEY. Thank you, Mr. Chairman.

Mr. Barron, you mentioned—I think you said 17 testing facilities that are available that do the Steiner tunnel test right now.

Mr. BARRON. That is my understanding.

Ms. KINNEY. We have information from the National Bureau of Standards which shows considerably fewer. You may not have the information with you right now. Can you provide us for the record a listing of all of those facilities which you believe now exist to do the Steiner tunnel testing?

Mr. BARRON. By all means, Ms. Kinney. I will ask the person who chairs the Tunnels Operators Committee to supply you with a list of these tunnels. I can think of a few. I can probably tell you five tunnels that I know of at the present time. Not all of those operators incorporate the influence of the galvanized steel screen that I discussed in my testimony and I believe that that is one of the big problems. Underwriters does incorporate the galvanized and as Mr. Mesigh paraphrased there UL 723 and so those two are in consonance. I will certainly see to it that you have a list of the tunnel occasions across the United States.

Ms. KINNEY. Would you please indicate which of those do make the correction for the wire mount?

Mr. BARRON. I will so endeavor.

[The following material was received for the record:]

TUNNEL OPERATORS OF NORTH AMERICA

Organization	Members	Telephone
E-84 task group mailing list:		
Ambric Testing and Engineering Association 4041 Ridge Ave., Building 11, Philadelphia, Pa. 19129.	L. G. Bricker, Myron Carson	(215) 438-7944
Commercial Testing Co., Inc., P. O. Box 94, 407 Central Ave, Dalton, Ga. 30720.	Earl Miles, J. Jackson	(404) 278-3935
Factory Mutual Engineering Division, 1151 Boston-Providence Turnpike, Norwood, Mass. 02062.	William Maroni, Tom Chestnut	(617) 762-4300
Hardwood Plywood Manufacturers Association, 2310 South Walter Reed Dr. Arlington, Va. 22206.	Robert Robins, William Groah	(703) 671-6262
Johns-Manville Products Corp., Greenwood Plaza, P. O. Box 5108, Denver, Colo. 80217.	Ken Smith, Robert Neisel	(303) 773-2400
National Gypsym Co., 1650 Military Road, Kenmore, N.Y. 14217.	Carl Mapes, R. Costolnick	(716) 873-9750
National Research Council of Canada, Division of Building Research Fire Section, Ottawa 7, Ontario, Canada KIA-OR6.	Alex Rose, John McGuire	(613) 996-8211 (613) 993-2204
Owens Corning Fiberglas Corp., P. O. Box 415, Granville, Ohio 43023.	Joe Prusaczyk	(614) 587-0610
Southwest Research Institute, 8500 Culebra Rd., San Antonio, Tex. 78228.	Carl Hafer, George Armstrong	(512) 684-5111
Terralab Engineers, P. O. Box 7025, Salt Lake City, Utah 84107.	Doug MacGregor	(801) 262-0094
Underwriters Laboratories of Canada, 7 Crouse Rd., Scarborough, Ontario, Canada, MIR-3A-9.	Peter Higginson, Harold Lock	(416) 757-3611
Underwriters Laboratories Inc., 333 Pfingsten Rd., Northbrook, Ill. 60062.	Jim Beyreis, Tom Castino	(312) 272-8800
United States Testing Co., Inc., 5521 Telegraph Rd., Los Angeles, Calif. 90040.	Jim Heywood Berndt Givon	(213) 723-7181
United States Testing Co., Inc., 1415 Park Ave., Hoboken, N. J. 07030.	William Rindosh, F. Pepe	(201) 792-2400
Weyerhauser Co., Technical Center, Longview, Wash. 98632	Jim White, Ray McNeil	(206) 425-2150
Ontario Research Foundation, Sheridan Park, Mississauga, Ontario, Canada L5K-1B3.	Dr. Williams, J. Dinuccio	(416) 822-4111
Warnock Hersey, 125 East 4th Ave., Vancouver, 10, British Columbia, Canada.	Howard Grisack	(604) 876-4111
For mailing purposes—not task group members:		
G. O. Atkinson, Staff Liaison E05, ASTM Headquarters, 1916 Race St., Philadelphia, Pa. 19103.		(215) 299-5496
Dan Davies, Chairman ASTM E05.04, Koppers Co., Inc., 700 Koppers Bldg., Pittsburgh, Pa. 15219.		(412) 227-2439
A. A. Briber, Underwriters Laboratories, 165 Scott Blvd., Sante Clara. Calif. 95050.		(408) 243-3600

ORGANIZATIONS THAT OPERATE A 25-FT TUNNEL

Organization	Uses a correction factor	Does not use a correction factor
1. Ambric Testing and Engineering Association, Philadelphia, Pa		X
2. Commercial Testing Co., Inc., Dalton, Ga		X
3. Factory Mutual, Engineering Division, Norwood, Mass	X	
4. Hardwood Plywood Manufacturers, Association,[1] Arlington, Va		
5. Johns Manville Products Corp., Denver, Colo		X
6. National Gypsum Co., Kenmore, N.Y		X
7. National Research Council of Canada,[2] Ottawa, Ontario, Canada		
8. Ownes Corning Fiberglas Corp., Granville, Ohio		X
9. Southwest Research Institute, San Antonio, Tex		X
10. Terralab Engineers, Salt Lake City, Utah		X
11. Underwriters Laboratories of Canada,[2] Scarborough, Ontario, Canada		
12. Underwriters Laboratories Inc., Northbrook, Ill	X	
13. Underwriters Laboratories Inc., Santa Clara, Calif	X	
14. United States Testing Co., Inc., Los Angeles, Calif		X
15. United States Testing Co., Inc., Hoboken, N.J		X
16. Weyerhaeuser Co., Longview, Wash	X	

[1] Does not test loose fill.
[2] Tests loose fill on floor of furnace.

Ms. KINNEY. Also, you commented upon what you believe is the justification for using 515C as a mandatory standard and you mentioned the fact that it has been used for a number of years. Are you aware of any tests that have been done and documented and published that show that the 515C standard is a reproducible test.

Mr. BARRON. When you speak of the 515C, I assume you are focusing in on the tunnel test.

Ms. KINNEY. That is correct.

Mr. BARRON. There is 25 years of accumulated data in that data.

Ms. KINNEY. What kind of accumulated data?

Mr. BARRON. Oh, my dear. All sorts of round robins have been around under the committee E–5 which has the overview for the tunnel and I am certain that the data could be developed for your review.

Ms. KINNEY. All right. We would like to see it and I will check with you later about getting that.

Mr. BARRON. Splendid.

Ms. KINNEY. Earlier witnesses from the DOE indicated that they were not aware of any published literature showing the 515C testing method was a reproducible testing method, so I will check with you on getting that later.

Mr. BARRON. Thank you.

Ms. KINNEY. 515C does not in any way simulate the conditions in a home attic. It merely measures how quickly material will burn. Now the GSA 515D revision would provide some kind of correlation between what actually occurs in the home and the 515D tests are designed to measure whether or not the insulation would be expected to burn under home conditions.

As I understand it, NBS is currently going through some round robin tests right now which they expect to be finished within the next couple of months to verify the valadity of the two testing speed methods that have been specified in 515D. If those tests show that the

515D is reproducible, would you still have objections to 515D being required as a national mandatory standard?

Mr. Mesigh, do you want to go first?

Mr. MESIGH. I have absolutely no objection to 515D being mandated as a national standard but I also suggest that it includes the flame spread of not greater than——

Ms. KINNEY. In addition to?

Mr. MESIGH. In addition to 515D.

Mr. KINNEY. Mr. Barron.

Mr. BARRON. Generally the way in which these are counter to the way generally the test methods are developed in the United States. I have been a member of ASTM committees for the last 30 years and generally speaking the consensus standards writing process in which you have input from the professorial level from industry, from consumer groups, these are hammered on the anvil until suddenly you have a consensus standard and when it comes to that point that standard has been checked out, it has been acertained whether or not the test method is reproducible or what have you.

The two test methods being talked about and diversity of the specification have a data base of something like 11 tests which I don't believe is a very broad data base and my estimation, Mr. Chairman, the work that is now being implemented to ascertain the reproducibility of these tests should be done long before the tests were even introduced into the specification.

Ms. KINNEY. You recommended that 515C with the flame spread of 40 be used for the mandatory standard.

Mr. BARRON. Yes.

Ms. KINNEY. Now there have been tests conducted at the National Bureau of Standards showing that cellulose insulation with a flame spread classification of 0 to 25 will burn readily in a home attic situation in the summertime when there are high heats in the attic. In light of that information, why do you think 0 to 40 is going to provide the consumer with any measurable degree of protection when even materials that meet a more stringent standard are shown to be easily flammable in what could be easily occuring situations?

Mr. BARRON. My response to that, Ms. Kinney, is that industry has not been provided that data.

Ms. KINNEY. We will see if we can get it provided.

Mr. BARRON. I would like that very, very much indeed. It is my understanding that the Bureau does not have a tunnel.

Ms. KINNEY. Do you know if ASTM is presently looking at the 515C standard to see if they can change it, to see if they can make it in any way more closely simulate the condition in a home?

Mr. BARRON. I believe that the anvil of ASTM is always aware of that and trying to improve the standards. We have a task group meeting of our ASTM task group scheduled for approximately mid-March and I know that there will be several items addressed to upgrade this particular specification.

Ms. KINNEY. How many years does it normally take to reach a consensus standard?

Mr. BARRON. Well, that could be quite a question. Sometimes it can be a year, a year and a half. Sometimes it can be even longer than that but the point is that is the strength of the consensus standards process, it is not an impetuous standard process. It is well thought out.

Ms. KINNEY. We are talking about 8 million homes which may be retrofitted in 1 year with home insulation, and a good share of that may be cellulose. If we wait 1 year to 2½ years for ASTM to come up with a testing standard that may more closely duplicate use conditions, there may be many millions of homes which will have been retrofitted with insulation and will not have any assurance that the material they have put into their home is safe under general use conditions.

Let me ask you one other thing. If 515C is mandated as an interim standard, can you think of any information that can be provided to the consumer at point of purchase and point of installation that would provide some kind of upgrading of the protection provided by 515C?

Mr. BARRON. I believe it was brought out in earlier testimony this morning that one of the Achilles tendons of the industry is the act of installation of insulation. I believe that the techniques of installation of these materials should be upgraded tremendously because while I have alluded to vapor barriers and another type of insulation, I am advised that they were not intended to be installed face up. I would submit to you, Mr. Chairman, that cellulosic material was not intended to be installed in proximity to a continuous heat source such as a recessed lighting fixture and that is one of the problems. I do believe if there were techniques to upgrade the installation of the materials it would be a tremendous step forward.

Ms. KINNEY. Mr. Mesigh, you have indicated that your association represents perhaps 20 companies. Mr. Barron, you have said your association represents perhaps 70 percent of the total cellulose output. Can you each tell us how many members of your association could meet the 515C standard both if it were limited to just type 1 or if it were expanded to cover both type 1 and type 2? Can you further give us information as to how many would meet the 515D standard?

Mr. Mesigh.

Mr. MESIGH. I think within our organization—are you talking about immediately or——

Ms. KINNEY. Say within a period of a few months.

Mr. MESIGH. I think probably 90 percent of our association could meet 515C, including, if I may preface this a little—part of the requirements of our association is upon application for membership to apply for third party certification. At this time the only laboratory that has been approved is Underwriters Laboratories. We are looking for other laboratories and do not specifically limit this to Underwriters Laboratories, Inc.

Ms. KINNEY. Underwriters Lab is the one you say does adequate testing?

Mr. MESIGH. At this point in time; yes.

Two is that we have mandatory compliance to HH 515—not C, not D but whatever revision may be.

Three, that we make a class 1 "0 to 25 flame spread insulation only." So with this process we then would obviously be able to comply within a relatively reasonable period of time. I can't specifically comment to the D revision, the D revision as written. I understand there are changes coming out in this. I would think that probably at least 80 percent of our manufacturers could comply within a relatively short period of time upon the issuance of a federally mandated standard.

Ms. KINNEY. What would you consider a relatively short period of time?

Mr. MESIGH. It depends on the backlog of test laboratories. I should hope no more than 6 months. I would like to request again not to go to war with our other trade organization now that two organizations have been mentioned. One is indeed a functioning organization, the other is conjecture at this point. As to representation of the industry and/or membership, maybe the committee should clarify that in questioning.

Ms. KINNEY. Mr. Barron.

Mr. BARRON. The only intelligent way to answer that would be to phase into the formula what is going to be the availability of chemicals used as flame-retardant chemicals in the cellulose industry. I am aware of one of the popular materials and I speak of boric acid. As undoubtedly the committee is aware, that is in rather tight supply.

It is my understanding that one of the dominant factors is bringing additional capacity onstream that won't be onstream for another year or two down the line. Furthermore, that particular product is a rather popular chemical used in the production of one of the aspects of another type of mineral material. It would be difficult indeed, Ms. Kinney, to speak with any degree of accuracy as to how many man-years would indeed be able to meet the demands of the HH 515D version under 25 flame spread; indeed many of them may be able to meet it for a part of the year depending upon their chemical allocation and the rest of it.

Mr. ANDERSON. May I amplify on that.

It is our company's opinion that the implementation of 515D would increase the requirements for boric acid approximately 30 to 50 percent over the current product manufacturing at this time. I think the Federal Government has the responsibility to look at the impact of such specifications if and when they were to be imposed because there is certainly not that type of availability of chemical in the marketplace at this time. I think, too, that with the major impact that the Federal establishment again has to be very responsible in assuring that the testing procedures that are required are right and that these are the ones that will be——

Ms. KINNEY. You commented already that you don't think the testing procedures in 515C are sufficiently specific to produce adequate results.

Mr. ANDERSON. That is right.

Ms. KINNEY. So if we mandated 515C as a standard, we would have to make some changes in it to eliminate the ambiguities that you have described.

Mr. ANDERSON. As an interim standard I would say not.

Ms. KINNEY. Why not?

Mr. ANDERSON. Because it would take too long to satisfy the ambiguities.

Ms. KINNEY. What does the standard mean if you cannot get reproducible results.

Mr. ANDERSON. I think we have to talk at the level of reproducibility. The reproducibility with regard to flame testing can be taken care of very easily by imposing the new flame spreader requirements as in the new ASTM specification C–739.

Ms. KINNEY. Are you aware of any studies that show that that does occur; that in fact if you do make that correction the results are very reproducible?

Mr. ANDERSON. I think it is fairly easy to identify the flame spread correction factor is about 47 percent so that immediately you begin a pulling together of the data that is a much tighter base.

Ms. KINNEY. You all heard discussion earlier today talking about the problems that could be posed for industry if it has to comply first with 515C and then within a relatively short period of time with 515D. I wonder if you would like to comment on that, and provide us with some example of what you see as the problem in complying first with one standard and then with the second standard that contains very different kinds of testing methods.

Mr. Mesigh, do you want to start, please?

Mr. MESIGH. My first comment would be that I don't think there will be a tremendous problem complying with 515C because it is a recognized standard. People in laboratories are conclusively aware of the testing methods, where to send materials, to what labs, et cetera. At this point it is my understanding that GSA will provide a list of recognized laboratories, if not within their own NBS structure, for testing for the proposed HH–I–515D.

In other words, you are talking about roughly 800 cellulose manufacturers according to the FTC. You can imagine the backlog on this.

One other quick point is the borax situation, as well as boric acid. It is not only escalating like boric acid was but there are shortages of borax as well.

Mr. METCALFE. That is the second bell and I have to go over and vote. I declare a 15-minute recess. We will resume in 15 minutes.

The subcommittee will stand in recess for 15 minutes at this time.

Thank you.

[Brief recess.]

Mr. METCALFE. The subcommittee will come to order.

We were in the process of Ms. Kinney interrogating Mr. Barron and Mr. Mesigh.

Proceed, Ms. Kinney.

Ms. KINNEY. Mr. Mesigh, you had started to comment on what you saw as far as compliance problems that could exist if the industry had to comply with one standard and then a second standard within a short period of time. I don't recall if you were finished. If you were, we will go on to Mr. Barron and Mr. Anderson.

Mr. MESIGH. Again I don't recall specifically what points have been mentioned. I think the one thing we do need to get into is whatever piece of legislation that is enacted has a reasonable compliance, period, and not a severing from one standard to another standard, merge the two and let them proceed.

Ms. KINNEY. Mr. Barron.

Mr. BARRON. Yes. I would like to affirm that the HH–I–515C hopefully with the modifications that we have offered to the committee, Ms. Kinney, would be mandated as a national standard and that furthermore the ASTM C–739 which we think is so critical in this matter be also mandated as a national standard for the conduct of the tunnel test to all of these 17 operators who may be involved. We would urge that HH–I–515C as recommended for revision be indeed mandated. Our apprehension with the D version is that if the D version

is impetuously implemented that we may tradeoff the same kinds of problems that everybody is talking about in the C version.

Ms. KINNEY. I understand that, Mr. Barron. What kinds of extra burdens might we impose on the industry if first one standard is mandated and then within, say a 6-month period, even a 1-year period, yet a second standard is mandated. Can you address your answer to that question?

Mr. BARRON. I would think that the orderly way to do it would be to first impose the tool that you have at the present time, the C version, and then when the D version is indeed validated and the test methods are validated with a good data base then go about the orderly implementation of that if it seems appropriate.

Ms. KINNEY. I think we all understand that. What will happen if your members have to comply with 515C and then 515D becomes the mandatory standard following on 515C? What kinds of readjustments will they have to make to comply with 515D?

Mr. BARRON. I feel rather sure, Ms. Kinney, that one of the readjustments they would have to make is in the chemical area, the whole availability of the complex flame retardants and cellulose insulation. It is my understanding that one of the dominant and one of the more popular materials is in tight supply. In the recess I was advised that the consumer subcommittee of the Senate that is under Mr. Ford's jurisdiction will be addressing this entire matter in a hearing on March 15. The entire premise of the production of boric acid, the distribution of the boric acid, the importation and the exportation of the material, and certainly the results of those hearings will have a dramatic impact upon whether or not the members of the cellulosic material industry will be able to meet the D version and its tightened up requirements.

Ms. KINNEY. What kinds of expenses do you think a manufacturer would have to go to first to get in compliance with 515C and then to be able to certify that he was in compliance with 515D? Would there be considerable testing expenses involved in getting labs to do testing on materials for both standards within a short period of time?

Mr. BARRON. By all means because the C version as we know uses the tunnel test. Many of the manufacturers of this country do indeed have a data base on the tunnel. Now all of a sudden we are contemplating abandoning that entire premise and going to the floor with the radiant panel test which is an entirely new test method, so I would dare say that all of it across the country would be compelled to develop test methods or test data off of that particular type of exposure. In the radiant test and smoldering test certainly there is going to be some expense involved.

Mr. ECKHARDT. How does that jibe with your statement that you would like to see C put into effect first and then D sequentially? Would that not mean the junking of the tunnel test facilities which as I understand is in the neighborhood of $75,000 in lieu of the other equipment?

Mr. BARRON. I don't know of any individual manufacturers of cellulosic insulation, Mr. Chairman, who have a tunnel in their quality control laboratories. It is a rather expensive device. The work is done with consulting laboratories such as Underwriters Laboratories such as for instance in which that laboratory runs tunnel tests upon that particular company's material.

Now as I have indicated to the panel in previous testimony, there are 17 tunnels at the present time. Some of them are operated by manufacturers of thermal insulation but at the present time it is my understanding that there are only five laboratories that have the flooring panel test and they are largely in carpet country.

Mr. ECKHARDT. To what extent would the placing into effect of 515C result in contractors purchasing tunnels with the costs passed on to a certain extent in their charges to the insulation purchasers? To what extent would that ultimately afford a burden on the cost of the material?

Mr. BARRON. I would not necessarily think that there would be any new tunnel facilities established, Mr. Chairman, because there are, as I say, 17 tunnels in place across the country at the present time. Factory Mutual up in the Boston area has one, U. S. Testing in Hoboken has one, Underwriters has one, Southwest Research has one. What should be done is that they should all be told that thou shalt perform your flame spread testing on cellulosic insulation in accordance with 739 C77. That would clear up the matter tremendously.

Mr. ECKHARDT. So you are saying that we could put into effect the 515C standard and then provide that the 515D standard would become effective without putting an undue burden on industry from the standpoint of waste in complying with the first requirement.

Mr. BARRON. If and when that point in time comes, Mr. Chairman, I think it would be a normal extension because what we are trying to determine, Mr. Chairman, is the credibility of the data base. As I explained earlier there are only 11 tests at the present time that are the data base for the flooring radiant panel test and the 11 tests for the smoldering test. We think that there should be a much broader data base of affirming that the test method is indeed reproducible.

Mr. MESIGH. Mr. Chairman, I would like to make the comment that SICIM has submitted to a laboratory which happens to be Certified Testing Laboratories in Dalton, Ga. At the time of sampling we had 16 manufacturers and 10 of these were submitted to Mr. Fitzgerald, our executive director, of which then 7 were submitted to the laboratory. Of the seven, six passed both the radiant panel and the smolder test and one failed very marginally; at a cost of $300 a test. If this is to be concurred as so expensive where we might bankrupt any company; I would suggest that they should not be in business.

Mr. ANDERSON. If I may add to that that—our company has submitted material for the radiant panel testing to two separate laboratories to see what the reproducibility might be on the test results. The results came back by a difference factor of two. I do not consider that to be consistent and I think this is why it is very necessary that the current work being performed by the Bureau of Standards be completed on checking out the reproducibility of the respective testing facilities. Unless there is reproducibility and correlation between the respective testing facilities, we have no idea as to which data are valid. Likewise, the Government would have no idea as to the validity of the data base.

Mr. ECKHARDT. What are those two laboratories?

Mr. ANDERSON. U.S. Testing and Southwest Research.

Mr. MESIGH. If I may make one other comment that these same materials have also been submitted to the Van Ness Laboratories of NBS from the same samplings.

Ms. KINNEY. And those tests?

Mr. MESIGH. Those test results are not vailable yet.

Mr. ECKHARDT. Thank you, gentlemen, for your testimony.

Mr. BARRON. Thank you, Mr. Chairman.

Mr. ECKHARDT. Mr. John T. Miller, Chief, Hardware and Mechnical Branch, Mechanical and Electrical Division, Standards and Quality Control, Federal Supply Service, General Services Administration.

Can you identify yourself for the record, Mr. Miller.

STATEMENT OF JOHN T. MILLER, CHIEF, HARDWARE AND MECHANICAL BRANCH, MECHANICAL AND ELECTRICAL DIVISION, STANDARDS AND QUALITY CONTROL, FEDERAL SUPPLY SERVICE, GENERAL SERVICES ADMINISTRATION, ACCOMPANIED BY ERNEST FREEMAN, SPECIFICATION MANAGER, BUILDING MATERIALS

Mr. MILLER. Yes.

Mr. Chairman and members of the committee, my name is John T. Miller, Chief, Hardware and Mechanical Branch, Mechanical and Electrical Division, Federal Supply Service, General Services Administration. To my right is Mr. Ernie Freeman, Specification Manager for Building Materials.

On behalf of the Administrator of General Services, I am very pleased to be with you today to discuss our technical programs in support of establishing the level of Federal requirements for thermal insulation material.

The Federal Supply Service of the General Services Administration is responsible for the administration of the Federal Government's Federal specifications and standards program.

This program encompasses 4,500 Federal specifications and 1,500 Federal standards. Federal specifications are technical descriptions of materials, products or services. These descriptions objectively specify necessary characteristics and performance in such a manner as to support competition for Government business through the formal advertised bid process.

Federal standards establish engineering or technical limitations and applications for materials, processes, methods, and designs. Standards are used primarily as references in specifications. Both Federal specifications and standards are mandatory only on Federal agencies.

Included in this program are three Federal specifications for blanket and loose fill thermal insulation designed for application in walls and ceilings of residential buildings and other frame type structures. They are:

HH–I–515—Insulation, thermal. (Loose fill for pneumatic or poured application) cellulosic or wood fiber [see p. 239].

HH–I–1030—Insulation, thermal (mineral fiber, for pneumatic or poured application) [see p. 262].

HH–I–521—Insulation blankets, thermal (mineral fiber for ambient temperatures) [see p. 285].

Federal specifications HH–I–515 and HH–I–1030 covering loose fill cellulose and mineral fiber insulation respectively are intended for use in housing and other framed building applications. They are adaptable

to wood joist, rafters, and stud construction. The material can be pneumatically blown or poured into place.

Federal specification HH–I–521 is also intended for use in housing and other framed building applications. This mineral fiber material is furnished in blanket form with or without vapor barriers. The material is supplied in various roll lengths.

These specifications are essentially performance oriented documents which describe the requirements of Federal agencies for insulation. Based on information provided us by the Department of Energy and the National Bureau of Standards and other members of the Federal family it was determined that we should revise the three insulation specifications to specify the most current technical data for physical properties and testing methods. This revision effort is being accomplished in accordance with our normal procedures, as follows:

(1) Pertinent technical data relative to the products is gathered.

(2) A draft proposed specification is prepared.

(3) Copies of the proposed specification are circulated for comments to interested parties including manufacturers, Federal Government activities, industry associations and testing laboratories.

(4) Comments are received, reviewed and evaluated, meetings are held to resolve differences and appropriate changes are made to the proposed specification.

(5) A final draft is prepared and forwarded for printing and promulgation.

Mr. Chairman, with your permission we are submitting copies of the three draft specifications (HH–I–515D, HH–I–1030B, and HH–I–521F) for the record.

Mr. ECKHARDT. Without objection, the record will be held open for these materials [see p. 239].

Mr. MILLER. The specific areas in the specifications where major changes or new requirements appear are fire testing, density measurement, and resistance to fungal growths.

The National Bureau of Standards accepted responsibility for reviewing the flame spread requirements and after examination and testing recommended the use of the radiant panel test chamber for the flame spread requirement. They also recommended that we include a smoldering combustion test. The major points considered in the decision to propose the radiant panel and smoldering combustion tests were as follows:

1. The E–84 tunnel test has been applied to cellulose insulation in ASTM C–739 only since 1973. Prior to this, the test was used for building material, including mineral fiber insulation for laboratory comparison. Mineral fiber insulation does not burn under this test; therefore, the use of E–84 for this material seems of little meaning. The use then in 1973 of the E–84 test for cellulose insulation seems to be based on previous acceptance with mineral fiber insulation.

2. The ignition source and ceiling mounting in the E–84 test have raised questions as to the relationship to real attic situations. In addition the ceiling mounting requires a wire screen for which a correction factor may or may not be applied. The ignition source in the tunnel test does not address a small open flame or a smoldering ignition source.

3. The flame spread classification may not be a reasonable comparison tool for all densities and material forms so that a classification of 100 means the same for a dense solid wood as for a low density cellulosic insulation.

4. The ASTM E–84 tunnel test has been shown to be invalid for some low density fire-retardant treated plastic foams in terms of measuring their contribution to fire growth. Its applicability to, and appropriateness for, other low density insulation materials may also be seriously questioned.

5. Fire data from the National Bureau of Standards has indicated that covered electrical—for heating—devices or a wiring hot spot may cause ignition of exposed insulation in the attic, basement, or crawl spaces.

6. The E–84 test does not simulate realistic exposure of the insulation to possible fire starting situations in the attic.

7. The attic floor radiant panel test simulates the configuration and radiant heat exposure which may be experienced by insulation laid between attic floor joists and subjected to a small open flame ignition.

8. It appears from the fire statistics and from tests with recessed lighting fixtures that smoldering ignition of insulation in the attic may be the most important potential hazard.

In a review of density requirements we found that all blown fibrous insulations can be assumed to settle after application. Therefore, the requirement for density in HH–I–515C and HH–I–1030A is applied to newly installed insulation. Settling is not considered in this requirement.

The density as determined in the proposed HH–I–515D and HH–I–1030B is the density of the product that would be expected to be found in the field some time after installation and is considered the settled density.

Finally, with respect to fungal growth of cellulosic insulation it is possible that this condition could cause the degrading of the thermal properties of the insulation by destroying the structure of the fibers; could provide a source of fungal spores which might penetrate the living area and cause health problems; could increase the corrosive action of the insulation material through the accumulation of metabolic products.

Recently we have had a number of meetings with various insulation trade associations to discuss the requirements in our proposed revisions of the insulation specifications. These associations include:

Society of International Cellulose Insulation Manufacturers;
Society of American Cellulose Insulation Manufacturers;
Manufacturing Association of Cellulose Insulation International;
National Cellulose Insulation Manufacturers Association; and
National Mineral Wool Insulation Association.

After we have completed our evaluation of the comments we have received, we plan to issue a second draft on each of three specifications. These will be circulated again to industry and Federal agencies for final comment before a final determination is made.

Again, Mr. Chairman, it is important to reiterate that Federal specifications are developed to describe Federal agency requirements and are mandatory only on Federal agencies.

These comments conclude our prepared statement. I would be pleased to answer any questions.

[Testimony resumes on p. 307.]
[The following information was received for the record:]

HH–I–515D
PROPOSED
(TO SUPERSEDE)
Fed. Spec. HH–I–515C
April 13, 1976

PROPOSED FEDERAL SPECIFICATION—INSULATION THERMAL (LOOSE FILL FOR PNEUMATIC OR POURED APPLICATION): CELLULOSIC OR WOOD FIBER

This proposed Federal Specification draft, dated November 4, 1977 prepared by the General Services Administration, Federal Supply Service, Washington, D.C. 20406, has not been approved for promulgation and is subject to modification. Do not use for procurement purposes.

1. SCOPE AND CLASSIFICATION

1.1 Scope: This specification covers chemically treated cellulosic or wood fiber loose fill thermal insulation for use in housing, and other framed building at ambient temperatures, by pneumatic or pouring application. While products that comply with this specification may be used in various constructions they are adaptable primarily, but not exclusively, to wood joist, rafters, and stud construction.

1.2. CLASSIFICATION

1.2.1 Types: Loose fill thermal insulation shall be of the following types, as specified (See 6.2).
Type I—Pneumatic application.
Type II—Poured application.

2. APPLICABLE DOCUMENTS

2.1 The following documents, of the issues in effect on date of invitation for bids or request for proposal, form a part of this specification to the extent specified herein.

Federal specification

US–S–48—Sacks, Shipping, Paper.

Federal standard

Fed. Std. No. 123—Marking for Shipment (Civil Agencies).

(Activities outside the Federal Government may obtain copies of Federal Specifications, Standards, and Handbooks as outlined under General Information in the Index of Federal Specifications and Standards and at the prices indicated in the Index. The Index, which includes cumulative monthly supplements as issued, is for sale on a subscription basis by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

(Single copies of this specification and other Federal Specifications required by activities outside the Federal Government for bidding purposes are available without charge from Business Service Centers at the General Services Administration Regional Offices in Boston, New York, Philadelphia, Washington, D.C., Atlanta, Chicago, Kansas City, MO., Fort Worth, Houston, Denver, San Francisco, Los Angeles, and Seattle, WA.

(Federal Government activities may obtain copies of Federal Specifications, Standards, and Handbooks and the Index of Federal Specifications and Standards from establishing distribution points in their agencies.)

Military standards

MIL–STD–105—Sampling Procedures and Tables for Inspection by Attributes.
MIL–STD–129—Marking for Shipment and Storage.
MIL–STD–810—Environmental Test Methods.

(Copies of Military Specifications and Standards required by contractors in connection with specific procurement functions should be obtained from the procuring activity or as directed by the contracting officer.)

2.2 Other publications: The following documents form a part of this specification to the extent specified herein. Unless a specific issue is identified, the issue in effect on date of invitation for bids or request for proposal shall apply.

American Society for Testing and Materials (ASTM) standards

C 177—Standard Test Method for Steady-State Thermal Transmission Properties by Means of the Guarded Hot plate Standard Test Method for.

C 236—Thermal Conductance and Transmittance of Built-up Sections by Means of the Guarded Hot Box.

C 518—Standard Test Method for Steady-State Thermal Transmission Properties by Means of the Heat Flow Meter.

C 739—Standard Specification for Cellulosic Fiber (Wood Base) Loose Fill Thermal Insulation.

(Application for copies should be addressed to the American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103.)

National Motor Freight Traffic Association, Inc., agent

National Motor Freight Classification.

(Application for copies should be addressed to the American Trucking Associations, Inc., Traffic Department, 1616 P Street NW., Washington, D.C. 20036.)

Uniform Classification Committee, agent

Uniform Freight Classification.

(Application for copies should be addressed to the Uniform Classification Committee, Room 1106, 222 South Riverside Plaza, Chicago, IL 60606.)

3. REQUIREMENTS

3.1 Material: The thermal insulating material shall be recycled cellulosic, vegetable or wood-based fibers made from selected paper or paper board stock from sources specified in 3.1.3. The insulating material shall be chemically treated so as to meet the requirements of this specification. The material shall be processed into a form suitable for pneumatic and pouring application. The particles shall not be so fine as to create a dust hazard, and the added chemicals shall not create a health hazard.

3.1.1 Recovered material: Insulation shall have a recovered material content equal to the total weight of the cellulosic content of the product. Recovered material is defined as material which has been collected or recovered from solid waste. Solid waste means any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining, and agricultural operations, and from community activities, but does not include solid or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges which are point sources subject to permits under section 402 of the Federal Water Pollution Control Act, as amended (86 Stat. 880), or source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954, as amended (68 Stat. 923).

3.A Qualification: The loose fill thermal insulation furnished under this specification shall be a product which has been tested and passed the qualification tests specified herein, and has been listed on or approved for testing on the applicable qualified products list (QPL).

3.1.4 Settled density: When tested in accordance with 4.5.1, the settled density shall be not more than 3.2 pounds per cubic foot (see 4.5.1).

3.1.5 Starch: When starch is found to be present in the insulation, as a result of the starch test specified in ASTM C 739, the manufacturer shall certify in writing to the contracting officer, or his representative, that the insulation offered to the Government has been chemically treated to resist vermin for the expected life use of the product.

3.1.6 Thermal resistance: The standard thermal resistance values recommended for application are: 13, 19, 24, 32, 40, and are expressed in deg F–h–ft^2/BTU (or K–M^2/W). The average thermal resistance, R, measured, shall not be more than 10 percent below the R value specified when tested in accordance with paragraph 4.5.2.

3.1.7 Moisture absorption: The percent moisture absorption gained in the insulation from exposure to high humidity shall be no more than 15 percent by weight when tested in accordance with paragraph 4.5.3.

3.1.8 Odor emission: A detectable odor of objectionable nature shall be cause for rejection of the insulation material, when tested in accordance with 4.5.4 and observed by two or more of the panel members.

3.1.9 Corrosiveness: The loose fill insulation material shall be tested for corrosiveness as specified in paragraph 4.5.5. The composition of the insulation material shall be such that after testing, no perforation of the 3 mil metal specimens shall be evident when the specimens are observed over a chrome reflected 40–W appliance light bulb. Test specimen (4) galvanized steel shall show no pitting of the metal specimen and shall show no more than 4 percent maximum weight loss (see 4.5.5).

3.1.10 Fungi resistance: The loose fill insulation material shall be tested for fungi resistance as specified in 4.5.6. The material shall show no evidence of fungi growth.

3.2 Marking. Each bag of insulation shall be marked to include the following:

(a) Name of manufacturer.

(b) Type of insulation, pouring or blowing.

(c) Minimum weight of insulation per bag.

(d) The manufacturer recommends that the insulation be installed at these minimum thicknesses, maximum coverages, and minimum weights per square foot to provide the levels of insulation thermal resistance (B) shown.

(e) Filled-in table on insulation shall include the following:

TABLE I.—THERMAL RESISTANCE

R value at 75° mean temperature to obtain an insulation resistance (R) of—	Minimum thickness—Installed insulation should not be less than—	Maximum net coverage		Minimum weight per square foot—Weight per square foot of installed insulation should be not less than—
		Maximum square foot coverage per bag—	Bags per 1,000 square foot (gross)—	
Attic sidewalls:				
R–40	____inches thick	____square feet	____bags	____pounds per square foot.
R–32	____inches thick	____square feet	____bags	____pounds per square foot.
R–24	____inches thick	____square feet	____bags	____pounds per square foot.
R–19	____inches thick	____square feet	____bags	____pounds per square foot.
R–13	____inches thick	____square feet	____bags	____pounds per square foot.
R–13	____inches thick	____square feet	____bags	____pounds per square foot.

(f) Builder's statement: "This is to certify that this insulation has been installed in conformance with the above recommendations to provide a value of R– using bags of this insulation to cover square feet of area."

(g) Place for builder's signature, company name, and date.

(h) Place for applicator's signature, company, name, and date.

3.2.1 Critical radiant flux: When tested in accordance with the Attic Floor Radiant Panel Test (see 4.5.7), the critical radiant flux shall be equal to or greater than 0.12 W/CM ^{2}. Specimens submitted for the critical radiant flux test shall be blown as specified in the settled density test procedure (4.5.1).

3.2.2 Smoldering combustion: When tested in accordance with the smoldering combustion test (see 4.5.8), the insulation shall meet the following requirements:

Weight loss $\leq$ 15 percent of critical weight.

No charring within 4 cm of the sides of the specimen holder.

No evidence of flaming combustion.

3.2.3 Workmanship: The insulation shall be free of extraneous foreign materials such as metals and glass which will adversely affect its serviceability.

4. Quality Assurance Provisions

4.1 Responsibility for inspection: Unless otherwise specified in the contract or purchase order, the contractor is responsible for the performance of all inspection requirements as specified herein. Except as otherwise specified in the contract or order, the contractor may use his own or any other facilities suitable for the performance of the inspection requirements specified herein, unless disapproved by the Government. The Government reserves the right to perform any of the inspections set forth in the specification where such inspections are deemed necessary to assure that supplies and services conform to prescribed requirements.

4.2 Reclaimed material certification: The contractor shall certify in writing to the contracting officer or his representative that the material offered to the Government contains the percentage of recovered material required by 3.1.3.

4.A Classification of inspections: The inspection requirements specified herein shall be classified as follows:

(a) Qualification tests.
(b) Quality conformance inspection.

4.B Qualification tests shall be conducted at a laboratory satisfactory to the Federal Supply Service, GSA. Qualification tests shall consist of the tests specified in 4.5.1, 4.5.2, 4.5.3, 4.5.4, 4.5.5, 4.5.6, 4.5.7 and 4.5.8. Failure of any sample to pass any test shall be cause for failure to qualify.

4.B.1 Sampling for qualification tests: The sample size for qualification shall be as established by the Federal Supply Service, General Services Administration.

4.C Quality conformance inspection: Quality conformance inspection shall be performed on samples selected in accordance with 4.3.1 and 4.3.2. Examination shall be in accordance with 4.4.1 and 4.4.2. Tests shall be in accordance with 4.5.7 and 4.5.8.

4.3 Sampling: Each unit of product selected in 4.3.1 shall be one filled bag of loose fill insulation.

4.3.1 Sampling for tests: Sampling for tests shall be in accordance with level S–1 of MIL–STD–105. The acceptance quality level (AQL) shall be 2.5 percent.

4.3.2 Sampling for examination: Sampling for examination shall be in accordance with MIL–STD–105, level S–4.

4.4 Examination and tests.

4.4.1 End item: Samples selected in accordance with 4.3.2 shall be examined for defects listed in table II. The acceptable quality levels (AQL's) for defects shall be 2.5 percent defective for major defects.

TABLE II.—*Classification of defects, end item*

Defects:	*Major*
Type not as specified	X
Extraneous materials in the insulation	X
Dirty or damp insulation	X
Bags not marked as specified	X

4.4.2 Inspection of preparation for delivery: An inspection shall be made to determine that the packaging, packing, and marking requirements comply with section 5. Defects shall be scored in accordance with table III. For examination of interior packaging, the sample unit shall be one shipping container fully prepared for delivery selected just prior to the closing operations. Sampling shall be in accordance with MIL–STD–105. Defects of closure listed shall be examined on shipping containers fully prepared for delivery. The lot size shall be the number of shipping containers in the end item inspection lot. The inspection level shall be S–2 and the AQL shall be 6.5 defects per hundred units.

TABLE III.—*Classification of preparation for delivery defects*

Examine	*Defects*
Markings	Omitted; incorrect illegible; improper size, location, sequence, or method of application.
Materials	Any bags missing, damaged, or not completed filled.
Workmanship	Inadequate or improper closure of bags. Bulging or distortion of bags.

4.5 Test methods.

4.5.1 Settled density: Determination of settled density of loose fill insulation shall be in accordance with the following test procedure:

APPARATUS

Loose fill insulation sample containers.—The sample containers shall be made of construction grade plywood and shall have inside dimensions of 36" long by 14" wide by 6" deep (914.4 X 355.6 X 152.4 mm) and 18" long by 14" wide by 12" deep (457.2 X 355.6 X 304.8 mm) and 11" long by 11" wide by 6" deep (279.4 X 279.4 X 152.4 mm) and 11" long by 11" wide by 12" deep (279.4 X 279.4 X 304.8 mm).

Depth gauge.—The depth gauge shall be as specified in ASTM C 167, Except: the pin shall be 12" (304.8 mm) long.

Blowing machine.—The blowing machine shall be as recommended by the manufacturer and shall be equipped with 100 feet (30.5M) of 2 inch (50.8mm) standard corrugated blower hose.

Humidity chamber.—The humidity chamber shall be capable of maintaining 120°F ± 3°F (48.9 ± 1.7°C) and 98% ± 1% relative humidity.

Sample preparation for pneumatic applications.—The loose fill sample container shall be located at the same level as the blowing machine on a level floor in front of an operator directing the blowing hose. When blowing, the hose shall be pointed 10 degrees upwards and the end of the hose shall be kept 11 inches (279.4 mm) above the floor surface for the 6-inch deep containers and 17 inches above the floor surface for the 12-inch deep containers. The air setting shall be selected by conducting a series of tests with the given machine. A minimum of four air settings shall be used. Widely different air settings shall be used first. The lowest setting should be that which will give a uniform flow of material and the highest that which will not produce excessive dust. Two intermediate air settings shall then be used. The air setting which produces the minimum or near minimum as blown density shall be used for the actual test. Place the loose fill insulation into the hopper of the blowing machine. When the insulation is blowing at a steady rate, start filling the container so that the main stream of the material is falling over the rear wall slowly move backwards maintaining the height and direction of the flexible hose as specified. Continue filling the container at an even rate until the material falls over the front wall of the container. Screed fluff the insulation to the top of the container, taking care not to compact the insulation or leave large voids in he surface of the material.

Sample preparation for pouring application.—Pour three or four bags of loose fill insulation into a simulated attic space. The attic space shall be formed by four 8-feet long 2 x 6-inch joists place 16 inches on center with ½ inch plywood nailed to the ends and bottom. Fluff the material with a 20-inch wide garden rake, applying a series of small amplitude strokes while moving the rake slowly along to joist. Repeat the fluffing process six times, and then with a shovel, place the insulation material into the sample container.

PROCEDURE

Blow or pour the material, as specified in the sample preparation, into four 36 by 14 by 6 inch (914.4 by 355.6 x 152.4 mm) containers, four 18 by 14 by 12 inch (457.2 by 355.6 by 304.8 mm) containers as specified and determine the density as blown/poured. Blow or pour two containers 11 by 11 by 6 inches (279.4 by 279.4 by 152.4 mm) and two containers 11 by 11 by 12 inches (279.4 by 279.4 by 304.8 mm) using the same techniques. Measure the thickness of the insulation in the center of the container and four additional measurements at locations in each quarter of the container, and calculate the average thickness. Drop the four 36 by 14 by 6 inch (914.4 by 355.6 by 152.4 mm) and the four 18 by 14 by 12 inch (457.2 by 355.6 by 304.8 mm) containers 6 times from a 6 inch (152.4 mm) height, making sure containers are dropped flat onto a concrete floor. Measure the thickness in the same spots as used above; determine the average thickness and calculate the percent decrease in thickness during the drop test (designated as S_d). NOTE: There will be a S_d for the 6 inch deep containers and a S_d for the 12 inch deep containers. Place the two 11 by 11 by 6 inch (279.4 by 152.4 mm) filled containers and the two 11 by 11 by 12 inch (279.4 by 279.4 by 304.8 mm) filled containers in a climatic chamber at 104°F + 2°F (40°C) and 98 + 1 percent relative humidity for four days. Remove the containers from the chamber and place in a conditioned room with climate 73°F ± 2°F and 50 + 5 percent relative humidity for at least 3 days. Repeat the 4-day cycle and the 3-day cycle until four exposures in the 104°F (40°C) chamber have been completed. Measure the thickness in the same spots as used above: determine the average thickness and calculate the percent decrease (designated S_c). (NOTE.—There will be an S_c for the 6 inch deep containers and an S_c for the 12 inch deep containers.)

Determine the settled density by multiplying the density as blown into the 36 by 14 by 6 inch (914.4 by 355.6 by 152.4mm) and the 18 x 14 x 12 inch (457.2 by 355.6 by 304.8 mm) containers by the factor $s=(100+S_d+S_c)/100$. If the settled densities for the 6 inch (152.4 mm) and the 12 inch (304.8) mm) thick specimens differ by more than 5 percent, both values shall be reported. If the difference is 5 percent or less, the average settled density shall be reported. The drop test and the cycling in the climate chambers shall be performed on the pouring application materials in the same manner as for the blown application materials and settled density measurements reported separately.

4.5.2 Thermal resistance: Determination of the thermal resistance shall be in accordance with ASTM C 177, C 236, or C 518. The mean temperature shall be 75° F (23.9° C). In cases of dispute ASTM C 177 or C 236 shall be used. The thermal resistance shall be determined at the highest settled density as measured in 4.5.1.

4.5.3 Moisture absorption: Determination of the moisture absorption shall be in accordance with paragraph 10.5 of ASTM C 739, except the test specimen shall fill a container 9'' x 9'' x 5'' deep at the maximum settled density determined in paragraph 4.5.1.

4.5.4 Odor emission: Subject a minimum of 50 g. of the material to a soaking temperature of 150° F (65° C) for 30 minutes in a closed container. The container shall be made of stainless steel or glass jars with all-metallic lids. Take care to use containers that will not produce odor. A panel of five persons with normal odor perception shall examine for odor using the following questions:

a. Was the odor perceptable?
b. Was the odor objectionable, pleasant or otherwise?
c. Was the odor weak, strong or very strong?

4.5.5 Corrosiveness: Determination of corrosion shall be in accordance with the following test procedure:

APPARATUS AND MATERIALS

Humidity chamber capable of maintaining 120.2+0.5° F dry heat and 119.2 +0.5° F wet heat for a relative humidity capacity of 97+1.5%.

Evaporating dishes: eight, glass, 90 by 50 mm.

Balance capable of determining the weight of the galvanized specimen to an accuracy of 1 mg.

Test specimens.—Two each, 2 by 2 inches (50.8 by 50.8 mm) by 0.003 inch (0.0762 mm) thick metal free of tears, punctures or crimps as follows:

(1) 3003 bare aluminum, zero temper.
(2) ASTM B 152, type ETP, Cabra No. 110 soft copper.
(3) Low carbon, commercial quality, cold rolled, less than 30 carbon content, shim steel.
(4) And two 2 by 2 inch 22 gauge type A224 cold rolled steel with 9 ounce per square foot of galvanized coating each side (record weight of specimen before testing).

Insulation specimens.—Samples of the loose fill thermal insulation submitted for test shall be material representative of the insulation manufactured, and the settled density of the material specimens shall be predetermined.

Procedure.—Degrease the steel coupons until completely free of water-breaks by scrubbing in 1,1,1 trichloroethane followed by ultrasonic cleaning in a fresh portion of the same solvent for 30 minutes. Rinse in two successive portions of distilled water or deionized water (glass containers only) and drain to inspect for water-breaks. Hot air dry. Handle degreased coupons only with clean forceps.

For each 20 g sample of presaturated insulation, place approximately one-half of the insulation specimen into an evaporating dish, tamp level, using a clean stainless steel spatula of appropriate size. Place a metal specimen centered on this one-half sample pad in a horizontal plane. Place the remaining half of the presaturated 20 g insulation sample into the evaporating dish on the metal specimen and tamp to assure an even distribution of this material and to assure good contact of the insulation with the metal. Do not cover the evaporating dishes. If dripping occurs in the chamber, position a drip guard in the chamber to divert condensation to the chamber floor. Repeat the above for the six specimens of the 3 mil material and for one of the galvanized specimens.

Place the remaining galvanized specimen into the remaining evaporating dish. Bend one corner of the specimen, placing the bent corner downward in the evaporating dish to slope the sample preventing full contact of the metal with the bottom of the dish. Place all eight specimens into the chamber preconditioned to 120.2° F (49° C) dry heat, 119.2° F (48.4° C) wet heat (97% relative humidity) for 28 days.

Upon completion of the test, thoroughly wash the metal specimen under running water and lightly brush them to remove loose corrosion products. Remove the remaining corrosion products from the copper, aluminum and steel specimens by immersing the test specimens in a solution of 10 parts distilled water and 1 part nitric acid, 15.9 N. The sampes shall be immersed in the acid rinse no longer than 60 seconds for any one period between rinsing and light brushing; and shall be immersed no more than twice to remove corrosion products and/or sealed insulation materials.

After cleaning, examine the 3 ml aluminum, copper and steel specimens over a chrome reflected 40 W appliance light bulb for perforation (see 3.1.9). Examine the galvanized specimen for pitting and weigh the specimen and its control. Compare the loss in weight of the specimen with that of the control (see 3.1.9).

4.5.6 Fungi resistance: Determination of fungi resistance shall be in accordance with MIL–STD–810, method 508. After the test exposure the test samples shall be examined at 40 X magnification for evidence of fungal growth (see 3.1.10).

4.5.7 Critical radiant flux: Critical radiant flux shall be determined in accordance with attachment 1—Standard Method of Test for Critical Radiant Flux of Exposed Attic Floor Insulation using a radiant heat energy source.

4.5.8 Smoldering combustion: Smoldering combustion test shall be determined in accordance with attachment 2—Standard Method of Test for Smoldering Combustion Characteristics of Materials Used for Thermal Insulation.

5. PREPARATION FOR DELIVERY

5.1 Packing: The packing shall be level A or Commercial as specified (see 6.2).

5.1.1 Level A: Insulation shall be packed in bags conforming to UU–S–48 6–6X(1). The gross weight shall not exceed 45 pounds.

5.1.2 Commercial: The insulation shall be packed in accordance with normal commercial practice. The material shall be packed in bags to insure safe delivery at destination, to provide a safe redistribution by the initial receiving activity, and shall be acceptable by common carrier under National Motor Freight Classification or Uniform Freight Classification.

5.2 Marking shall be in accordance with 5.2.1 or 5.2.2 as specified (see 6.2).

5.2.1 Civil agencies: Each shipping container or bag (when applicable) shall be marked in accordance with Federal Standard No. 123.

5.2.2 Military agencies: Each shipping container or bag (when applicable) shall be marked in accordance with MIL–STD–129.

6. NOTES

6.1 Intended use: The loose fill insulation covered by this specification is intended for use as thermal insulation in housing and buildings.

6.2 Ordering data: Purchasers should select the preferred options permitted herein, and include the following information in procurement documents.

(a) Title, number, and date of this specification.

(b) Type (see 1.2).

(c) Level of packing required (see 5.1).

(d) When ordering on applied basis, thermal resistance (P) value required shall be specified (see table I).

6.3 Thermal resistance R value: P is the reciprocal of the thermal conductance (c) and can be calculated as follows:

$$R = \frac{1}{C} = \frac{T}{K}$$

Where

T=Thickness of insulation in inches.

K=Thermal Conductivity Value in BTU in./hr. sq. ft. °F. at 75° F. mean temperature.

C=Thermal Conductance Value in BTU/hr. sq. ft. °F.

Custodians: Army—ME; Air Force—84.

User activity: CE.

Military coordination activity: Army—ME; Project No. 5640–0297.

Preparing activity: GSA—FSS.

Civil agency coordination activities: Commerce—NPS; HUD—TCS; GSA—PBS; DOE.

ATTACHMENT NO. 1

STANDARD METHOD OF TEST FOR CRITICAL RADIANT FLUX OF EXPOSED ATTIC FLOOR INSULATION USING A RADIANT HEAT ENERGY SOURCE

1. SCOPE

1.1 This method of test describes a procedure for measuring the critical radiant flux of exposed attic floor insulation subjected to a flaming ignition source in a graded radiant heat energy environment, in a test chamber. The test specimen may consist of loose-fill insulation, insulation batts, foam board insulation, or other form intended for the purpose.

1.2 This method measures the critical radiant flux at flame-out. It provides a basis for estimating one aspect of fire exposure behavior for attic floor insulation. The imposed radiant flux embraces the thermal radiation levels likely to impinge on the floor of an attic whose upper surfaces are heated by solar radiation and exposed to an open flame.

2. SUMMARY OF METHOD

2.1 The basic elements of the test chamber (Figure 1) are: (1) an air-gas fueled radiant heat energy panel inclined at 30° and directed at (2) a horizontally-mounted attic floor insulation specimen (Figure 2). The radiant panel generates a radiant energy flux distribution ranging along the 100-cm length of the test specimen from a nominal maximum of 1.0 watts/cm^2 to a minimum of 0.1 watts/cm^2. The test is initiated by open flame ignition from a pilot burner. The distance burned to flame-out is converted to watts/cm^2 from the flux profile graph (Figure 8) and reported as critical radiant flux, watts/cm^2.

3. SIGNIFICANCE

3.1 This method of test is designed to provide a basis for estimating one aspect of the fire exposure behavior of an attic floor insulation in a building attic. The test environment is intended to simulate conditions that have been observed and defined in full-scale attic experiments.

3.2 The test is intended to be suitable for regulatory purposes, specification accepance, design purposes, or development and research.

3.3 The fundamental assumption inherent in the test is that "critical radiant flux" is one measure of the sensitivity to flame spread of attic floor insulation installed in a building attic.

3.4 The test is applicable to attic floor insulation specimens installed by acceptable installation practice.

4. DEFINITION OF TERMS

4.1 Critical Radiant Flux is the level of incident radiant heat energy on the attic floor insulation system at the most distant flame-out point. It is reported as watts/cm^2 (Btu/ft^2 s).

4.2 Flux Profile is the curve relating incident radiant heat energy on the specimen plane to distance from the point of initiation of flaming ignition, i.e., 0 cm.

4.3 Total Flux Meter is the instrument used to measure the level of radiant heat energy incident on the specimen plane at any point.

4.4 Black Body Temperature is the temperature of a perfect radiator—a surface with an emissivity of unity and, therefore, a reflectivity of zero.

5. RADIANT PANEL TEST CHAMBER—CONSTRUCTION AND INSTRUMENTATION

5.1 The radiant panel test chamber employed for this test shall be located in a draft-protected laboratory.

5.1.1 The radiant panel test chamber, Figures 3 and 4, shall consist of an enclosure 140 cm (55 in) long by 50 cm (19½ in) deep by 71 cm (28 in) above the test specimen. The sides, ends and top shall be of 1.3 cm (½ in) calcium silicate board, such as Marinite XL, 0.58 g/cm^3 (36 lbs/ft^3) nominal density, with a thermal conductivity @ 200 °F of 0.96 cal (g)/hr cm^2 deg C per cm [0.77 Btu/(hr) (ft^2) (deg F per in)]. One side shall be provided with an approximately 10 cm x 110 cm (4 x 44 in) draft tight fire resistance glass window so that the entire length of the test specimen may be observed from outside the fire test chamber. On the same side and below the observation window is a door which, when open, allows the specimen platform to be moved out for mounting or removal of test specimens. A draft tight fire resistant observation window may be installed at the low flux end of the chamber.

5.1.2 The bottom of the test chamber shall consist of a sliding steel platform which has provisions for rigidly securing the test specimen holder in a fixed and level position. The free, or air access, area around the platform shall be in the range of 1950–3550 cm^2 (300–500 sq in).

5.1.3 The top of the chamber shall have an exhaust stack with interior dimensions of 12.5 cm (5 in) wide by 38 cm (15 in) deep by 30 cm (12 in) high at the opposite end of the chamber from the radiant energy source.

5.2 The radiant heat energy source shall be a panel of porous refractory material mounted in a cast iron frame, with a radiation surface of 30.5 x 45.7 cm

(12 by 18 in). It shall be capable of operating at temperatures up to 816 °C (1500 °F). The panel fuel system shall consist of a venturi-type aspirator for mixing gas and air at approximately atmospheric pressure, a clean dry air supply capable of providing 28.3 NTP m^3 per hr (1000 Standard Cubic Feet per Hour) at 7.6 cm (3.0 in) of water, and suitable instrumentation for monitoring and controlling the flow of fuel to the panel.

5.2.1 The radiant heat energy panel is mounted in the chamber at 30° to the horizontal specimen plane. The horizontal distance from the 0 mark on the specimen fixture to the bottom edge (projected) of the radiating surface of the panel is 8.9 cm (3½ in). The panel to specimen vertical distance is 14 cm (5½ in) (see Figure 3). The angle and dimensions given above are critical in order to obtain the required radiant flux.

5.2.2 The radiation pyrometer for standardizing the thermal output of the panel shall be suitable for viewing a circular area 25.4 cm (10 in) in diameter at a range of about 1.37 m (54 in). It shall be calibrated over the black body temperature range of 490–510 °C (914–950 °F) in accordance with the procedure described in Appendix A.

5.2.3 A high impedance potentiometer voltmeter with a suitable millivolt range shall be used to monitor the output of the radiation pyrometer described in 5.2.2.

5.3 The dummy holder (see Figure 5), is constructed from heat-resistance stainless steel [1] having overall dimensions of 115 cm (45 in) by 32 cm (12¾ in) with a specimen opening of 20 cm (7.9 in) x 100 cm (40 in). Six slots are cut in the flange on either side of the holder to reduce warping. The holder is fastened to the platform with two stud bolts at each end.

5.4 The specimen tray (see Figure 6) is constructed from heat-resistant stainless steel [1] having overall dimensions of 110 cm (43.3 in) by 27.3 cm (10.8 in); the depth of the tray is 5 cm (2 in). The flanges of the specimen tray are drilled to accommodate two stud bolts at each end; the bottom surface of the flange is 2.1 cm (0.83 in) below the top edge of the specimen tray.

5.5 The pilot burner, used to ignite the specimen, is a commercial propane venturi torch [2] with an axially symmetric burner tip having a propane supply tube with an orifice diameter of 0.0076 cm (0.003 in). In operation, the propane flow is adjusted to give a pencil flame blue inner cone length of 1.3 cm (½ in). The pilot burner is positioned so that the flame generated will impinge on the centerline of the specimen at the 0 distance burned point at right angles to the specimen length (see Figures 3 and 4). The burner shall be capable to being swung out of the ignition position so that the flame is horizontal and at least 5 cm (2 in) above the specimen plane.

5.6 Two 0.32 cm (⅛ in) stainless steel sheathed grounded junction chromel alumel thermocouples [3] are located in the Flooring Radiant Panel Test Chamber (see Figures 3 and 4). The chamber thermocouples is located in the longitudinal central vertical plane of the chamber 2.5 cm (1 in) down from the top and 10 cm (4 in) back from the inside of the exhaust stack. The exhaust stack thermocouple is centrally located 15.2 cm (6 in) from the top.

5.6.1 An indicating potentiometer with a range of 100–500 °C (212–932 °F) may be used to determine the chamber temperatures prior to a test.

5.7 An exhaust duct with a capacity of 28.3–85 NTP m^3 per minute (1000–3000 SCFM) decoupled from the chamber stack by at least 7.6 cm (3 in) on all sides and with an effective area of the canopy slightly larger than the plane area of the chamber with the specimen platform in the out position is used to remove combustion products from the chamber. With the panel turned on and the dummy specimen in place, there should be no measurable difference in air flow through the chamber stack with the exhaust on or off.

5.8 The dummy specimen which is used in the flux profile determination shall be made of 1.9 cm (¾ in) inorganic 0.58 g/c^3m (36 lbs/ft^3) nominal density calcium silicate board, such as Marinite XL (see Figure 5). It is 25 cm (10 in) wide by 107 cm (42 in) long with 2.7 cm (1 1/16 in) diameter holes centered on and along the centerline at the 10, 20, 30, . . . , 90 cm locations, measured from the maximum flux end of the specimen.

5.8.1 The total heat flux transducer used to determine the flux profile of the chamber in conjunction with the dummy specimen should be of the Schmidt-Boelter [4] type, have a range of 0–1.5 watts/cm^2 (0–1.32 Btu/ft^2 s), and shall be

[1] AISI Type 300 (UNA–N08330) or equivalent, thickness 0.198 cm (0.078 in).
[2] Bernz-O-Matic TX 101 or equivalent.
[3] Thermocouples should be kept clean to insure accuracy of readout.
[4] Medtherm 64–2–20 will meet this requirement.

calibrated over the operating flux level range of 0.10 to 1.5 watts/cm^2 in accordance with the procedure outlined in Appendix A. A source of 15–25 °C cooling water shall be provided for this instrument.

5.8.2 A high impedance or potentiometric voltmeter with a range of 0–10 m.v. and reading to 0.01 m.v. shall be used to measure the output of the total heat flux transducer during the flux profile determination.

5.9 A timer shall be conveniently mounted on the chamber for measuring preheat and pilot contact time.

6. SAFETY PROCEDURES

6.1 The possibility of a gas-air fuel explosion in the test chamber should be recognized. Suitable safeguards consistent with sound engineering practice should be installed in the panel fuel supply system. These may include one or more of the following: (1) a gas feed cut-off activated when the air supply fails, (2) a fire sensor directed at the panel surface that stops fuel flow when the panel flame goes out, (3) a commercial gas water heater or gas-fired furnace pilot burner control thermostatic shut-off which is activated when the gas supply fails or other suitable and approved device. Manual reset is a requirement of any safeguard system used.

6.2 In view of the potential hazard from products of combustion, the exhaust system must be so designed and operated that the laboratory environment is protected from smoke and gas. The operator should be instructed to minimize his exposure to combustion products by following sound safety practice, e.g., insure exhaust system is working properly, wear appropriate clothing including gloves, et al.

7. SAMPLING

7.1 The samples selected for testing shall be representative of the product.

7.2 Standard ASTM sampling practice shall be followed where applicable, see ASTM Method E–122.

8. TEST SPECIMENS

8.1 The test specimen shall be attic floor insulation of sufficient size to fill the specimen tray to a depth of 5 cm (2 in).

8.2 Insofar as possible, the attic floor insulation specimen should simulate actual installation practice. Typical examples follow:

8.2.1 Loose-fill insulation blown in to fill the tray, then carefully screeded to provide a depth of 5 cm in the tray.

8.2.2 Loose-fill insulation poured in to fill the tray, then carefully screeded to provide a depth of 5 cm in the tray.

8.2.3 Insulation batts sliced to a depth of 5 sm and cut to fit into the tray.

8.2.4 Foam board insulation cut to fit into the tray to a depth of 5 cm.

8.3 A minimum of three specimens per sample shall be tested.

8.4 The density of the specimen tested shall be determined by weighing the specimen tray just prior to testing.

9. RADIANT HEAT ENERGY FLUX PROFILE STANDARDIZATION

9.1 In a continuing program of tests, the flux profile shall be determined not less than once a week. Where the time interval between tests is greater than one week, the flux profile shall be determined at the start of the test series.

9.2 Mount the dummy specimen in the mounting frame and attach the assembly to the sliding platform.

9.3 With the sliding platform out of the chamber, ignite the radiant panel. Allow the unit to heat for one hour. The pilot burner is off during this determination. Adjust the fuel mixture to give an air-rich flame. Make fuel flow settings to bring the panel to an apparent black body temperature as measured by the radiation pyrometer, of about 500 °C (932 °F), and the chamber temperature to about 180 °C (356 °F). When equilibrium has been established, move the specimen platform into the chamber.

9.4 Allow 0.5 hours for the closed chamber to equilibrate.

9.5 Measure the radiant heat energy flux level at the 40 cm point with the total flux meter instrumentation. This is done by inserting the flux meter in the opening so that its detecting plane is 0.16–0.32 cm $\frac{1}{16}$–$\frac{1}{8}$ in) above and parallel to the plane of the dummy specimen and reading its output after 30 $\pm$ 10 seconds. If the level is within the limits specified in 9.6 the flux profile determination is started. If it is not, make the necessary adjustments in panel fuel flow. A suggested flux profile data log format is shown in Figure 7.

9.6 The test shall be run under chamber operating conditions which give a flux profile as shown in Figure 8. The radiant heat energy incident on the dummy specimen shall be between 0.87 and 0.95 W/cm^2 (0.77 and 0.83 Btu/ft^2 sec) at the 20 cm point, between 0.48 and 0.52 W/cm^2 (0.42 and 0.46 Btu/ft^2 sec) at the 40 cm point and between 0.22 and 0.26 W/cm^2 (0.19 and 0.23 Btu/ft^2 sec) at the 60 cm point.

9.7 Insert the flux meter in the 10 cm opening following the procedure given in 9.5 above. Read the m.v. output at 30 ± 10 seconds and proceed to the 20 cm point. Repeat the 10 cm procedure. The 30–90 cm flux levels are determined in the same manner. Following the 90 cm measurement, make a check reading at 40 cm. If this is within the limits set forth in 9.6, the test chamber is in calibration and the profile determination is completed. If not, carefully adjust fuel flow, allow 0.5 hours for equilibrium and repeat the procedure.

9.8 Plot the radiant heat energy flux data as a function of distance along the specimen plane on rectangular plane on rectangular coordinate graph paper. Carefully, draw the best smooth curve through the data points. This curve will hereafter be referred to as the flux profile curve.

9.9 Determine the open chamber apparent black body and chamber temperatures that are identified with the standard flux profile by opening the door and moving the specimen platform out. Allow 0.5 hours for the chamber to equilibrate. Read the radiation pyrometer output and record the apparent black body temperature in °C. This is the temperature setting that can be used in subsequent test work in lieu of measuring the radiant flux at 20 cm, 40 cm, and 60 cm using the dummy specimen. The chamber temperature also should be determined again after 0.5 hours and is an added check on operating conditions.

10. CONDITIONING

10.1 Test specimens are to be conditioned to equilibrium or a minimum of 48 hours, whichever is greater, at 21 ± 3 °C (69.8 ± 5.4 °F) and a relative humidity of 50 ± 5 percent immediately prior to testing.

11. TEST PROCEDURE

11.1 With the sliding platform out of the chamber, ignite the radiant panel. Allow the unit to heat for one hour[5]. Read the panel apparent black body temperature and the chamber temperature. If these temperatures are in agreement to within ±5 °C with those determined in accordance with 9.9 above, the chamber is ready for use.

11.2 Mount the specimen tray on the sliding platform and position with stud bolts (see Figure 9).

11.3 Ignite the pilot burner, move the specimen into the chamber, and close the door. Start the timer. After 2 minutes preheat, with the pilot burner on and set so that the flame is horizontal and 5 cm above the specimen, bring the pilot burner flame into contact with the center of the specimen at the 0 cm mark. Leave the pilot burner flame in contact with the specimen for 5 minutes, then remove to a position 5 cm above the specimen and leave burning until the test is terminated.

11.4 If the specimen does not ignite within 5 minutes following pilot burner flame application, the test is terminated by extinguishing the pilot burner flame. For specimens that do ignite, the test is continued until the flame goes out. Observe and record significant phenomena, such as discoloration, charring, smoldering, etc.

11.5 When the test is completed, the door is opened, the specimen platform is pulled out.

11.6 Measure the distance burned, i.e., the point of farthest advance of the flame front, to the nearest 0.1 cm. From the flux profile curve, convert the distance to watts/cm^2 critical radiant heat flux at flame out. Read to two significant figures. A suggested data log format is shown in Figure 10.

11.7 Remove the specimen tray from the moveable platform.

11.8 The succeeding test can begin as soon as the panel apparent black body temperature and chamber temperature are verified (see 11.1). The specimen tray should be at room temperature prior to insertion of the next specimen.

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[5] It is recommended that a sheet of inorganic millboard be used to cover the opening when the hinged portion of the front panel is open and the specimen platform is moved out of the chamber. The millboard is used to prevent heating of the specimen and to protect the operator.

12. REPORT

12.1 The report shall include the following:

12.1.1 Description of the attic floor insulation.

12.1.2 Description of the procedure used to prepare the floor insulation specimen.

12.1.3 Number of specimens tested, including critical radiant flux and density for each specimen as tested.

12.1.4 Observations of the burning characteristics of the specimen, such as discoloration, charring, smoldering, etc.

APPENDIX A—PROCEDURE FOR CALIBRATION OF RADIATION INSTRUMENTATION

A1. RADIATION PYROMETER

A1.1 Calibrate the radiation pyrometer by means of a conventional black body enclosure placed within a furnace and maintained at uniform temperatures of 490, 500, and 510 °C (914, 932, 950 °F). The black body enclosure may consist of a closed chromel metal cylinder with a small sight hole in one end. Sight the radiation pyrometer upon the opposite end of the cylinder where a thermocouple indicates the black body temperature. Place the thermocouple within a drilled hole and in good thermal contact with the black body. When the black body enclosure has reached the appropriate temperature equilibrium, read the output of the radiation pyrometer. Repeat for each temperature.

A2. TOTAL HEAT FLUX METER

A2.1 The total flux meter shall be calibrated by the National Bureau of Standards [1], or alternatively, its calibration shall be developed by transfer calibration methods with an NBS calibrated flux meter. This latter calibration shall make use of the radiant panel tester as the heat source. Measurements shall be made at each of the nine dummy specimen positions and the mean value of these results shall constitute the final calibration.

A2.2 It is recommended that each laboratory maintain a dedicated calibrated reference flux meter again which one or more working flux meters can be compared as needed. The working flux meters should be calibrated according to the procedure of A2.1 at least once per year.

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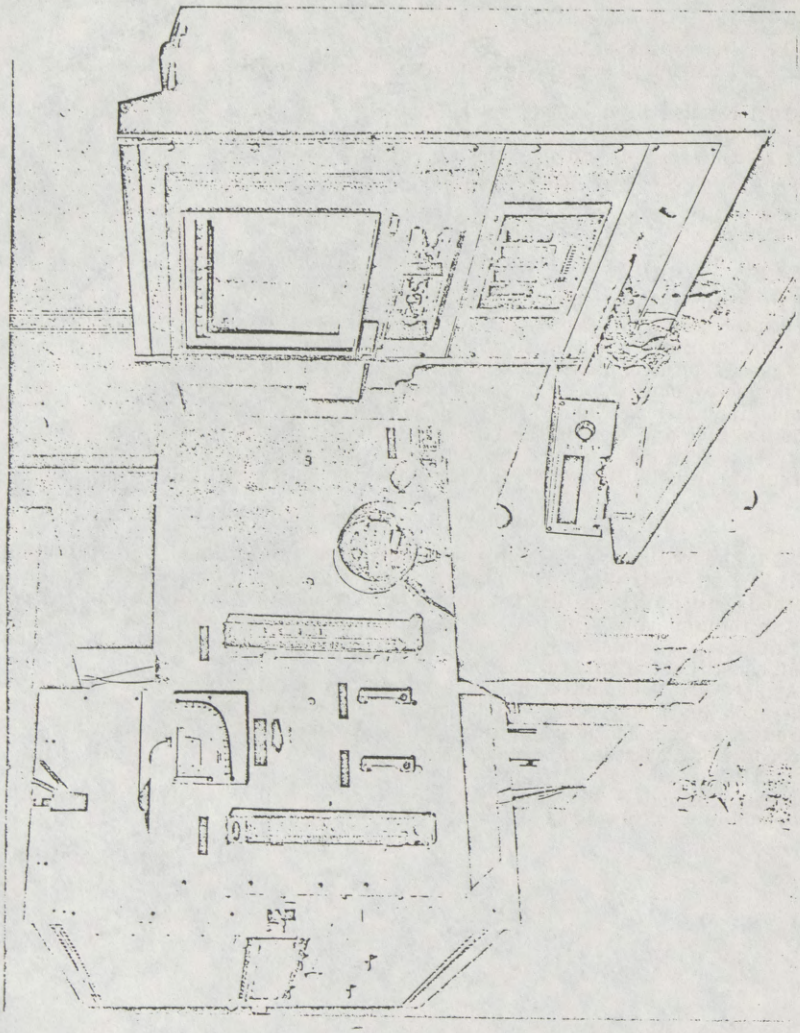
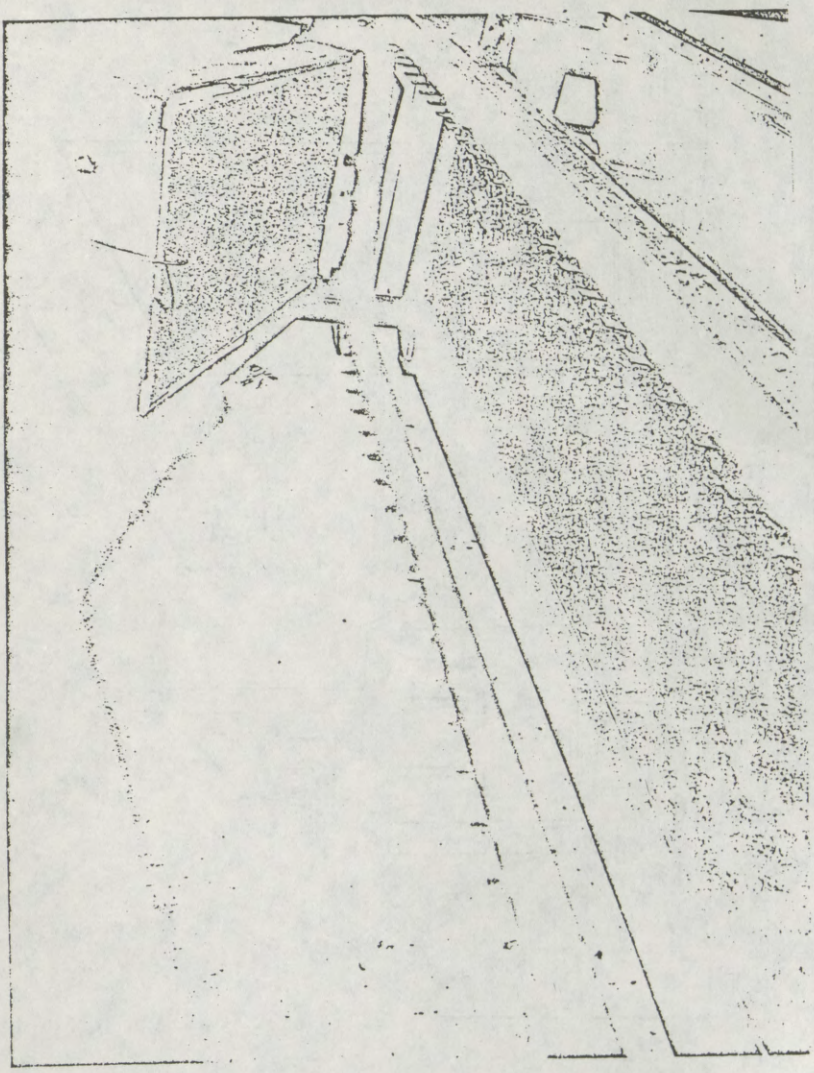
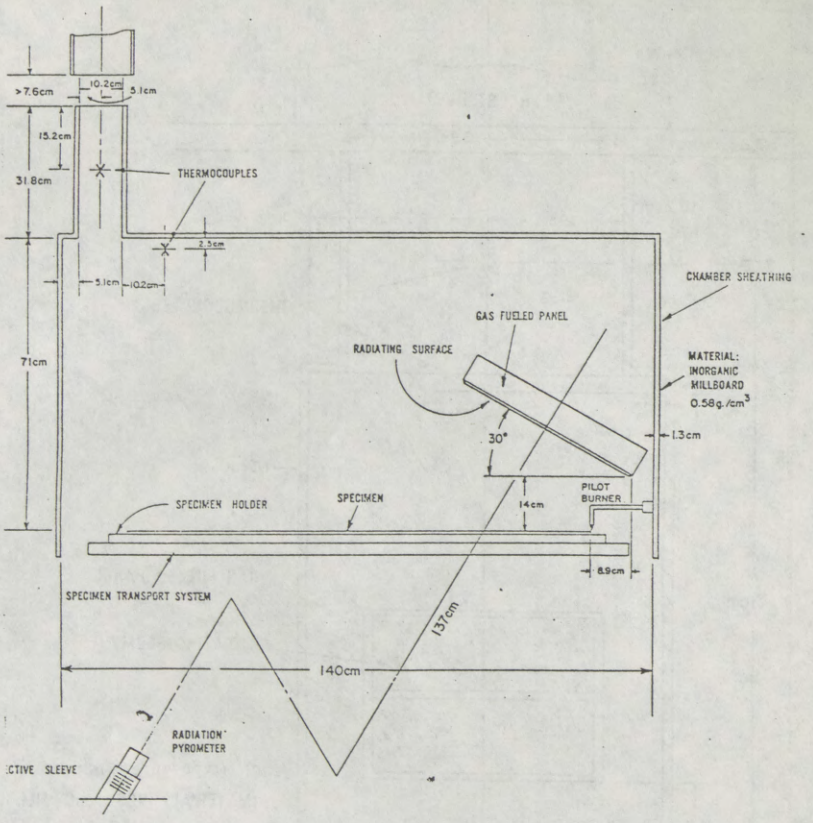
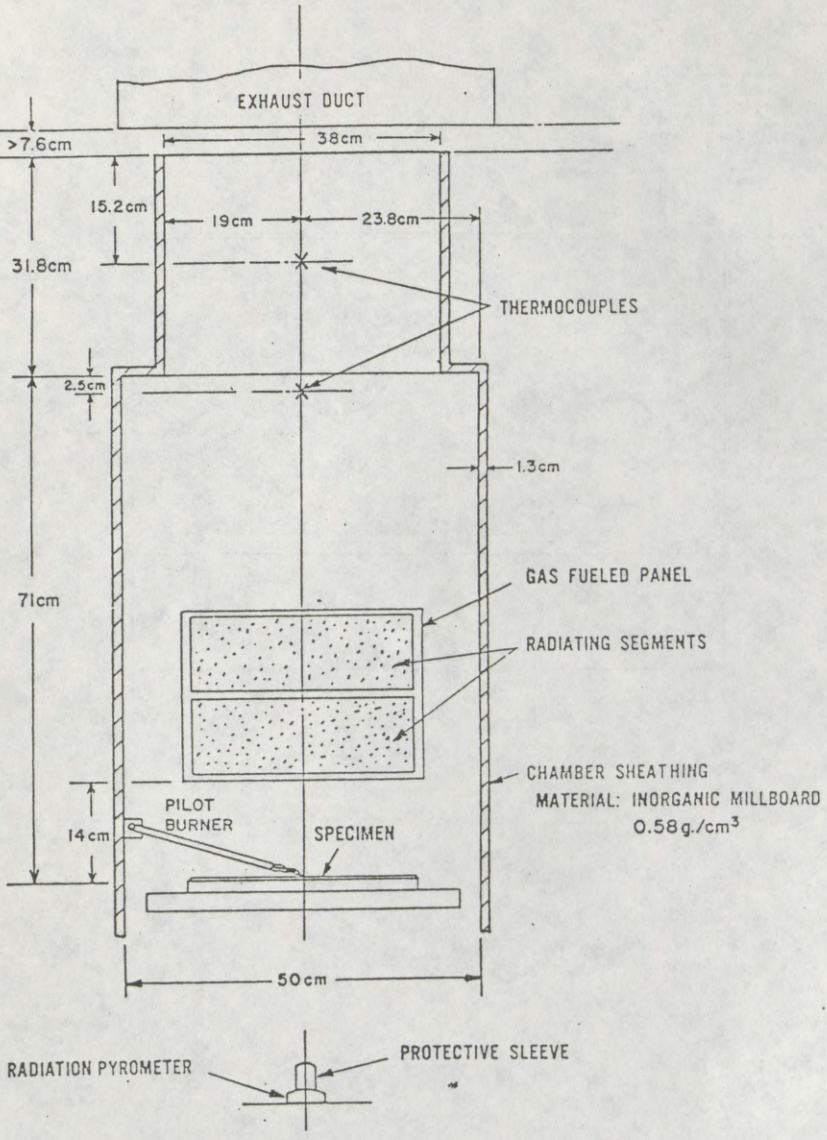
[1] Direct requests for such calibration services to the: Optical Radiation Section, 232.04, National Bureau of Standards, Washington, D.C. 20234.



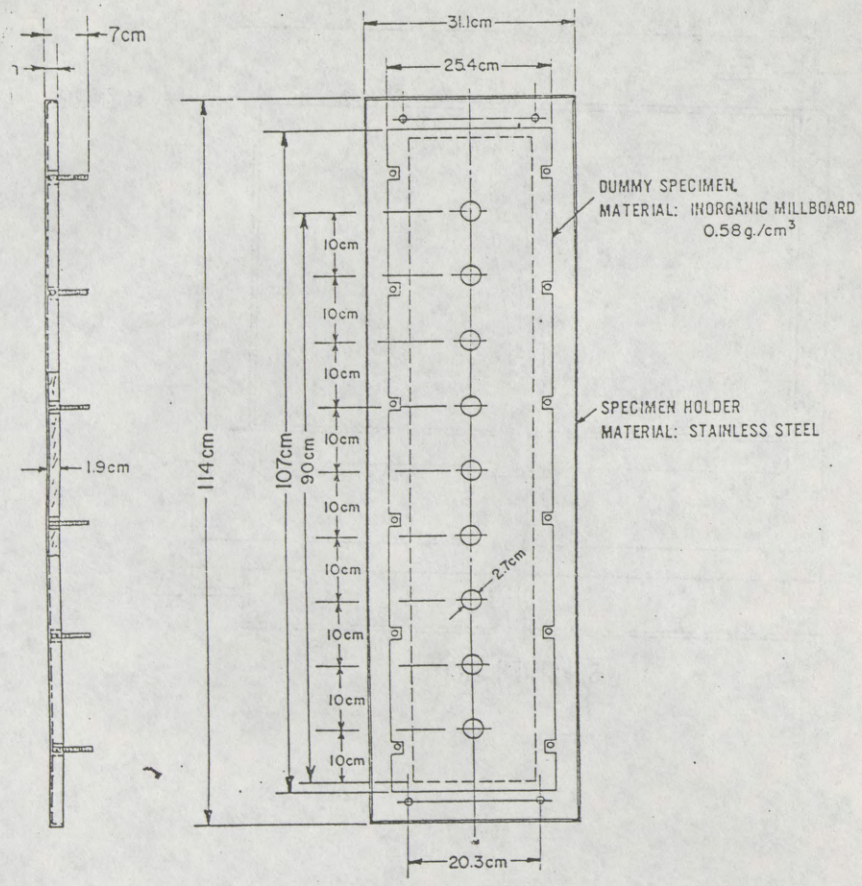



>7.6cm
10.2cm
5.1cm
15.2cm
31.8cm
THERMOCOUPLES
2.5cm
5.1cm
10.2cm
71cm
CHAMBER SHEATHING
GAS FUELED PANEL
RADIATING SURFACE
MATERIAL:
INORGANIC
MILLBOARD
0.58g./cm³
30°
1.3cm
SPECIMEN HOLDER
SPECIMEN
14cm
PILOT
BURNER
8.9cm
SPECIMEN TRANSPORT SYSTEM
137cm
140cm
RADIATION
PYROMETER
CTIVE SLEEVE



FLOORING RADIANT PANEL TESTER SCHEMATIC
LOW FLUX END, ELEVATION

Figure 4



DUMMY SPECIMEN IN SPECIMEN HOLDER

Figure 5

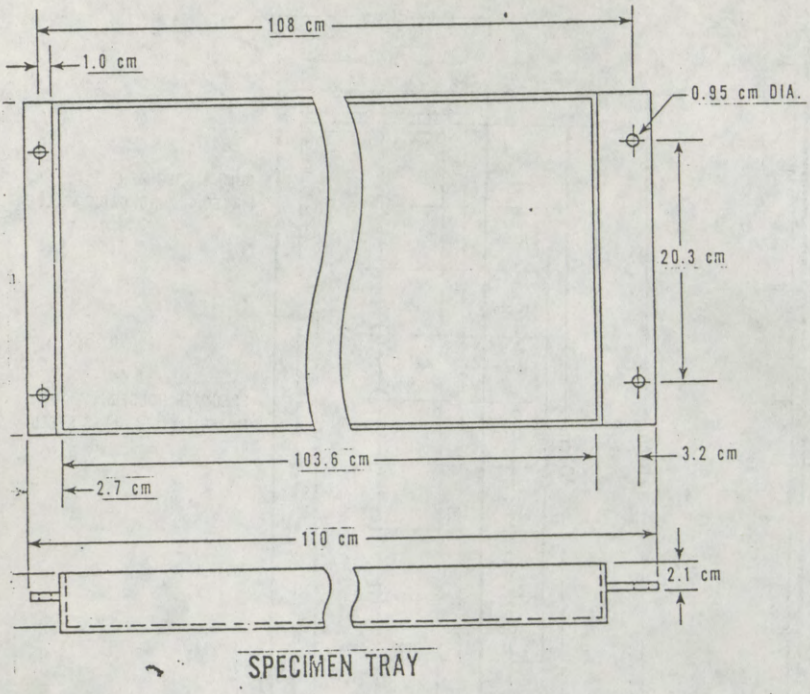

108 cm
1.0 cm
0.95 cm DIA.
20.3 cm
103.6 cm
2.7 cm
3.2 cm
110 cm
2.1 cm
SPECIMEN TRAY

Figure 6

RADIANT FLUX PROFILE

ate_____

lack Body Temperature_____m.v. · _____°C (°F)

as Flow_____NTPm^{3}H (SCFH) Air Flow_____NTPm^{3}H (SCFH)

oom Temperature_____°C (°F)

ir Pressure _____ Gas_____cm (in) of H_2O

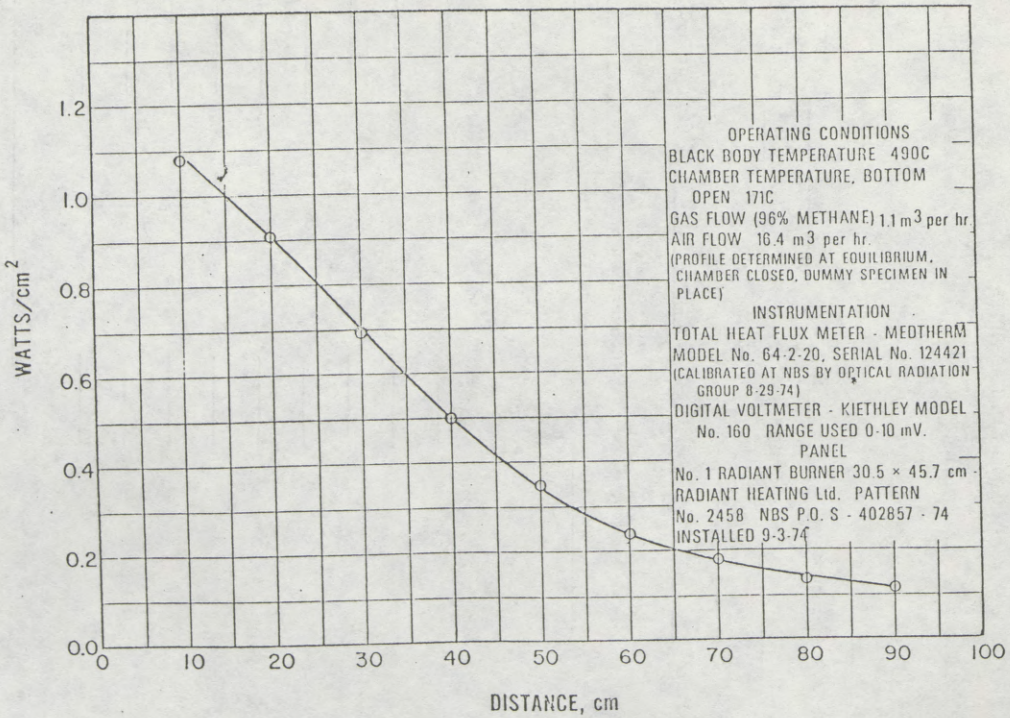
'lux Meter Conversion Factor_____

adiometer No._____ from Calibration on_____

Distance (cm)	MV	Watts/cm^2
10	_____	_____
20	_____	_____
30	_____	_____
40	_____	_____
50	_____	_____
60	_____	_____
70	_____	_____
80	_____	_____
90	_____	_____

Signed _____

Figure 7. Flux Profile Data Log Format



STANDARD RADIANT HEAT ENERGY FLUX PROFILE

Figure 8

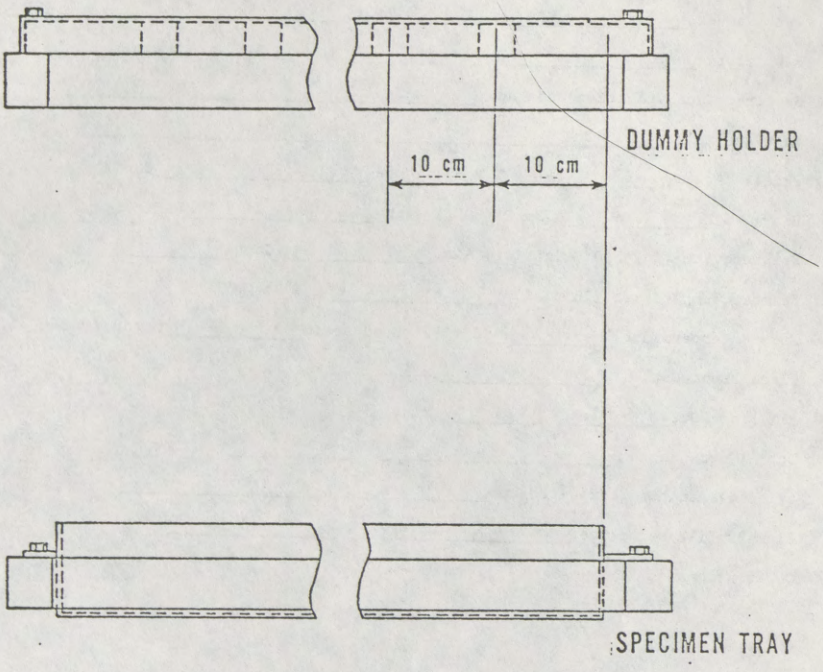

DUMMY HOLDER
10 cm
10 cm
SPECIMEN TRAY
SPECIMEN TRAY MOUNTING POSITION

Figure 9

Test Number _____ Date _____ Time _____

Laboratory _____

Specimen Identification/Code No. _____

Test Assembly: _____

Panel: Angle _____° Temperature _____°C (°F)

Flow: Gas _____NTPm^{3}H (SCFH) Air _____NTPm^{3}H

Pressure, cm (in) H_2O: Initial, Air _____ Gas _____

Chamber Temperature (Initial) _____°C (°F)

Room: Temperature _____°C (°F) Hood Draft _____cm (in) water

Flame Front Out _____ min.

All Flame Out _____ min.

Total Burn Length _____cm (in)

Critical Radiant Flux watts/cm^2 _____

Flux Profile Reference _____

Observations:

Signed _____

Figure 10. Insulation Radiant Panel Test Data Log Format

ATTACHMENT No. 2

APPENDIX C.—STANDARD METHOD OF TEST FOR SMOLDERING COMBUSTION CHARATERISTICS OF MATERIALS USED FOR THERMAL INSULATION

1. SCOPE

1.1 This method evaluates the tendency of thermal insulation in the form of loose fill, batts or blankets to support smoldering combustion. It is applicable to any insulation that is capable of being installed in the specimen holder at the density and in the physical state of the material in its intended use.

1.2 The purpose of this test is to determine the tendency of the material under test to support and propogate smoldering combustion subsequent to exposure to a standard ignition source.

2. SUMMARY OF METHOD

2.1 This method measures the extent and progression of smoldering from a lighted cigarette inserted vertically, with the lit end upward, into the center of an insulation sample.

2.2 The extent of damage to the test specimen, as indicated by percent of specimen weight loss and by the extent of charring, are recorded in this test, as well as any other observable combustion behavior, such as progression to flaming combustion.

3. SIGNIFICANCE

3.1 This method of test is designed to provide a basis for evaluating the tendency of insulation to support smoldering combustion when subjected to a small ignition source. The lighted cigarette represents a typical ignition source which may make contact with insulation installed in residential buildings.

4. APPARATUS

4.1 Specimen holder.

4.1.1 The specimen holder shall be an open-top 20 ± 0.2 cm square box, 10 ± 0.2 cm in height, fabricated from a single piece of 0.61 ± 0.08 mm thick (24 U.S. Standard gauge) stainless steel sheet with the vertical edges of the box overlapped not to exceed to 7 mm in seam width, and soldered so as to be watertight.

4.1.2 The specimen holder during test use shall rest upon a pad of inert insulation, such as of glass or ceramic fibers, of at least 1.5 cm in thickness and approximating the dimensions of the bottom of the specimen holder. The density of the insulation shall be 50 ± 15 Kg/m^3.

4.2 Ignition source.

4.2.1 The ignition source shall be a cigarette without filter tip made from natural tobacco, 85 ± 2 mm long with a tobacco packing density of 0.270 ± 0.020 g/cm^3 and a total weight of 1.1 ± 0.1 gm.

4.3 Balance.

4.3.1 A balance of 1 kg capacity, accurate at least to 0.1 g, and provided with a suitable scale pan is required.

4.4 Test area.

4.4.1 The test area shall be draft-protected and equipped with a suitable system for exhausting smoke and/or noxious gases produced by testing. Air velocities as measured by a hot wire anemometor in the vicinity of the surface of the sample shall not exceed 0.5 m/sec.

4.4.2 The test area shall be maintained at 23±5 °C and 50±5 percent relative humidity.

4.3 Sampling.

4.3.1 At least three samples shall be prepared of any material undergoing test. Samples shall be taken in a manner to encompass possible variations in material composition (for example, from the top, middle, and bottom of bagged insulation).

4.3.2 Samples of material to be tested shall be selected, prepared, and handled in a manner to avoid differences in the composition and condition of the sample from that of the sampled material in its intended use.

5. TEST PROCEDURE

5.1 Samples and cigarettes shall be conditioned in air at a temperature of 23 ± 5°C and a relative humidity of 50 ± percent for at least 12 hours prior to test. Samples and cigarettes shall be removed from any packaging and exposed

in a suitable manner to permit free movement of air around them during conditioning.

5.2 Sample material shall be loaded into specimen holders to uniformly and homogeneously fill the holders level and flush to the top edges of the holders. Specimen weight shall be measured, at least to the nearest 0.2 g, by weighing the holder before and after filling. The density of the specimen contained in a holder (volume 4 l, 0.14 ft^3) shall be calculated and shall be not less than the density recommended for the material in its intended use.

5.3 With the sample in the holder and placed on the insulated pad, a rod of 8 mm diameter with a pointed end shall be inserted vertically into the center of the material being tested and withdrawn to form an appropriate cavity for the ignition source. A well lit cigarette, burned not more than 8 mm (0.3 in), shall be inserted in the formed cavity, with the lit end upward and flush with the sample surface.

5.4 Burning of the cigarette and specimen shall be allowed to proceed undisturbed in the test area for at least 2 hours or until the smoldering is no longer progressing.

5.5 After completion of burning and after the holder has cooled down to 25° C, the specimen holder with its material residue shall be weighed, at least to the nearest 0.2 g, and the percent weight loss of the original specimen calculated.[1]

5.6 After completion of burning, the minimum distance of charring or smoldering of the material from the edge of the holder shall be measured. In cases where the material tested has smoldered to some extent, the material residue shall be carefully removed by layers and the closest proximity of charred material to the vertical sides of the specimen holder determined to the nearest 0.5 cm.

6. CRITERIA

6.1 Materials tested by this method shall be judged in terms of the following criteria:

6.1.1 Weight loss of each specimen expressed as a percent of its initial weight.

6.1.2 Charring of specimen in terms of progression to within 4 cm of the sides of the specimen holder.

6.1.3 Evidence of flaming combustion of the specimen during testing.

7. REPORT

7.1 The report shall include the following:

7.1.1 Identification and/or description of the material being tested.

7.1.2 The original weight of specimens tested and their calculated density.

7.1.3 The final weight of specimens tested and the percent weight loss they have experienced during testing.

7.1.4 The closest distance that charring in specimens tested has approached the sides of the specimen holder during testing, when appreciable charring of a specimen has occurred.

7.1.5 Any observations of the burning characteristics of the specimens that could be pertinent to the material's performance in its intended use.

HH–I–1030B
PROPOSED
(TO SUPERSEDE)
Fed. Spec. HH–I–1030A
February 23, 1973

PROPOSED FEDERAL SPECIFICATION—INSULATION, THERMAL (MINERAL FIBER, FOR PNEUMATIC OR POURED APPLICATION)

This proposed Federal Specification draft, dated November 4, 1977, prepared by the General Services Administration, Federal Supply Service, Washington, D.C. 20406, has not been approved for promulgation and is subject to modification. Do not use for procurement purposes.

1. SCOPE AND CLASSIFICATION

1.1 Scope: This specification covers loose fill mineral fiber thermal insulation for use in housing and other framed buildings at ambient temperatures, by pneumatic or pouring application. While products that comply with this specification

[1] The weight of the cigarette residue is ignored in this exercise and may, in some cases, result in a slight gain in sample weight.

may be used in various constructions they are adaptable primarily, but not exclusively, to wood joist rafters, and stud construction.

1.2 Classification: Insulation shall be of the following types and classes, as specified (see 6.2).

Type I—Pneumatic application.

Type II—Poured application.

2. APPLICABLE DOCUMENTS

2.1 The following documents, of the issues in effect on date of invitation for bids or request for proposal, form a part of this specification to the extent specified herein.

Federal specification

UU–S–48—Sacks, Shipping, Paper.

Federal standard

Fed. Std. No. 123—Marking for Shipment (Civil Agencies).

(Activities outside the Federal Government may obtain copies of Federal Specifications, Standards, and Handbooks as outlined under General Information in the Index of Federal Specifications and Standards and at the prices indicated in the Index. The Index, which includes cumulative monthly supplements as issued, is for sale on a subscription basis by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

(Single copies of this specification and other Federal Specifications required by activities outside the Federal Government for bidding purposes are available without charge from Business Service Centers at the General Services Administration Regional Offices in Boston, New York, Philadelphia, Washington, D.C., Atlanta, Chicago, Kansas City, Mo., Fort Worth, Houston, Denver, San Francisco, Los Angeles, and Seattle, Wash.

(Federal Government activities may obtain copies of Federal Specifications, Standards, and Handbooks and the Index of Federal Specifications and Standards from established distribution points in their agencies.)

Military standards

MIL–STD–105–Sampling procedures and Tables for Inspection by Attributes.

MIL–STD–129—Marking for Shipment and Storage.

MIL–STD–810—Environmental Test Methods.

(Copies of Military Specifications and Standards required by contractors in connection with specific procurement functions should be obtained from the procuring activity or as directed by the contracting officer.)

2.2 Other publications: The following documents form a part of this specification to the extent specified herein. Unless a specific issue is identified, the issue in effect on date of invitation for bids or request for proposal shall apply.

American Society for Testing and Materials (ASTM) standards

C177—Steady-State Thermal Transmission Properties by Means of the Guarded Hot Plate.

C236—Thermal Conductance and Transmittance of Built-Up Sections by Means of the Guarded Hot Box.

C553—Mineral Fiber Blanket and Felt Insulation (Industrial Type).

C518.—Standard Test Method for Steady-State Thermal Transmission Properties by Means of the Heat Flow Meter.

National Motor Freight Traffic Association, Inc., agent

National Motor Freight Classification.

(Application for copies should be addressed to the American Trucking Associations, Inc., Traffic Department, 1616 P Street, N.W., Washington, D.C. 20036.)

Uniform Classification Committee, agent

Uniform Freight Classification.

(Application for copies should be addressed to the Uniform Classification Committee, Room 1106, 222 South Riverside Plaza, Chicago, Ill. 60606.)

3. REQUIREMENTS

3.1 Material: Mineral fiber insulation shall be made from mineral substances such as rock, slag, or glass processed from a molten state into an incombustible fibrous form. The insulation shall be mechanically processed to produce a mineral fiber suitable for pneumatic or poured application.

3.1.3 Reclaimed material: Insulation shall contain recovered material content of 15 percent by weight of the total mineral content of the product. Recovered material is defined as material which has been collected or recovered from solid waste. Solid waste means any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining, and agricultural operations, and from community activities, but does not include solid or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges which are point sources subject to permits under section 402 of the Federal Water Pollution Control Act, as amended (86 Stat. 880), or source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954, as amended (68 Stat. 923).

3.A Qualification: The loose fill thermal insulation furnished under this specification shall be a product which has been tested and passed the qualification tests specified herein, and has been listed on or approved for listing on the applicable qualified products list, (QPL).

3.2 Physical requirements.

3.2.1 Settled density: When tested in accordance with 4.5.1. The settled density shall be not more than 2.8 pounds per cubic foot.

3.2.2 Thermal resistance: The standard thermal resistance value recommended for application are 11, 19, 22, 30, 38, and are expressed in Deg. F–h–fT^2/BTU (K–M^2/W). The thermal resistance value, R, Measured shall not be more than 10% below the R Value specified when tested in accordance with 4.5.2.

3.2.3 Moisture adsorption: When tested in accordance with 4.5.3, the moisture adsorption of the insulation shall be a maximum of 2 percent by volume.

3.2.4 Nonfibrous content: When tested in accordance with 4.5.4, the nonfibrous content of the insulation shall be no greater than 20 percent by weight.

3.2.5 Odor emission: A detectable odor of objectionable nature shall be cause for rejection of the insulation material, when tested in accordance with 4.5.5, and observed by two or more of the panel members.

3.2.6 Corrosiveness: When tested in accordance with 4.5.6, the steel test plate in contact with the insulation shall show no greater corrosion than sterile cotton in contact with a steel plate for comparison, when tested in the same manner.

3.2.7 Fungi resistance: The loose fill insulation material shall be tested for fungi resistance as specified in 4.5.7. The material shall show no evidence of fungal growth.

3.2.8 Loss of ignition: When tested in accordance with 4.5.10, the loss of ignition shall be 12 percent or less.

3.3 Marking: Each bag of insulation shall be marked to include the following:

(a) Name of manufacturer.

(b) Type of insulation.

(c) Minimum weight of insulation per bag.

(d) The manufacturer recommends that the insulation be installed at these minimum thickness, maximum coverage, and minimum weights per square foot to provide the levels of insulation thermal resistance (R) shown.

(e) Filled-in table on insulation shall include the following:

TABLE I.—THERMAL RESISTANCE

R value at 75° mean temperature to obtain an insulation resistance of—	Minimum thickness—Installed insulation should be not less than—	Maximum net coverage—Contents of this bag should not cover more than—	Minimum weight per square foot—Weight per square foot of installed insulation should be not less than—
R=38	____inches thick	____square feet	____pounds per square foot.
R=30	____inches thick	____square feet	____pounds per square foot.
R=22	____inches thick	____square feet	____pounds per square foot.
R=19	____inches thick	____square feet	____pounds per square foot.
R=11	____inches thick	____square feet	____pounds per square foot.

(f) Builder's statement: "This is to certify that this insulation has been installed in conformance with the above recommendations to provide a value of R= using bags of this insulation to cover square feet of area".

(g) Place for builder's signature, company name, and date.

(h) Place for applicator's signature, company name, and date.

3.3.1 Critical radiant flux: When tested in accordance with the Attic Floor Radiant Panel Test (see 4.5.8), the Critical Radiant Flux shall be equal to a greater than 0.12 W/CM^2. Specimens submitted for the critical Radiant Flux test shall be blown as specified in the settled density test procedure (see 4.5.1).

3.3.2 Smoldering combustion: When tested in accordance with the Smoldering Combustion Test (see 4.5.9) the insulation shall meet the following requirements:

Weight loss $\leqq$ 15 percent of critical weight.

No charring within 4 cm of the sides of the specimen holder.

No evidence of flaming combustion.

3.3.3 Loss of ignition: When tested in accordance with 4.5.10 the loss of ignition shall be 12 percent or less.

3.4 Workmanship: Insulation shall not have visual defects that adversely affect its serviceability.

4. QUALITY ASSURANCE PROVISIONS

4.1 Responsibility for inspection: Unless otherwise specified in the contract or purchase order, the contractor is responsible for the performance of all inspection requirements as specified herein. Except as otherwise specified in the contract or order, the contractor may use his own or any other facilities suitable for the performance of the inspection requirements specified herein, unless disapproved by the Government.

4.2 Reclaimed material certification: The contractor shall certify in writing to the contracting officer or his representative that the material offered to the Government contains the percentage of recovered material required by 3.1.3.

4.A Classification of inspections: The inspection requirements specified herein shall be classified as follows:

(a) Qualification tests.

(b) Quality conformance inspection.

4.B Qualification tests: Qualification tests shall be conducted at a laboratory satisfactory to the Federal Supply Service, General Services Administration. Qualification tests shall consist of the tests specified in 4.5.1, 4.5.2, 4.5.3, 4.5.4, 4.5.5, 4.5.6, 4.5.7, 4.5.8, 4.5.9 and 4.5.10. Failure of any sample to pass any test shall be cause for failure to qualify.

4.B.1 Sampling for qualification tests: The sample size for qualification shall be as established by The Federal Supply Service, General Services Administration.

4.C Quality conformance inspection: Quality conformance inspection shall be performed on samples selected in accordance with 4.3.1 and 4.3.2. Examination shall be in accordance with 4.4.1 and 4.4.2. Tests shall be in accordance with 4.5.8 and 4.5.9.

4.3 Sampling: Each unit of product selected in 4.3.1 and 4.3.2 shall be one filled bag of loose fill insulation.

4.3.1 Sampling for tests: Sampling for tests shall be in accordance with level S–1 of MIL–STD–105. The Acceptance Quality Level (AQL's) shall be 2.5 percent.

4.3.2 Sampling for examination: Sampling for examination shall be in accordance with level S–4 of MIL–STD–105.

4.4 Examination and tests.

4.4.1 End item: Samples selected in accordance with 4.3.2, shall be examined and defects listed in table II. The acceptable quality levels (AQL's) for defects shall be 2.5 percent defective for major defects and 6.5 percent defective for minor defects.

TABLE II. *Classification of defects, end item*

Defects:	*Minor*	*Major*
Type and class not as specified	X	
Extraneous materials in the insulation	X	
Dirty or damp insulation	X	
Bags not marked	X	

4.4.2 Inspection of preparation for delivery: An inspection shall be made to determine that the packaging, packing, and marking requirements comply with section 5. Defects shall be scored in accordance with table III. For examination of interior packaging, the sample unit shall be one shipping container fully prepared for delivery selected just prior to the closing operations. Sampling shall be in accordance with MIL–STD–105. Defects of closure listed shall be examined on shipping containers fully prepared for delivery. The lot size shall be the number of shipping containers in the end item inspection lot. The inspection level shall be S–2 and the AQL shall be 6.5 defects per hundred units.

Table III.—Classification of preparation for delivery defects

Examine	*Defects*
Markings	Omitted, incorrect; illegible; improper size, location, sequence, or method of application.
Materials	Any bags missing, damaged, or not completely filled.
Workmanship	Inadequate or improper closure of bags. Bulging or distortion of bags.

4.5 Test methods.

4.5.1 Settled density: Determination of settled density of loose fill insulation shall be in accordance with the following test procedure:

APPARATUS

Loose fill insulation sample containers.—The sample containers shall be made of construction grade plywood and shall have inside dimensions of 36" long by 14" wide by 6" deep (914.4 x 355.6 x 152.4mm) and 18" long by 14" wide by 12" deep (457.2 x 355.6 x 304.8mm) and 11" long by 11" wide by 6" deep (279.4 x 279.4 x 152.4mm) and 11" long by 11" wide by 12" deep (279.4 x 279.4 x 304.8mm).

Depth gauge.—The depth gauge shall be as specified in ASTM C167, Except: the pin shall be 12" (304.8mm) long.

Blowing machine.—The blowing machine shall be as recommended by the manufacturer and shall be equipped with 150 feet (45.0M) of 2½ inch (63.5) standard corrugated blower hose.

Humidity chamber.—The humidity chamber shall be capable of maintaining 120°F ± 3°F (48.9 ± 1.7°C) and 98% ± 1% relative humidity.

Sample preparation for pneumatic applications.—The loose fill sample containers shall be located at the same level as the blowing machine on a level floor in front of an operator directing the blowing hose. The horizontal distance between the end of the flexible hose from which the insulation is blown, and the far side of the containers shall be 6 feet (1.8m). When blowing, the hose shall be pointed 10 degrees upwards and the end of the hose shall be kept 3 feet (914.4mm) above the top surface of the containers. The air setting shall be selected by conducting a series of tests with the given machine. A minimum of four air settings shall be used. Widely different air settings shall be used first. The lowest setting should be that which will give a uniform flow of material and the highest that which will not produce excessive dust. Two intermediate air settings shall then be used. The air setting which produces the minimum or near minimum as blown density shall be used for the actual test. Place the loose fill insulation into the hopper of the blowing machine. When the insulation is blowing at a steady rate, start filling the container so that the main stream of the material is falling over the rear wall; slowly move backwards maintaining the height and direction of the flexible hose as specified. Continue filling the container at a even rate until the material falls over the front wall of the container. Screen fluff the insulation to the top of the container, taking care not to compact the insulation or leave large voids in the surface of the material.

Sample preparation for pouring application.—Pour three or four bags of loose fill insulation into a simulated attic space. The attic space shall be formed by four 8 feet long 2 x 6 inch joists placed 16 inches on center with ½ inch plywood nailed to the ends and bottom. Fluff the material with a 20 inch wide garden rake, applying a series of small amplitude strokes while moving the rake slowly along the joist. Repeat the fluffing process 6 times, and then with a shovel, place the insulation material into the sample containers.

PROCEDURE

Blow or pour the material as specified in the sample preparation into four 36 by 14 by 6 inch (914.4 by 355.6 x 152.4mm) containers, and four 18 by 14 by 12 inch (457.2 by 355.6 by 304.8mm) containers as specified and determine the density as blown or poured. Blow or pour two containers 11 by 11 by 6 inches (279.4 by 279.4 by 152.4mm) and two containers 11 by 11 by 12 inches (279.4 by 279.4 by 304.8mm) using the same blowing techniques. Measure the thickness of the insulation in the center of the container, and four additional measurements at locations in each quarter of the container, calculate the average thickness. Drop the four 36 by 14 by 6 inch (914.4 by 355.6 by 152.4mm) and the four 18 by 14 by 12 inch (457.2 by 355.6 by 304.8mm) containers 6 times from a 6 inch (152.4mm)

height making sure containers are dropped flat onto a concrete floor. Measure the thickness in the same locations specified above determine the average thickness and calculate the percent decrease in thickness during the drop test (designated as S_d). NOTE.—There will be a S_d for the 6 inch deep containers and a S_d for the 12 inch deep containers.

Place the two 11 by 11 by 6 inch (279.4 by 279.4 by 152.4mm) containers and the two 11 by 11 by 12 inch (279.4 by 279.4 by 304.8mm) filled containers in a climatic chamber at 104°F (40°C) and 98 ± 1 percent relative humidity for four days. Remove the containers from the chamber and place in a conditioned room with climate 73°F ± 2°F and 50 ± 5 percent relative humidity for at least three days. Repeat the four days cycle and the three days cycle until four exposures in the 104°F ± 2°F (40°C) chamber have been completed. Measure the thickness in the same locations specified above; determine the average thickness and calculate the percent decrease (designated S_c). NOTE: There will be a S_c for the 6 inch deep containers, and a S_c for the 12 inch deep containers. Determine the settled density by multiplying the density as blown into the 36 by 14 by 6 inch (914.4 by 355.6 by 152.4mm) and the 18 x 14 x 12 inch (457.2 x 355.6 x 304.8mm) containers by the factors=$100 + S_d + S_c)/100$. If the settled densities for the 6 inch (152.4mm) and the 12 inch (304.8mm) thick specimens differ by more than 5 percent, both values shall be reported. If the difference is 5 percent or less, the average value of settled density shall be reported. The drop test and the cycling in the climate chambers shall be performed on the pouring application materials in the same manner as for the blown application materials and settled density measurements reported separately.

4.5.2 Thermal resistance: Determination of the thermal resistance shall be in accordance with ASTM C177, C236, or C518. The mean temperature shall be 75°F (23.9°C). In cases of dispute ASTM C177 or C236 shall be used. The thermal resistance shall be determined at the highest settled density as measured in 4.5.1.

4.5.3 Moisture adsorption: Determination of the moisture absorption shall be in accordance with ASTM C553, (see 3.2.3).

4.5.4 Nonfibrous content: Test specimen.—A specimen weighing 15 to 25 g. shall be used. The specimen shall be taken from the sample, taking care no particles are lost. Apparatus.—A furnace capable of heating the specimen to at least 1,000°F., and of maintaining that temperature. A plan for holding the specimen during the heating. A balance accurate to 0.50 g. Three 8 inch diameter U.S. Standard Sieves (Nos. 10, 30, and 50), nested in order, with a top cover and bottom receiver. Three large-diameter rubber stoppers (No. 12 or 13). Procedure.—Weight the specimen, using the pan to avoid any loss while handling, then heat in the furnace to 800°F. for at least 20 minutes prior to test. The temperature must not be high enough to melt, or fuse, the fibers together. Place one rubber stopper on the surface of each sieve, nest the sieves, and transfer the specimen to the surface of the upper (No. 10) sieve. Break up to specimen shape by pressing it against the sieve surface, using a flat face of the rubber stopper. Put the top cover and bottom reeciver in place and shake either in a machine or by hand, with occasional inspection of the sieves, until substantially all the fiber has been broken up and collected in the bottom receiver. Carefully collect the particles on all three sieves and weigh, (see 3.2.4). Express as a percentage of the initial weight.

4.5.5 Odor emission: Subject a minimum of 50 g of the material to a soaking temperature of 150°F (65°C) for 30 minutes in a closed container. The container shall be made of stainless steel or glass jars with all metallic lids. Take care to use containers that will not produce odor. A panel of five persons with normal odor perception shall examine for odor using the following questions: (see 3.2.5).

1. Was the odor perceptible?
2. Was the odor objectionable, pleasant or otherwise?
3. Was the odor weak, strong or very strong?

4.5.6 Corrosiveness: Determination of corrosion shall be in accordance with the following test procedure: (see 3.2.6).

Corrosiveness.—Test specimen—Two specimens shall be used, each measuring 1½ inches by 4½ inches by approximately ½ inch thick when compressed against the metal test plates under the conditions of this test. Apparatus—Two steel test plates 1 inch wide, 4 inches long and 0.020 inch thick. They shall be bright No. 2 finish, cold rolled strip steel, quarter hard, temper No. 3. Four pieces, 1½ inches by 4½ inches, Type 304 stainless steel woven wire cloth, ½ inch mesh. 1/16 inch wire. Four No. 12 rubber bands. Clean humidity test chamber.

Procedure.—The steel test plates shall be cleaned until completely free of water breaks by a five minute vapor degreasing followed by a 15 minute hot caustic bath (15% KOH solution), rinsed thoroughly in distilled water and immediately dried. One piece of cold rolled steel shall be placed between two insulation specimens. This assembly is then compressed between two pieces of woven wire cloth and secured at each end with a No. 12 rubber band. The compressed thickness of this assembly shall measure 1 inch +/—⅛ inch. The other piece of cold rolled steel is placed between two 1½ inch by 4½ pices of sterile cotton which have been slovent extracted in ACS reagent grade acetone for 48 hours. The cotton is secured against the metal test plate in the same manner as the insulation specimen. The test specimen and extracted sterile cotton covered plate shall be suspended vertically in an atmosphere free of contaminants having a relative humidity of 95 percent +/— 3 percent, and a temperature of 120 degrees +/— 3 degrees F, for 28 days, and then be examined for corrosion.

4.5.7 Fungi resistance: Determination of fungi resistance shall be in accordance with MIL–STD–810, method 508. After the test exposure the test samples shall be examined at 40× magnification for evidence of fugal growth (see 3.2.7).

4.5.8 Critical Radiant Flux: Critical Radiant Flux shall be determined in accordance with attachment #1 Standard Method of Test for Critical Radiant Flux of Exposed Attic Floor Insulation using a Radiant Heat Energy Source (see 3.3.1).

4.5.9 Smoldering combustion: Smoldering combustion test shall be determined in accordance with attachment #2 Standard Method of test for Smoldering Combustion Characteristics of materials used for Thermal Insulation (see 3.3.2).

4.5.10 Lose on ignition: Remove moisture by heating in an oven at 220°F for 30 minutes. Place a 10 gram specimen in a porcelain crucible, then place the crucible in a cool muffle furnace, and expose to a temperature of 800°F. for a period of 8 hours. Remove the crucible from the furnace, cool to room temperature, and weigh the crucible. Deduct the weight of the crucible and then calculate the loss in weight as a percent of the original specimen weight, (see 3.2.8).

5. PREPARATION FOR DELIVERY

5.1 Packing: The packing shall be level A or commercial as specified (see 6.2).

5.1.1 Level A: Insulation shall be packed in bags conforming to UU–S–48 6–6X(1). The gross weight shall not exceed 45 pounds.

5.1.2 Commercial: The insulation shall be packed in accordance with normal commercial practice. The material shall be packed in bags to insure safe delivery at destination, to provide a safe redistribution by the initial receiving activity, and shall be acceptable by common carrier under National Motor Freight Classification or Uniform Freight Classification.

5.2 Marking: Marking shall be in accordance with 5.2.1 or 5.2.2 as specified, (see 6.2).

5.2.1 Civil agencies: Each shipping container or bag (when applicable) shall be marked in accordance with Federal Std. No. 123.

5.2.2 Military agencies: Each shipping container or bag (when applicable) shall be marked in accordance with MIL–STD–129.

6. NOTES

6.1 Intended use: Both types and classes of mineral fiber insulation are intended for use as thermal insulation in housing and buildings at ambient temperatures.

6.2 Ordering data: Purchasers should select the preferred options permitted herein and include the following information in procurement documents:

(a) Title, number and date of this specification.

(b) Type (see 1.2).

(c) Level of packing required (see 5.1).

(d) When ordering on applied basis, thermal resistance (R) value required shall be specified (see table I).

6.3 Thermal resistance R value: R is the reciprocal of the thermal conductance (c) and can be calculated as follows:

$$R = \frac{1}{C} = \frac{T}{K}$$

Where:
T=Thickness of insulation in inches.
K=Thermal Conductivity Value in BTU in/hr. sq. ft. °F at 75°F. mean temperature.
C=Thermal Conductance Value in BTU/hr. sq. ft. °F.
Military custodians: Navy—YD; Air Force—84.
Review activities: Navy—YD; Air Force—84.
User activities: Army—ME; Navy—YD; Air Force—84.
Military Coordinating Activity: Army—ME.
Preparing activity: GSA—FSS.
Civil agency coordinating activities: Commerce—NBS; GSA—FSS; PCD; HUD-TCS.

ATTACHMENT No. 1

STANDARD METHOD OF TEST FOR CRITICAL RADIANT FLUX OF EXPOSED ATTIC FLOOR INSULATION USING A RADIANT HEAT ENERGY SOURCE

1. SCOPE

1.1 This method of test describes a procedure for measuring the critical radiant flux of exposed attic floor insulation subjected to a flaming ignition source in a graded radiant heat energy environment, in a test chamber. The test specimen may consist of loose-fill insulation, insulation batts, foam board insulation, or other form intended for the purpose.

1.2 This method measures the critical radiant flux at flame-out. It provides a basis for estimating one aspect of fire exposure behavior for attic floor insulation. The imposed radiant flux embraces the thermal radiation levels likely to impinge on the floor of an attic whose upper surfaces are heated by solar radiation and exposed to an open flame.

2. SUMMARY OF METHOD

2.1 The basic elements of the test chamber (Figure 1) are: 1) an air-gas fueled radiant heat energy panel inclined at 30° and directed at 2) a horizontally-mounted attic floor insulation specimen (Figure 2). The radiant panel generates a radiant energy flux distribution ranging along the 100-cm length of the test specimen from a nominal maximum of 1.0 watts/cm^2 to a minimum of 0.1 watts cm^2. The test is initiated by open flame ignition from a pilot burner. The distance burned to flame-out is converted to watts/cm^2 from the flux profile graph (Figure 8) and reported as critical radiant flux, watts/cm^2.

3. SIGNIFICANCE

3.1 This method of test is designed to provide a basis for estimating one aspect of the fire exposure behavior of an attic floor insulation in a building attic. The test environment is intended to simulate conditions that have been observed and defined in full-scale attic experiments.

3.2 The test is intended to be suitable for regulatory purposes, specification acceptance, design purposes, or development and research.

3.3 The fundamental assumption inherent in the test is that "critical radiant flux" is one measure of the sensitivity to flame spread of attic floor insulation installed in a building attic.

3.4 The test is applicable to attic floor insulation specimens installed by acceptable installation practice.

4. DEFINITION OF TERMS

4.1 Critical Radiant Flux is the level of incident radiant heat energy on the attic floor insulation system at the most distance flame-out point. It is reported as watts/cm^2 (Btu/ft^2 s).

4.2 Flux Profile is the curve relating incident radiant heat energy on the specimen plane to distance from the point of initiation of flaming ignition, i.e., 0 cm.

4.3 Total Flux Meter is the instrument used to measure the level of radiant heat energy incident on the specimen plane at any point.

4.4 Black Body Temperature is the temperature of a perfect radiator—a surface with an emissivity of unit and, therefore, a reflectivity of zero.

5. RADIANT PANEL TEST CHAMBER—CONSTRUCTION AND INSTRUMENTATION

5.1 The radiant panel test chamber employed for this test shall be located in a draft-protected laboratory.

5.1.1 The radiant panel test chamber, Figures 3 and 4, shall consist of an enclosed 140 cm (55 in) long by 50 cm (19½ in) deep by 71 cm (28 in) above the test specimen. The sides, ends and top shall be of 1.3 cm (½in) calcium silicate board, such as Marinite ×L, 0.58 g/cm³ (36 lbs/ft³) nominal density, with a thermal conductivity @ 200 °F of 0.96 cal (g)/hr cm² deg C per cm [0.77 Btu/(hr) (ft²) (deg F per in)]. One side shall be provided with an approximately 10 cm x 110 cm (4 x 44 in) draft tight fire resistance glass window so that the entire length of the test specimen may be observed from outside the fire test chamber. On the same side and below the observation window is a door which, when open, allows the specimen platform to be moved out for mounting or removal of test specimens. A draft tight fire resistant observation window may be installed at the low flux end of the chamber.

5.1.2 The bottom of the test chamber shall consist of a sliding steel platform which has provisions for rigidly securing the test specimen holder in a fixed and level position. The free, or air access, area around the platform shall be in the range of 1950–3550 cm² 300–500 sq in).

5.1.3 The top of the Chamber shall have an exhaust stack with interior dimensions of 12.5 cm (5 in) wide by 38 cm (15 in) deep by 30 cm (12 in) high at the opposite end of the chamber from the radiant energy source.

5.2 The radiant heat energy source shall be a panel of porous refractory material mounted in a cast iron frame, with a radiation surface of 30.5 x 45.7 cm (12 by 18 in). It shall be capable of operating at temperatures up to 816 °C (1500 °F). The panel fuel system shall consist of a venturi-type aspirator for mixing gas and air at approximately atmospheric pressure, a clean dry air supply capable of providing 28.3NTP m³ per hr (1000 Standard Cubic Feet per Hour) at 7.6 cm (3.0 in) of water, and suitable instrumentation for monitoring and controlling the flow of fuel to the panel.

5.2.1 The radiant heat energy panel is mounted in the chamber at 30° to the horizontal specimen plane. The horizontal distance from the 0 mark on the specimen fixture to the bottom edge (projected) of the radiating surface of the panel is 8.9 cm (3½ in). The panel to specimen vertical distance is 14 cm (5½ in) (see Figure 3). The angle and dimensions given above are critical in order to obtain the required radiant flux.

5.2.2 The radiation pyrometer for standardizing the thermal output of the panel shall be suitable for viewing a circular area 25.4 cm (10 in) in diameter at a range of about 1.37 m (54 in). It shall be calibrated over the black body temperature range of 490–510 °C (914–950 °F) in accordance with the procedure described in Appendix A.

5.2.3 A high impedance potentiometer voltmeter with suitable millivolt range shall be used to monitor the output of the radiation pyrometer described in 5.2.2.

5.3 The dummy holder (see Figure 5), is constructed from heat-resistance stainless steel[1] having overall dimension of 115 cm (45 in) by 32 cm (12¾ in) with a specimen opening of 20 cm (7.9 in) x 100 cm (40 in). Six slots are cut in the flange on either side of the holder to reduce warping. The holder is fastened on the platform with two stud bolts at each end.

5.4 The specimen tray (see Figure 6) is constructed from heat-resistant stainless steel[1] having overall dimensions of 110 cm (43.3 in) by 27.3 cm (10.8 in); the depth of the tray is 5 cm (2 in). The flanges of the specimen tray are drilled to accommodate two stud bolts at each end; the bottom surface of the flange is 2.1 cm (0.83 in) below the top edge of the specimen tray.

5.5 The pilot burner, used to ignite the specimen, is a commercial propane centuri torch[2] with an axially symmetric burner tip having a propane supply tube with an orifice diameter of 0.0076 cm (0.003 in). In operation, the propane flow is adjusted to give a pencil flame blue inner cone length of 1.3 cm (½ in). The pilot burner is positioned so that the flame generated will impinge on the centerline of the specimen at the 0 distance burned point at right angles to the specimen length (see Figures 3 and 4). The burner shall be capable to being swung out of the ignition position so that the flame is horizontal and at least 5 cm (2 in) above the specimen plane.

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[1] AISI Type 300 (UNA–N08330) or equivalent, thickness 0.198 cm (0.078 in).
[2] Bernz-O-Matic TX 101 or equivalent.

5.6 Two 0.33 cm ⅛ in) stainless steel sheathed grounded junction chromel alumel thermocouples[3] are located in the Flooring Radiant Panel Test Chamber (see Figures 3 and 4). The chamber thermocouple is located in the longitudinal central vertical plane of the chamber 2.5 cm (1 in) down from the top and 10 cm (4 in) back from the inside of the exhaust stack. The exhaust stack thermocouple is centrally located 15.2 cm (6 in) from the top.

5.6.1 An indicating potentiometer with a range of 100–500 °C (212–932 °F) may be used to determine the chamber temperatures prior to a test.

5.7 An exhaust duct with a capacity of 28.3–85 NTP m^3 per minute (1000–3000 SCFM) decoupled from the chamber stack by at least 7.6 cm (3 in) on all sides and with an effective area of the canopy slightly larger than the plane area of the chamber with the specimen platform in the out position is used to remove combustion products from the chamber. With the panel turned on and the dummy specimen in place, there should be no measurable difference in air flow through the chamber stack with the exhaust on or off.

5.8 The dummy specimen which is used in the flux profile determination shall be made of 1.9 cm (¾ in) inorganic 0.58 g/cm^3 (36 lbs/ft^3) nominal density calcium silicate board, such as Marinite XL (see Figure 5). It is 25 cm (10 in) wide by 107 cm (42 in) long with 2.7 cm (1 1/16 in) diameter holes centered on and along the centerline at the 10, 20, 30, . . ., 90 cm locations, measured from the maximum flux end of the specimen.

5.8.1 The total heat flux transducer used to determine the flux profile of the chamber in conjunction with the dummy specimen should be of the Schmidt-Boelter[4] type, have a range of 0–1.5 watts/cm^2 (0–1.32 Btu/ft^2 s), and shall be calibrated over the operating flux level range of 0.10 to 1.5 watts/cm^2 in accordance with the procedure outlined in Appendix A. A source of 15–25 °C cooling water shall be provided for this instrument.

5.8.2 A high impedance or potentiometric voltmeter with a range of 0–10 m.v. and reading to 0.01 m.v. shall be used to measure the output of the total heat flux transducer during the flux profile determination.

5.9 A timer shall be conveniently mounted on the chamber for measuring preheat and pilot contact time.

6. SAFETY PROCEDURES

6.1 The possibility of a gas-air fuel explosion in the test chamber should be recognized. Suitable safeguards consistent with sound engineering practice should be installed in the panel fuel supply system. These may include one or more of the following: 1) a gas feed cut-off activated when the air supply fails, 2) a fire sensor directed at the panel surface that stops fuel flow when the panel flame goes out, 3) a commercial gas water heater or gas-fired furnace pilot burner control thermostatic shut-off which is activated when the gas supply fails or other suitable and approved device. Manual reset is a requirement of any safeguard system used.

6.2 In view of the potential hazard from products of combustion, the exhaust system must be so designed and operated that the laboratory environment is protected from smoke and gas. The operator should be instructed to minimize his exposure to combustion products by following sound safety practice, e.g., insure exhaust system is working properly, wear appropriate clothing including gloves, et al.

7. SAMPLING

7.1 The samples selected for testing shall be representative of the product.

7.2 Standard ASTM sampling practice shall be followed where applicable, see ASTM Method E–122.

8. TEST SPECIMENS

8.1 The test specimen shall be attic floor insulation of sufficient size to fill the specimen tray to a depth of 5 cm (2 in).

8.2 Insofar as possible, the attic floor insulation specimen should simulate actual installation practice. Typical examples follow:

8.2.1 Loose-fill insulation blown in to fill the tray, then carefully screeded to provide a depth of 5 cm in the tray.

8.2.2 Loose-fill insulation poured in to fill the tray, then carefully screeded to provide a depth of 5 cm in the tray.

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[3] Thermocouples should be kept clean to insure accuracy of readout.

[4] Medtherm 64–2–20 will meet this requirement.

8.2.3 Insulation batts sliced to a depth of 5 cm and cut to fit into the tray.
8.2.4 Foam board insulation cut to fit into the tray to a depth of 5 cm.
8.3 A minimum of three specimens per sample shall be tested.
8.4 The density of the specimen tested shall be determined by weighing the specimen tray just prior to testing.

9. RADIANT HEAT ENERGY FLUX PROFILE STANDARDIZATION

9.1 In a continuing program of tests, the flux profile shall be determined not less than once a week. Where the time interval between tests is greater than one week, the flux profile shall be determined at the start of the test series.
9.2 Mount the dummy specimen in the mounting frame and attach the assembly to the sliding platform.
9.3 With the sliding platform out of the chamber, ignite the radiant panel. Allow the unit to heat for one hour. The pilot burner is off during this determination. Adjust the fuel mixture to give an air-rich flame. Make fuel flow settings to bring the panel to an apparent black body temperature as measured by the radiation pyrometer, of about 500 °C (932 °F), and the chamber temperature to about 180 °C (356 °F). When equilibrium has been established, move the specimen platform into the chamber.
9.4 Allow 0.5 hours for the closed chamber to equilibrate.
9.5 Measure the radiant heat energy flux level at the 40 cm point with the total flux meter instrumentation. This is done by inserting the flux meter in the opening so that its detecting plane is 0.16–0.32 cm (1/16–1/8 in) above and parallel to the plane of the dummy specimen and reading its output after 30±10 seconds. If the level is within the limits specified in 9.6 the flux profile determination is started. If it is not, make the necessary adjustments in panel fuel flow. A suggested flux profile data log format is shown in Figure 7.
9.6 The test shall be run under chamber operating conditions which give a flux profile as shown in Figure 8. The radiant heat energy incident on the dummy specimen shall be between 0.87 and 0.95 W/cm^2 (0.77 and 0.83 Btu/ft^2 sec) at the 20 cm point, between 0.48 and 0.52 W/cm^2 (0.42 and 0.46 Btu/ft^2 sec) at the 40 cm point and between 0.22 an 0.26 W/cm^2 (0.19 and 0.23 Btu/ft^2 sec) at the 60 cm point.
9.7 Insert the flux meter in the 10 cm opening following the procedure given in 9.5 above. Read the m.v. output at 30±10 seconds and proceed to the 20 cm point. Repeat the 10 cm procedure. The 30–90 cm flux levels are determined in the same manner. Following the 90 cm measurement, make a check reading at 40 cm. If this is within the limits set forth in 9.6, the test chamber is in calibration and the profile determination is completed. If not, carefully adjust fuel flow, allow 0.5 hours for equilibrium and repeat the procedure.
9.8 Plot the radiant heat energy flux data as a function of distance along the specimen plane on rectangular coordinate graph paper. Carefully, draw the best smooth curve through the data points. This cure will hereafter be referred to as the flux profile curve.
9.9 Determine the open chamber apparent black body and chamber temperatures that are identified with the standard flux profile by opening the door and moving the specimen platform out. Allow 0.5 hours for the chamber to equilibrate. Read the radiation pyrometer output and record the apparent black body temperature in °C. This is the temperature setting that can be used in subsequent test work in lieu of measuring the radiant flux at 20 cm, 40 cm, and 60 cm using the dummy specimen. The chamber temperature also should be determined again after 0.5 hours and is an added check on operating conditions.

10. CONDITIONING

10.1 Test specimens are to be conditioned to equilibrum or a minimum of 48 hours, whichever is greater, at 21±3 °C (69.8 ±5.4 °F) and a relative humidity of 50±5 percent immediately prior to testing.

11. TEST PROCEDURE

11.1 With the sliding platform out of the chamber, ignite the radiant panel. Allow the unit to heat for one hour.[5] Read the paned apparent black body tem-

[5] It is recommended that a sheet of inorganic millboard be used to cover the opening when the hinged portion of the front panel is open and the specimen platform is moved out of the chamber. The millboard is used to prevent heating of the specimen and to protect the operator.

peratue and the chamber temperature. If these temperatures are in agreement to within ±5 °C with those determined in accordance with 9.9 above, the chamber is ready for use.

11.2 Mount the specimen tray on the sliding platform and position with stud bolts (see Figure 9).

11.3 Ignite the pilot burner, move the specimen into the chamber, and close the door. Start the timer. After 2 minutes preheat, with the pilot burner on and set so that the flame is horizontal and 5 cm above the specimen, bring the pilot burner flame into contact with the center of the specimen at the 0 cm mark. Leave the pilot burner flame in contact with the specimen for 5 minutes, then remove to a position 5 cm above the specimen and leave burning until the test is terminated.

11.4 If the specimen does not ignite within 5 minutes following pilot burner flame application, the test is terminated by extinguishing the pilot burner flame. For specimens that do ignite, the test is continued until the flame goes out. Observe and record significant phenomena, such as discoloration, charring, smoldering, etc.

11.5 When the test is completed, the door is opened, the specimen platform is pulled out.

11.6 Measure the distance burned, i.e., the point of farthest advance of the flame front, to the nearest 0.1 cm. From the flux profile curve, convert the distance to watts/cm^2 critical radiant heat flux at flame out. Read to two significant figures. A suggested data log format is shown in Figure 10.

11.7 Remove the specimen tray from the moveable platform.

11.8 The succeeding test can begin as soon as the panel apparent black body temperature and chamber temperature are verified (see 11.1). The specimen tray should be at room temperature prior to insertion of the next specimen.

12. REPORT

12.1 The report shall include the following:

12.1.1 Description of the attic floor insulation.

12.1.2 Description of the procedure used to prepare the floor insulation specimen.

12.1.3 Number of specimens tested, including critical radiant flux and density for each specimen as tested.

12.1.4 Observations of the burning characteristics of the specimen, such as discoloration, charring, smoldering, etc.

APPENDIX A—PROCEDURE FOR CALIBRATION OF RADIATION INSTRUMENTATION

A1. RADIATION PYROMETER

A1.1 Calibrate the radiation pyrometer by means of a conventional black body enclosure placed within a furnace and maintained at uniform temperatures of 490, 500, and 510 °C (914, 932, 950 °F). The black body enclosure may consist of a closed chromel metal cylinder with a small sight hole in one end. Sight the radiation pyrometer upon the opposite end of the cylinder where a thermocouple indicates the black body temperature. Place the thermocouple within a drilled hole and in good thermal contact with the black body. When the black body enclosure has reached the appropriate temperature equilibrium, read the output of the radiation pyrometer. Repeat for each temperature.

A2. TOTAL HEAT FLUX METER

A2.1 The total flux meter shall be calibrated by the National Bureau of Standards[1], or alternatively, its calibration shall be developed by transfer calibration methods with an NBS calibrated flux meter. This latter calibration shall make use of the radiant panel tester as the heat source. Measurements shall be made at each of the nine dummy specimen positions and the mean value of these results shall constitute the final calibration.

A2.2 It is recommended that each laboratory maintain a dedicated calibrated reference flux meter against which one or more working flux meters can be compared as needed. The working flux meters should be calibrated according to the procedure of A2.1 at least once per year.

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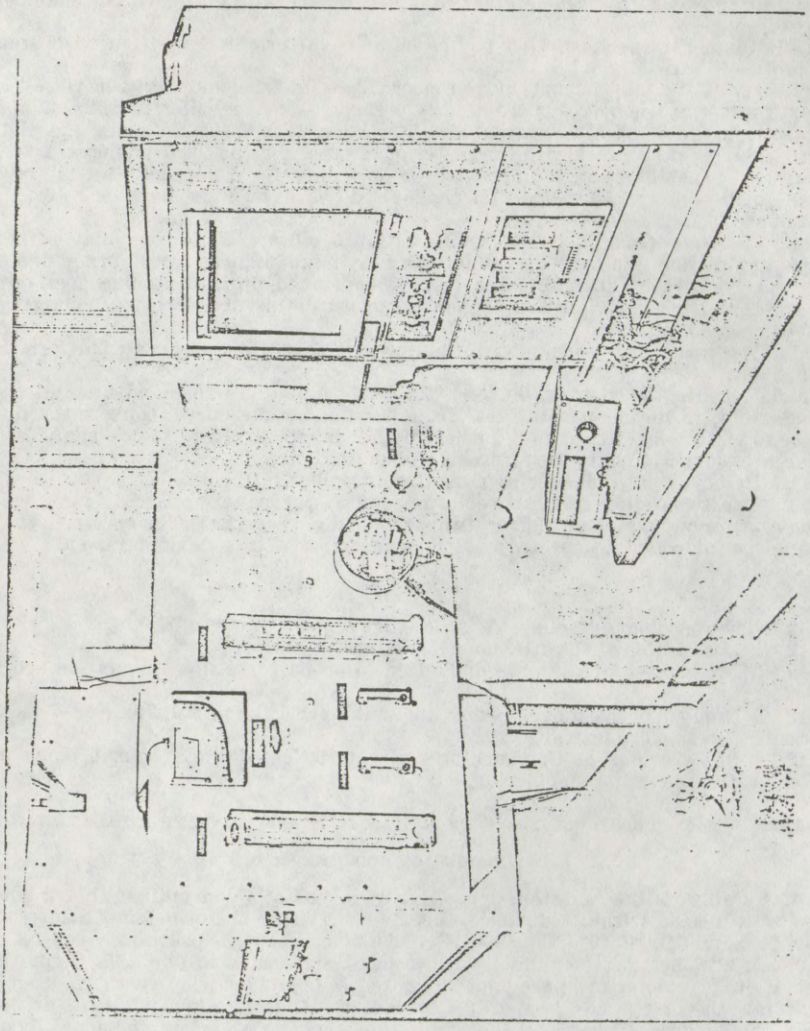
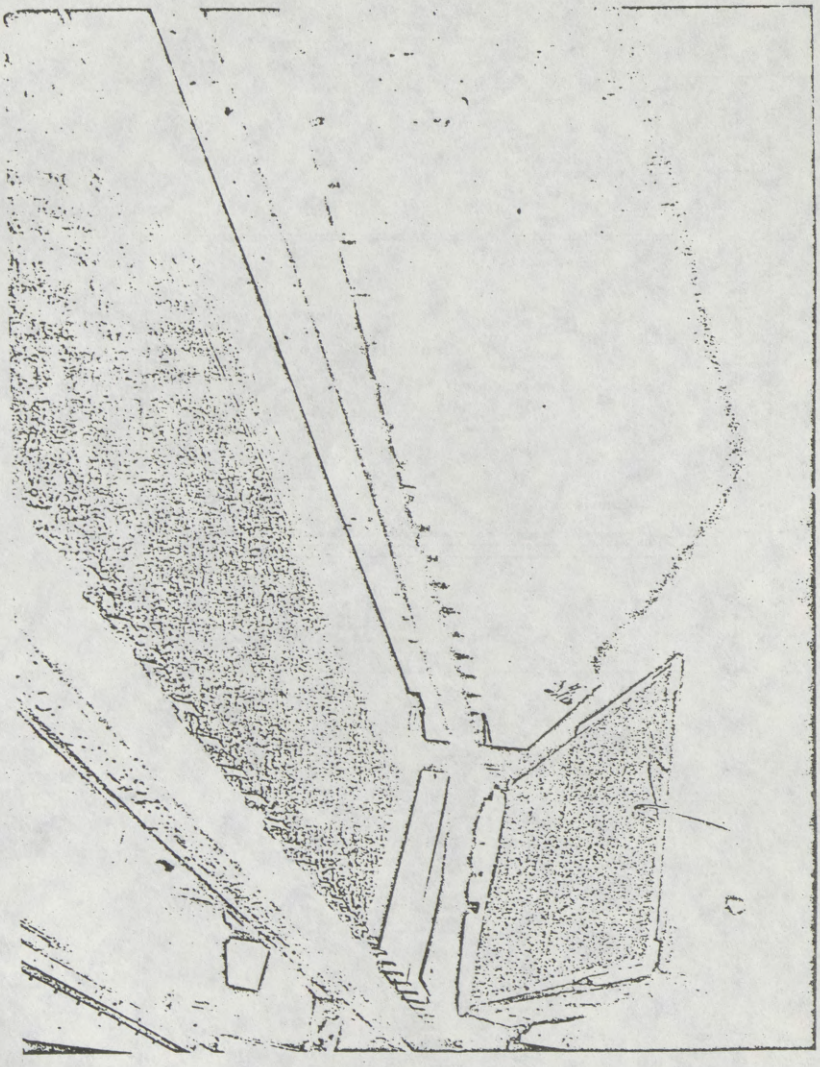
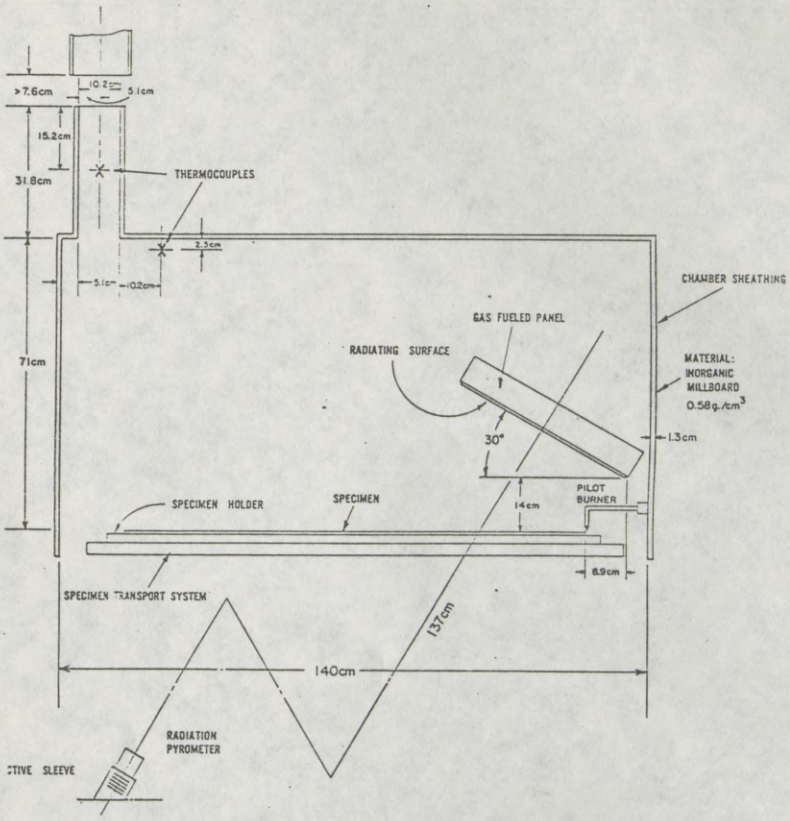
[1] Direct requests for such calibration services to the: Optical Radiation Section, 232.04, National Bureau of Standards, Washington, D.C. 20234.

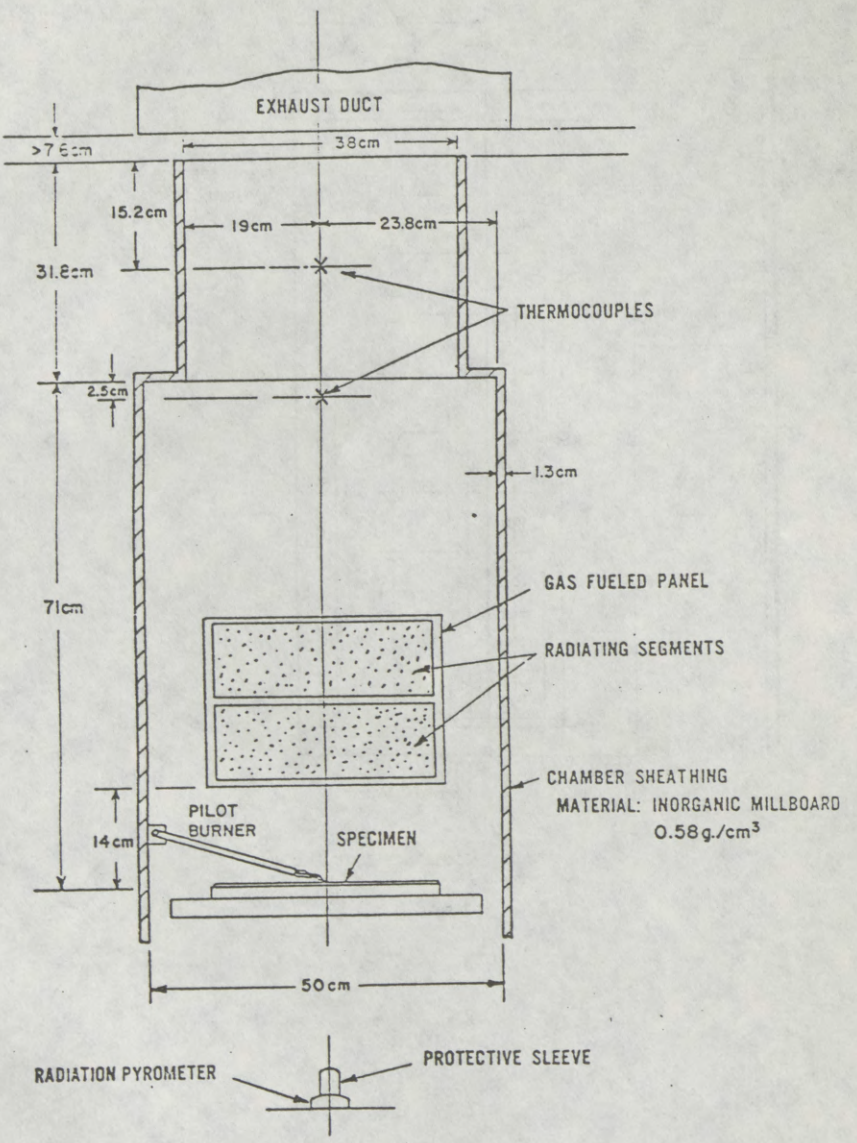






FLOORING RADIANT PANEL TESTER SCHEMATIC
SIDE ELEVATION

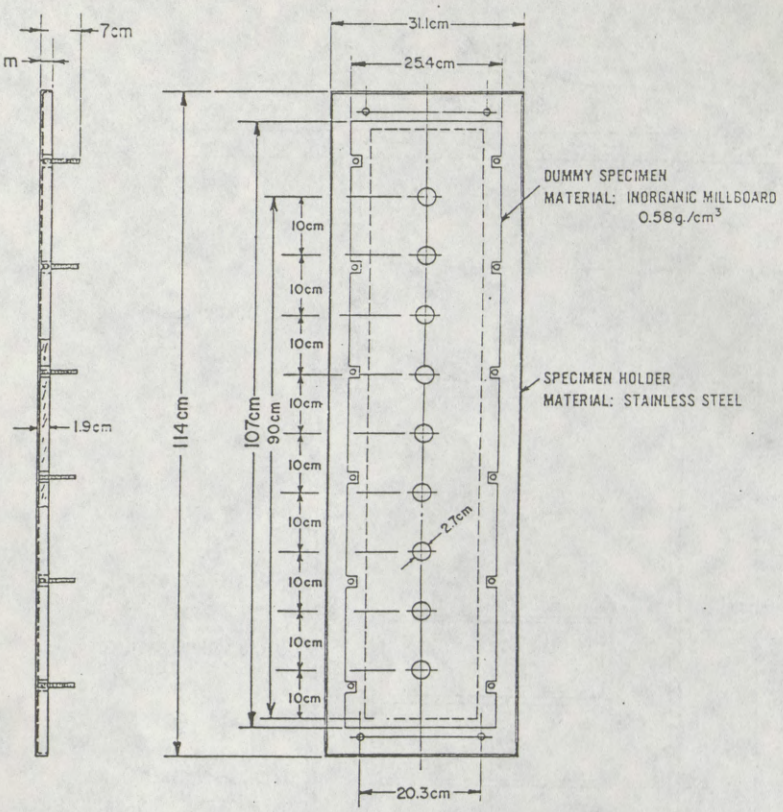
Figure 3



FLOORING RADIANT PANEL TESTER SCHEMATIC
LOW FLUX END, ELEVATION

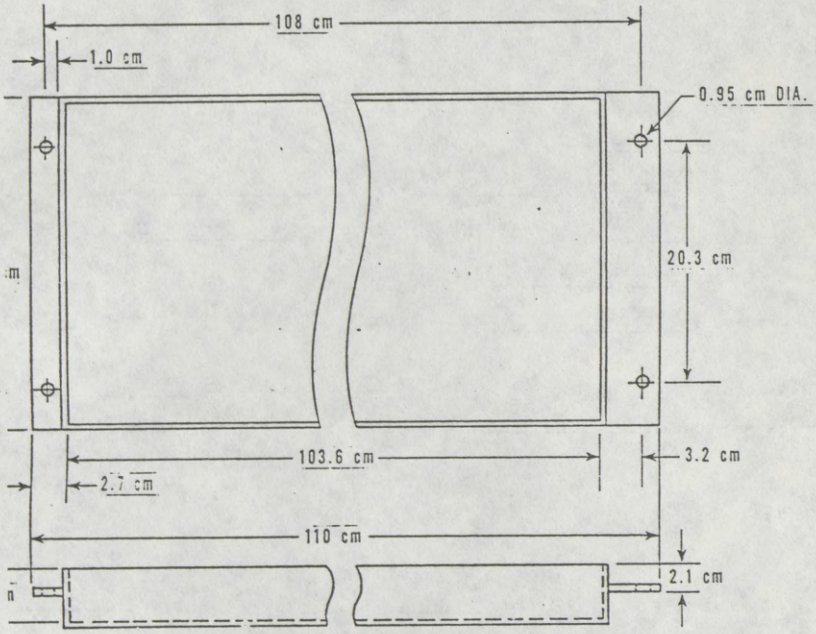
Figure 4

31-737 O - 78 - 19



DUMMY SPECIMEN IN SPECIMEN HOLDER

Figure 5



SPECIMEN TRAY

Figure 6

RADIANT FLUX PROFILE

Date_____

Black Body Temperature_____m.v. - _____°C (°F)

Gas Flow_____NTPm^{3}H (SCFH) Air Flow_____NTPm^{3}H (SCFH)

Room Temperature_____°C (°F)

Air Pressure _____ Gas_____cm (in) of H_2O

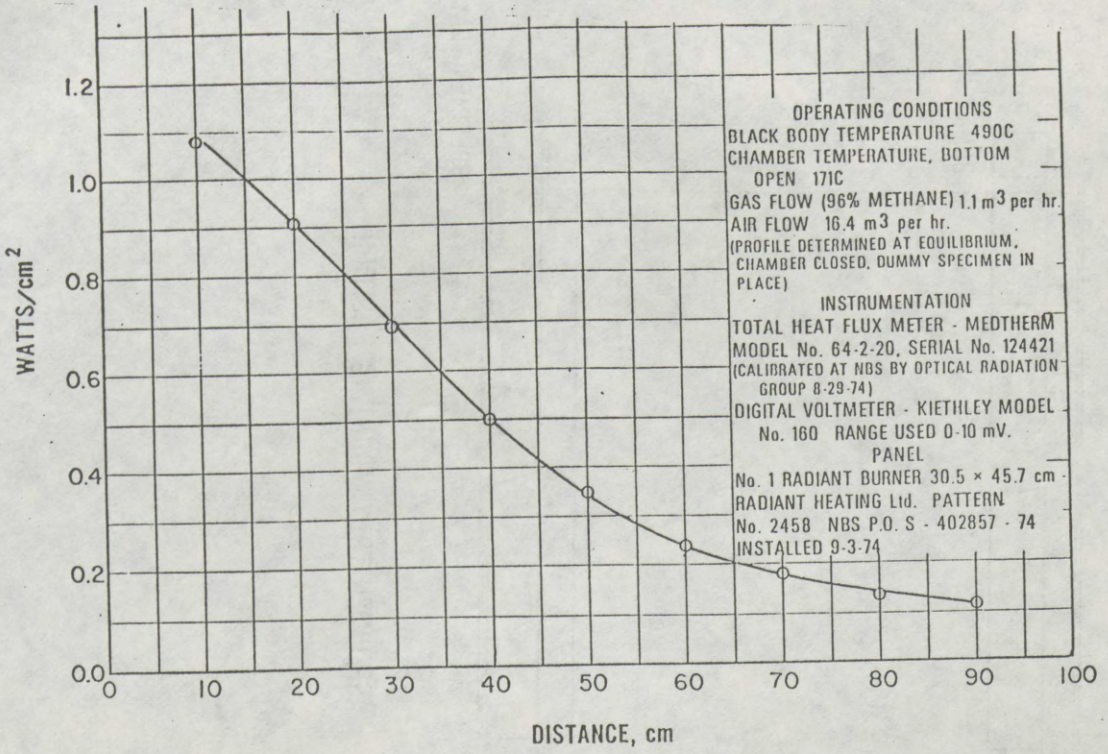
Flux Meter Conversion Factor_____

Radiometer No._____ from Calibration on_____

Distance (cm)	MV	Watts/cm^2
10	_____	_____
20	_____	_____
30	_____	_____
40	_____	_____
50	_____	_____
60	_____	_____
70	_____	_____
80	_____	_____
90	_____	_____

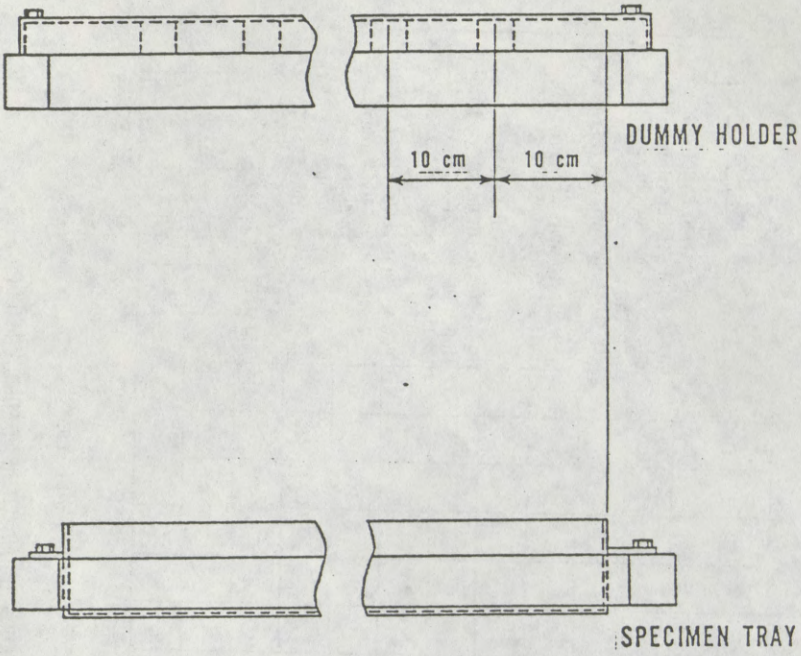
Signed _____

Figure 7. Flux Profile Data Log Format



STANDARD RADIANT HEAT ENERGY FLUX PROFILE

Figure 8



SPECIMEN TRAY MOUNTING POSITION

Figure 9

Test Number _____ Date _____ Time _____

Laboratory _____

Specimen Identification/Code No. _____

Test Assembly: _____

Panel: Angle _____° Temperature _____°C (°F)

Flow: Gas _____NTPm^{3}H (SCFH) Air _____NTPm^{3}H

Pressure, cm (in) H_2O: Initial, Air _____ Gas _____

Chamber Temperature (Initial) _____°C (°F)

Room: Temperature _____°C (°F) Hood Draft _____cm (in) water

Flame Front Out _____ min.

All Flame Out _____ min.

Total Burn Length _____cm (in)

Critical Radiant Flux watts/cm^2 _____

Flux Profile Reference _____

Observations:

Signed _____

Figure 10. Insulation Radiant Panel Test Data Log Format

ATTACHMENT No. 2

STANDARD METHOD OF TEST FOR SMOLDERING COMBUSTION CHARACTERISTICS OF MATERIALS USED FOR THERMAL INSULATION

1. SCOPE

1.1 This method evaluates the tendency of thermal insulation in the form of loose fill, batts or blankets to support smoldering combustion. It is applicable to any insulation that is capable of being installed in the specimen holder at the density and in the physical state of the material in its intended use.

1.2 The purpose of this test is to determine the tendency of the material under test to support and propagate smoldering combustion subsequent to exposure to a standard ignition source.

2. SUMMARY OF METHOD

2.1 This method measures the extent and progression of smoldering from a lighted cigarette inserted vertically, with the lit end upward, into the center of an insulation material sample.

2.2 The extent of damage to the test specimen, as indicated by percent of specimen weight loss and by the extent of charring, are recorded in this test, as well as any other observable combustion behavior, such as progression to flaming combustion.

3. SIGNIFICANCE

3.1 This method of test is designed to provide a basis for evaluating the tendency of insulation to support smoldering combustion when subjected to a small ignition source. The lighted cigarette represents a typical ignition source which may make contact with insulation installed in residential buildings.

4. APPARATUS

4.1 Specimen holder.

4.1.1 The specimen holder shall be an open-top 20 ± 0.2 cm square box, 10 ± 0.2 cm in height, fabricated from a single piece of 0.61 ± 0.08 mm thick (24 U.S. Standard gauge) stainless steel sheet with the vertical edges of the box overlapped, not to exceed to 7 mm in seam width, and soldered so as to be watertight.

4.1.2 The specimen holder during test use shall rest upon a pad of inert insulation, such as of glass of ceramic fibers, of at least 1.5 cm in thickness and approximating the dimensions of the bottom of the specimen holder. The density of the insulation shall be 50 ± 15 Kg/m^3.

4.2 Ignition source.

4.2.1 The ignition source shall be a cigarette without filter tip made from natural tobacco, 85 ± 2 mm long with a tobacco density of 0.270 ± 0.020 g/cm^3 and a total weight of 1.1 ± 0.1 gm.

4.3 Balance.

4.3.1 A balance of 1 kg capacity, accurate at least to 0.1 g, and provided with a suitable scale pan is required.

4.4 Test area.

4.4.1 The test area shall be draft-protected and equipped with a suitable system for exhausting smoke and/or noxious gases produced by testing. Air velocities as measured by a hot wire anemometor in the vicinity of the surface of the sample shall not exceed 0.5 m/sec.

4.4.2 The test area shall be maintained at 23±5° C and 50±5 percent relative humidity.

4.3 Sampling.

4.3.1 At least three samples shall be prepared of any material undergoing test. Samples shall be taken in a manner to encompass possible variations in material composition (for example, from the top, middle, and botto of bagged insulation).

4.3.2 Samples of material to be tested shall be selected, prepared, and handled in a manner to avoid differences in the composition and condition of the sample from that of the sampled material in its intended use.

5. TEST PROCEDURE

5.1 Samples and cigarettes shall be conditioned in air at a temperature of 23 ± 5° C and a relative humidity of 50 ± percent for at least 12 hours prior to test. Samples and cigarettes shall be removed from any packaging and exposed in a suitable manner to permit free movement of air around them during conditioning.

5.2 Sample material shall be loaded into specimen holders to uniformly and homogeneously fill the holders level and flush to the top edges of the holders. Specimen weight shall be measured, at least to the nearest 0.2 g, by weighing the holder before and after filling. The density of the specimen contained in a holder (volume 4l, 0.14 ft^3) shall be calculated and shall not be less than the density recommended for the material in its intended use.

5.3 With the sample in the holder and placed on the insulated pad, a rod of 8 mm diameter with a pointed end shall be inserted vertically into the center of the material being tested and withdrawn to form an appropriate cavity for the ignition source. A well lit cigarette, burned not more than 8 mm (0.3 in.), shall be inserted in the formed cavity, with the lit end upward and flush with the sample surface.

5.4 Burning of the cigarette and specimen shall be allowed to proceed undisturbed in the test area for at least 2 hours or until the smoldering is no longer progressing.

5.5 After completion of burning and after the holder has cooled down to 25° C, the specimen holder with its material residue shall be weighed, at least to the nearest 0.2 g, and the percent weight loss of the original specimen calculated.[1]

5.6 After completion of burning, the minimum distance of charring or smoldering of the material from the edge of the holder shall be measured. In cases where the material tested has smoldered to some extent, the material residue shall be carefully removed by layers and the closest proximity of charred material to the vertical sides of the specimen holder determined to the nearest 0.5 cm.

6. CRITERIA

6.1 Materials tested by this method shall be judged in terms of the following criteria:

6.1.1 Weight loss of each specimen expressed as a percent of its initial weight.

6.1.2 Charring of specimen in terms of progression to within 4 cm of the sides of the specimen holder.

6.1.3 Evidence of flaming combustion of the specimen during testing.

7. REPORT

7.1 The report shall include the following:

7.1.1 Identification and/or description of the material being tested.

7.1.2 The original weight of specimens tested and their calculated density.

7.1.3 The final weight of specimens tested and the present weight loss they have experienced during testing.

7.1.4 The closest distance that charring in specimens tested has approached the sides of the specimen holder during testing, when appreciable charring of a specimen has occurred.

7.1.5 Any observations of the burning characteristics of the specimens that could be pertinent to the material's performance in its intended use.

HH–I–521F
PROPOSED
(TO SUPERSEDE)
Fed. Spec. HH–I–521E
July 24, 1972

Proposed Federal Specification—Insulation Blankets, Thermal (Mineral Fiber, for Ambient Temperatures)

This proposed Federal Specification draft, dated November 9, 1977, prepared by the General Services Administration, Federal Supply Service, Washington, D.C. 20406, has not been approved for promulgation and is subject to modification. Do not use for procurement purposes.

1. SCOPE AND CLASSIFICATION

1.1 Scope: This specification covers mineral fiber thermal insulation blankets for use in housing and other framed buildings at ambient temperatures. While products that comply with this specification may be used in various constructions, they are adaptable primarily, but not exclusively, to wood joist, rafters, and stud construction.

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[1] The weight of the cigarette residue is ignored in this exercise and may, in some cases, result in a slight gain in sample weight.

1.2 Classification.

1.2.1 Types: Thermal insulation blankets shall be of the following types, as specified (see 6.2) :

Type I—Blankets with No Membrane Coverings.

Type II—Blankets with a Nonreflective Membrane Covering One Principal Face.

Type III—Blankets with a Reflective Membrane Covering on One Principal Face.

1.2.2 Sizes and thermal resistance (R) values: Sizes and thermal resistance (R) values of the blankets shall be in accordance with table I, as specified (see 6.2).

TABLE I.—SIZES[1] AND THERMAL RESISTANCE (R) VALUES

Type	R values[2]	Width (inches) excluding flanges	Length
I, II, III	11, 13, 19, 22, and 30	11, 15, 16 19, 23, 24[3], 30	Lengths of 100 in or less in precut pieces. Lengths over 100 in in rolls.

[1] All sizes listed are not available from all manufacturers. For other sizes and R values consult manufacturers.

[2] Insulation blankets of the same R value, but from different manufacturers, may vary appreciably in thickness (see 6.4) For R values other than those listed, consult manufacturers. Thermal resistance (R) values apply to the mineral fiber only as defined in 3.5.

[3] For buildings utilizing steel studs.

2. APPLICABLE DOCUMENTS

2.1 The following documents, of the issues in effect on date of invitation for bids or requests for proposal, form a part of this specification to the extent specified herein.

Federal specifications

PPP–B–636—Box, Fiberboard.

PPP–B–640—Boxes, Fiberboard, Corrugated, Triple-Wall.

PPP–B–1055—Barrier Material, Waterproofed, Flexible.

Federal standard

Fed. Std. No. 123—Marking for Shipment (Civil Agencies).

(Activities, outside the Federal Government may obtain copies of Federal Specifications, Standards, and Handbooks as outlined under General Information in the Index of Federal Specifications and Standards and at the prices indicated in the Index. The Index, which includes cumulative monthly supplements as issued, is for sale on a subscription basis by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

(Single copies of this specification and other Federal Specifications required by activities outside the Federal Government for bidding purposes are available without charge from Business Service Centers at the General Services Administration Regional Offices in Boston, New York, Philadelphia, Washington, D.C., Atlanta, Chicago, Kansas City, MO, Fort Worth, Houston, Denver, San Francisco, Los Angeles, and Seattle, WA.

(Federal Government activities may obtain copies of Federal Specifications, Standards, and Handbooks and the Index of Federal Specifications and Standards from established distribution points in their agencies.)

Military standards

MIL–STD–105—Sampling Procedures and Tables for Inspection by Attributes.

MIL–STD–810—Environmental Test Methods.

(Copies of Military Specifications and Standards required by contractors in connection with specific procurement functions should be obtained from the procuring activity or as directed by the contracting officer.)

2.2 Other publications: The following documents form a part of this specification to the extent specified herein. Unless a specific issue is identified, the issue in effect on date of invitation for bids or request for proposal shall apply.

American Society for Testing and Materials (ASTM) standards

C 167—Methods of Test for Thickness and Density of Blanket-or-Batt-Type Thermal Insulating Materials.

C 177—Methods of Test for Thermal Conductivity of Materials by Means of the Guarded Hot Plate.

C 236—Thermal Conductance and Transmittance of Built-Up Sections by Means of the Guarded Hot Box.

C 445—Methods of Test for Normal Total Emittance of Surfaces of Materials 0.01 in. or less in Thickness at Approximately Room Temperature.

C 518—Thermal Conductivity of Materials by Means of the Heat Flow Meter.

C 653—Determination of the Thermal Resistance of Low Density Mineral Fiber Blanket-Type Building Insulation.

C 665—Mineral Fiber Blanket Thermal Insulation for Wood Frame and Light Construction Buildings.

E 96—Methods of Test for Water Vapor Transmission of Materials in Sheet Form.

(Application for copies should be addressed to the American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103.)

National Motor Freight Traffic Association, Inc., agent

National Motor Freight Classification.

(Application for copies should be addresssed to the American Trucking Associations, Inc., Traffic Department, 1616 P Street, N.W., Washington, D.C. 20036.)

Uniform Classification Committee, agent

Uniform Freight Classification.

(Application for copies should be addressed to the Uniform Classification Committee, Room 1106, 222 South Riverside Plaza, Chicago, IL 60606.)

3. REQUIREMENTS

3.1 Material: The basic material shall be fibers made from mineral substances such as rock, slag, or glass processed from a molten state into fibrous form.

3.1.1 Recovered material: Insulation shall have a recovered material content of not less than 15 percent of the total weight of the fiber content of the product. Recovered material is defined as material which has been collected or recovered from solid waste. Solid waste means any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining, and agricultural operations, and from community activities, but does not include solid or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges which are point sources subject to permits under section 402 of the Federal Water Pollution Control Act, as amended (86 Stat. 880), or source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954, as amended (68 Stat. 923).

3.A Qualification: Type I, type II, and type III thermal insulation blankets furnished under this specification shall be products which have been tested and passed the qualification tests specified herein, and have been listed on or approved for listing on the applicable qualified products list (QPL).

3.2 Construction: The insulation blankets shall consist of flexible units composed of felted mineral fibers in rolls or flat pieces, with or without various combinations of attached membrane coverings, as required.

3.2.1 Type I: Type I insulation blankets shall have no membrane coverings and shall have dimensions and physical properties to be self-supporting when placed between structural members having standard spacings. A partial covering for identification purposes shall be permissible.

3.2.2 Types II and III: Types II and III insulation blankets shall have a nonreflective or reflective membrane covering, as applicable, on one principal face. The membrane coverings shall be vapor resistant and shall extend beyond the longitudinal edges of the insulation to provide flanges for attachment to structural members. When required, a vapor permeable membrane covering shall be provided on the opposite face as specified (see 6.2). When not specified in the contract or purchase order, a vapor permeable membrane covering on the opposite face may be provided at the supplier's option.

3.3 Membrane coverings.

3.3.1 Vapor permeance: When tested in accordance with 4.6.2, vapor resistant membrane coverings shall have a vapor permeance of not more than 1 perm and vapor permeable membrane coverings shall have a vapor permeance of not less than 5 perms.

3.3.2 Surface emittance: When tested in accordance with 4.6.3, reflective membrane coverings shall have a surface emittance of 0.05 or less.

3.4 Dimensional data.

3.4.1 Thickness: The thickness of insulation shall not be less than that required to provide the thermal resistance (R) value specified (see table I, 3.5 and 4.7.8. When thickness limitations are imposed by the size of structural members, the maximum acceptable thickness of insulation to provide the required thermal resistance (R) value shall be specified (see 6.2).

3.4.2. Dimensional tolerance.

3.4.2.1 Length: The tolerance on the specified length shall be as follows: 100 inches or less, minus ½ inch; over 100 inches, minus 0.5 percent.

3.4.2.2 Width: The tolerance on the specified width, excluding any attaching flanges, shall be as follows: Type I, + ½ inch, — 0; Type II and III, ± ¼ inch.

3.5 Physical requirements.

3.5.1 Thermal resistance: When determined in accordance with 4.7.8, the thermal resistance (R) value of individual blankets, excluding membrane coverings, expressed as a reciprocal of thermal conductance (C) shall be not more than 10 percent below the R value specified (see 1.2.2. and 6.3).

3.5.2 Critical radiant flux: When tested in accordance with the Attic Floor Radiant Panel Test (see 4.7.6), the critical radiant flux shall be equal to or greater than 0.12 W/CM^2. Insulation blankets with a membrane covering shall be tested both with and without the membrane. The blankets with membrane coverings shall be tested with the vapor barrier side exposed to the radiant panel.

3.5.3 Smoldering combustion: When tested in accordance with the smoldering combustion test (see 4.7.7), the insulation shall meet the following requirements:

Weight loss $\leq$ 15 percent of critical weight.

No charring within 4 cm of the sides of the specimen holder.

No evidence of flaming combustion.

3.5.4 Density: When tested in accordance with 4.7.1, the average measured density shall be reported to determine the thermal resistance value of the material.

3.5.5 Moisture absorption: When tested in accordance with 4.7.2 the moisture absorption of the insulation shall not gain no more than 5 percent by weight.

3.5.6 Odor emission: A detectable odor of objectionable nature shall be cause for rejection of the insulation material, when tested in accordance with 4.7.3 and observed by two or more panel members.

3.5.7 Corrosiveness: When tested in accordance with 4.7.4, the steel test plate in contact with the insulation shall show no greater corrosion than sterile cotton in contact with a steel plate for comparison, when tested in the same manner.

3.5.8 Fungi resistance: The blanket insulation shall be tested for fungi resistance as specified in 4.7.5. The material shall show no evidence of fungal growth.

3.6 Identification marking.

3.6.1 Insulation blankets: Insulation blankets shall be marked with the manufacturer's name or trademark, the thermal resistance (R) value of the insulation (see 6.3), and the thickness to obtain this thermal resistance (R) value. On each type I insulation blanket, the identification marking shall be printed on a partial facing, branded, or indelibly marked on types II and III insulation blankets, the identification marking shall be printed on the vapor resistant membrane covering at intervals not exceeding 8 linear feet.

3.6.2 Shipping bags and wrapping: Shipping bags and wrapping (see 5.1) for insulation blankets shall be marked with the manufacturer's name or trademark, the length, width, thickness, the R value of the insulation, and the square feet of insulation.

3.6.3 Shipping containers: Shipping containers (see 5.2) for insulation blankets shall be marked with the manufacturer's name or trademark, the length, width, and the R value of the insulation.

3.7 Workmanship: Insulation shall be clean, dry, and free of extraneous materials. Fibers shall be evenly distributed and insulation and facings shall be sufficiently coherent to be unaffected by handling and insulation.

4. QUALITY ASSURANCE PROVISIONS

4.1 Responsibility for inspection: Unless otherwise specified in the contract or purchase order, the contractor is responsible for the performance of all inspection requirements as specified herein. Except as otherwise specified in the contract or order, the contractor may use his own or any other facilities suitable for the performance of the inspection requirements specified herein, unless disapproved by the Government.

4.2 Reclaimed material certification: The contractor shall certify in writing to the contracting officer or his representative that the material offered to the Government contains the percentage of recovered material required by 3.1.3.

4.3 Classification of inspections: The inspection requirements specified herein shall be classified as follows:

(a) Qualification tests.

(b) Quality conformance inspection.

4.3.1 Qualification tests: Qualification tests shall be conducted at a laboratory satisfactory to the Federal Supply Service, General Services Administration. Qualification tests shall consist of the tests specified in 4.6.2, 4.6.3, 4.6.4, 4.7.1, 4.7.2, 4.7.3, 4.7.4, 4.7.5, 4.7.6, 4.7.7, and 4.7.8. Failure of any sample to pass any test shall be cause for failure to qualify.

4.3.2 Sampling for qualification tests: The sample size for qualification shall be as established by the Federal Supply Service, General Services Administration.

4.3.3 Quality conformance inspection: Quality conformance inspection shall be performed on samples selected in accordance with 4.4.1 and 4.4.2. Examination shall be in accordance with 4.5.1 and 4.5.2. Tests shall be in accordance with 4.7.6 and 4.7.7.

4.4 Sampling: Each unit of product selected in accordance with 4.4.1 shall be 8 linear feet of insulation.

4.4.1 Sampling for examination: Sampling for examination shall be in accordance with level S–2 of MIL–STD–105.

4.4.2 Sampling for tests: Sampling for tests shall be in accordance with level S–1 of MIL–STD–105. The acceptable quality level (AQL) shall be 2.5 percent defective.

4.5 Examination and tests.

4.5.1 End item: Samples selected in accordance with 4.4.1 shall be examined for defects listed in table II. The acceptable quality levels (AQL's) for defects shall be 2.5 percent defective for major defects and 6.5 percent defective for minor defects.

TABLE II.—*Classification of defects, end item*

Defects:	*Major*	*Minor*
Type of insulation not as specified	X	
Dimensions not as specified or not within tolerances	X	
Unclean or wet insulation	X	
Foreign material in insulation	X	
Identification marking not as required (see 3.7)	X	
Facing material missing, badly torn, punctured, or inadequately bonded to insulation	X	
Damage or defects affecting function or serviceabiilty	X	
Damage or defects not affecting function or serviceability		X
* * * * * *		*

1/16 inch wire. Four No. 12 rubber bands. Clean humidity test chamber. Procedure: The steel test plates shall be cleaned until completely free of water breaks by a five minute vapor decreasing followed by a 15 minute hot caustic bath (15 percent KOH solution), rinsed thoroughly in distilled water and immediately dried. One piece of cold rolled steel shall be placed between two insulation specimens. This assembly is then compressed between two pieces of woven wire cloth and secured at each end with a No. 12 rubber band. The compressed thickness of this assembly shall measure 1 inch±1/8 inch. The other piece of cold rolled steel is placed between two 1½ inch by 4½ inch pieces of sterile cotton which have been solvent extracted in ACS reagent grade acetone for 48 hours. The cotton is secured against the metal test plate in the same manner as the insulation specimen. The test specimen and extracted sterile cotton covered plate shall be suspended vertically in an atmosphere free of contaminants having a relative humidity of 95 percent±3 percent and a temperature of 120°±3° F, for 28 days, and then be examined for corrosion.

4.7.5 Fungi resistance: Determination of fungi resistance shall be in accordance with MIL–STD–810C method 508. After the test exposure the test samples shall be examined at 40 X magnification for evidence of fungal growth (see 3.5.8).

4.7.6 Critical radiant flux: Critical radiant flux shall be determined in accordance with attachment #1. Standard method of test for critical radiant flux of exposed attic floor insulation using a radiant heat energy source (see 3.5.2).

4.7.7 Smoldering combustion: Smoldering combustion tests shall be determined in accordance with attachment #2. Standard method of test for smoldering combustion. Characteristics of materials used for thermal insulation (see 3.5.3).

4.7.8 Thermal resistance: Determination of the thermal resistance shall be in accordance with ASTM C 177, C 236, C 518, or C 653. The mean temperature shall be 75° F (23.9° C). In case of dispute, ASTM C 177 or C 236 shall be used.

5. PREPARATION FOR DELIVERY

5.1 Packaging: Packaging shall be level A or commercial as specified (see 6.2).

5.1.1 Level A.

5.1.1.1 Precut pieces: Precut pieces of insulation furnished in widths, lengths, and quantities as specified (set 6.2), shall be packaged in a bag or wrapped with material meeting the requirements of PPP–B–1055, B–1 or B–2. The wrap of bag shall be secured by stitching, tape, adhesive, or staples.

5.1.1.2 Polls: Polls of insulation furnished in widths, lengths, and quantities as specified (see 6.2), shall be packaged in a bag or wrapped with material meeting the requirements of PPP–B–1055, B–1 or B–2. The wrap or bag shall be secured by stitching, tape, adhesive, or staples.

5.1.2 Commercial: The blanket insulation shall be packaged in accordance with normal commercial practice. The material shall be packaged in bags or wrapped to insure safe delivery at destination, to provide a safe redistribution by the initial receiving activity, and shall be acceptable by common carrier under National Motor Freight Classification or Uniform Freight Clasification.

5.2 Packing: Packing shall be level A or commercial as specified (see 6.2).

5.2.1 Level A: When specified (see 6.2), insulation of like description shall be packed in a close-fitting box conforming to PPP–B–636, V3C or PPP–B–640, class 2, grade A. The boxes shall be closed and strapped in accordance with the applicable specification or appendix thereto. The gross weight of the triple wall box shall not exceed 200 pounds. The gross weight of the PPP–B–636 box shall not exceed the weight limitations of the box specification.

5.2.2 Commercial: The blanket insulation shall be packed in accordance with normal commercial practice. The material shall be packed in containers to insure safe delivery at destination, to provide a safe redistribution by the initial receiving activity, and shall be acceptable by common carrier under National Motor Freight Classification or Uniform Freight Classification.

5.3 Marking: Shall be in accordance with 5.3.1 or 5.3.2 as specified (see 6.2).

5.3.1 Civil agencies: In addition to any special markings required by the contract or order, all marking shall be in accordance with Fed. Std. No. 123.

5.3.2 Military agencies: In addition to any special markings required by the contract or order, all marking shall be in accordance with MIL–STD–129.

6. NOTES

6.1 Intended use: All types of insulation are intended for use as thermal insulation in housing and other buildings at ambient temperatures.

6.2 Ordering data : Purchasers should select the preferred options permitted herein, and include the following information in procurement documents:

(a) Title, number, and date of this specification.

(b) Type (see 1.2.1).

(c) Length, width, and R value (see 1.2.2 and table I).

(d) Requirements for vapor permeable membrane covering (see 3.2.2).

(e) When required, the maximum acceptable thickness to provide the specified R value (see 3.4.1).

(f) Selection of applicable level of packaging and packing required (see 5.1 and 5.2).

(g) Quantity of insulation required (see 5.1.1 and 5.1.2).

(h) When fiberboard boxes are required for shipping containers (see 5.2.1).

(i) Marking, as specified (see 5.3.1 and 5.3.2).

6.3 Thermal resistance R value: R is the reciprocal of the thermal conductance (C) and can be calculated as follows:

$$R = \frac{1}{C} = \frac{t}{k}$$

Where:

t=Thickness of insulation in inches.

k=Thermal conductivity value in Btu in./hr. sq. ft. °F. at 75 °F. mean temperature.

C=Thermal conductance value in Btu/hr. sq. ft. °F.

6.4 Insulation thickness: Insulation is produced by different manufacturers at different densities, therefore, there is a wide variation in thickness for the same R value between various manufacturers. No effort should be made to relate any specific R value to any specific thickness. The commercial thicknesses generally available range from 2 to 7 inches.

Military custodians: Navy—YD; Air Force—84.

Review activities: Navy—YD; Air Force—84.

User activities: Army—ME, CE; Navy—None; Air Force—None.

Military coordinating activity: Army—ME.

Preparing activity: GSA-FSS.

Civil agency coordinating activities: Commerce-NBS; GSA-FSS, PCD; HUD-TCS; Interior-BPA; DOE.

ATTACHMENT NO. 1

STANDARD METHOD OF TEST FOR CRITICAL RADIANT FLUX OF EXPOSED ATTIC FLOOR INSULATION USING A RADIANT HEAT ENERGY SOURCE

1. SCOPE

1.1 This method of test describes a procedure for measuring the critical radiant flux of exposed attic floor insulation subjected to a flaming ignition source in a graded radiant heat energy environment, in a test chamber. The test specimen may consist of loose-fill insulation, insulation batts, foam board insulation, or other form intended for the purpose.

1.2 This method measures the critical radiant flux at flame-out. It provides a basis for estimating one aspect of fire exposure behavior for attic floor insulation. The imposed radiant flux embraces the thermal radiation levels likely to impinge on the floor of an attic whose upper surfaces are heated by solar radiation and exposed to an open flame.

2. SUMMARY OF METHOD

2.1 The basic elements of the test chamber (Figure 1) are: 1) an air-gas fueled radiant heat energy panel inclined at 30° and directed at 2) a horizontally-mounted attic floor insulation specimen (Figure 2). The radiant panel generates a radiant energy flux distribution ranging along the 100-cm length of the test specimen from a nominal maximum of 1.0 watts/cm^2 to a minimum of 0.1 watts/cm^2. The test is initiated by open flame ignition from a pilot burner. The distance burned to flame-out is converted to watts/cm^2 from the flux profile graph (Figure 8) and reported as critical radiant flux, watts/cm^2.

3. SIGNIFICANCE

3.1 This method of test is designed to provide a basis for estimating one aspect of the fire exposure behavior of an attic insulation in a building attic. The test environment is intended to simulate conditions that have been observed and defined in full-scale attic experiments.

3.2 The test is intended to be suitable for regulatory purposes, specification acceptance, design purposes, or development and research.

3.3 The fundamental assumption inherent in the test is that "critical radiant flux" is one measure of the sensitivity to flame spread of attic floor insulation in a building attic.

3.4 The test is applicable to attic floor insulation specimens installed by acceptable installation practice.

4. DEFINATION OF TERMS

4.1 Critical Radiant Flux is the level of incident radiant heat energy on the attic floor insulation system at the most distant flame-out point. It is reported as watts/cm^2 (Btu/ft^2 s).

4.2 Flux Profile is the curve relating incident radiant heat energy on the specimen plane to distance from the point of initiation of flaming ignition, i.e., 0 cm.

4.3 Total Flux Meter is the instrument used to measure the level of radiant heat energy incident on the specimen plane at any point.

4.4 Black Body Temperature is the temperature of a perfect radiator—a surface with an emissivity of unity and, therefore, a reflectivity of zero.

5. RADIANT PANEL TEST CHAMBER—CONSTRUCTION AND INSTRUMENTATION

5.1 The radiant panel test chamber employed for this test shall be located in a draft-protected laboratory.

5.1.1 The radiant panel test chamber, Figures 3 and 4, shall consist of an enclosure 140 cm (55 in) long by 50 cm (19 ½ in) deep by 71 cm (28 in) above the test specimen. The sides, ends and top shall be of 1.3 cm (½ in) calcium silicate board, such as Marinite XL, 0.58 g/cm^3 (36 lbs/ft^3) nominal density, with a thermal conductivity @ 200 °F of 0.96 cal (g)/hr cm^2 deg C per cm [0.77 Btu/ (hr) (ft^2) (deg F per in)]. One side shall be provided with an approximaley 10 cm x 110 cm (4 x 44 in) draft tight fire resistance glass window so that the entire length of the test specimen may be observed from outside the fire test chamber. On the same side and below the observation window is a door which, when open, allows the specimen platform to be moved out for mounting or removal of test specimens. A draft tight fire resistant observation window may be installed at the low flux end of the chamber.

5.1.2 The bottom of the test chamber shall consist of a sliding steel platform which has provisions for rigidly securing the test specimen holder in a fixed and level position. The free, or air access, area around the platform shall be in the range of 1950–3500 cm^2 (300-500 sq in).

5.1.3 The top of the chamber shall have an exhaust stack with interior dimensions of 12.5 cm (5 in) wide by 38 cm (15 in) deep by 30 (12 in) high at the opposite end of the chamber from the radiant energy source.

5.2 The radiant heat energy source shall be a panel of porous refractory material mounted in a cast iron frame, with a radiation surface of 30.5 x 45.7 cm (12 by 18 in). It shall be capable of operating at temperatures up to 816 °C (1500 °F). The panel fuel system shall consist of a venturi-type aspirator for mixing gas and air at approximately atmospheric pressure, a clean dry air supply capable of providing 28.3 NTP m^3 per hr (1000 Standard Cubic Feet per Hour) at 7.6 in) of water, and suitable instrumentation for monitoring and controlling the flow of fuel to the panel.

5.2.1 The radiant heat energy panel is mounted in the chamber at 30° to the horizontal specimen plane. The horizontal distance from the 0 mark on the specimen fixture to the bottom edge (projected) of the radiating surface of the panel is 8.9 cm (3½ in). The panel to specimen vertical distance is 14 cm (5½ in) (see Figure 3). The angle and dimensions given above are critical in order to obtain the required radiant flux.

5.2.2 The radiation pyrometer for standardizing the thermal output of the panel shall be suitable for viewing a circular area 25.4 cm (10 in) in diameter at a range of about 1.37 m (54 in). It shall be calibrated over the black body temperature range of 490–510 °C (914–950 °F) in accordance with the procedure described in Appendix A.

5.2.3 A high impedance potentiometer voltmeter with a suitable millivolt range shall be used to monitor the output of the radiation pyrometer described in 5.2.2.

5.3 The dummy holder (see Figure 5), is constructed from heat-resistance stainless steel[1] having overall dimension of 115 cm (45 in) by 32 cm (12¾ in) with a specimen opening of 20 cm (7.9 in) x 100 cm (40 in). Six slots are cut in the flange on either side of the holder to reduce warping. The holder is fastened to the platform with two stud bolts at each end.

5.4 The specimen tray (see Figure 6) is constructed from heat-resistant stainless steel[1] having overall dimensions of 110 cm (43.3 in) by 27.3 cm (10.8 in); the depth of the tray is 5 cm (2 in). The flanges of the specimen tray are drilled to accommodate two stud bolts at each end; the bottom surface of the flange is 2.1 cm (0.83 in) below the top edge of the specimen tray.

5.5 The pilot burner, used to ignite the specimen, is a commercial propane venturi torch[2] with an axially symmetric burner tip having a propane supply tube with an oriface diameter of 0.00076 cm (0.003 in). In operation, the propane flow is adjusted to give a pencil flame blue inner cone length of 1.3 cm (½ in). The pilot burner is positioned so that the flame generated will impinge on the centerline of the specimen at the 0 distance burned point at right angles to the specimen length (see Figures 3 and 4). The burner shall be capable to being swung out of the ignition position so that the flame is horizontal and at least 5 cm (2 in) above the specimen plane.

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[1] AISI Type 300 (UNA–N08330) or equivalent, thickness 0.198 cm (0.078 in).
[2] Bernz-O-Matic TX 101 or equivalent.

5.6 Two 0.32 cm (⅛ in) stainless steel sheathed grounded junction chromel alumel thermocouples [3] are located in the Flooring Radiant Panel Test Chamber (see Figures 3 and 4). The chamber thermocouple is located in the longitudinal central vertical plane of the chamber 2.5 cm (1 in) down from the top and 10 cm (4 in) back from the inside of the exhaust stack. The exhaust stack thermocouple is centrally located 15.2 cm (6 in) from the top.

5.6.1 An indicating potentiometer with a range of 100–500°C (212–932°F) may be used to determine the chamber temperatures prior to a test.

5.7 An exhaust duct with a capacity of 28.3–85 NTP m^3 per minute (1000–3000 SCFM) decoupled from the chamber stack by at least 7.6 cm (3 in) on all sides and with an effective area of the canopy slightly larger than the plane area of the chamber with the specimen platform in the out position is used to remove combustion products from the chamber. With the panel turned on and the dummy specimen in place, there should be no measurable difference in air flow through the chamber stack with the exhaust on or off.

5.8 The dummy specimen which is used in the flux profile determination shall be made of 1.9 cm (¾ in) inorganic 0.58 g/cm^3 (36 lbs/ft^3) nominal density calcium silicate board, such as Marinite –L (see Figure 5). It is 25 cm (10 in) wide by 107 cm (42 in) long with 2.7 cm (1/16 in) diameter holes centered on and along the centerline at the 10, 20, 30, . . . , 90 cm locatios, measured from the maximum flux end of the specimen.

5.8.1 The total heat flux transducer used to determine the flux profile of the chamber in conjunction with the dummy specimen should be of the Schmidt-Boelter [4] type, have a range of 0–1.5 watts/cm^2 (0–1.32 Btu/ft^2 s), and shall be calibrated over the operating flux level range of 0.10 to 1.5 watts/cm^2 in accordance with the procedure outlined in Appendix A. A source of 15–25°C cooling water shall be provided for this instrument.

5.8.2 A high impedence or potentiometric voltmeter with a range of 0–10 m.v. and reading to 0.01 m.v. shall be used to measure the output of the total heat flux transducer during the flux profile determination.

5.9 A timer shall be conveniently mounted in the chamber for measuring preheat and pilot contact time.

6. SAFETY PROCEDURES

6.1 The possibility of a gas-air fuel explosion in the test chamber should be recognized. Suitable safeguards consistent with sound engineering practice should be installed in the panel fuel supply system. These may include one or more of the following: 1) a gas feed cut-off activated when the air supply fails, 2) a fire sensor directed at the panel surface that stops fuel flow when the panel flame goes out, 3) a commercial gas water heater or gas-fired furnace pilot burner control thermostatic shut-off which is activated when the gas supply fails or other suitable and approved device. Manual reset is a requirement of any safeguard system used.

6.2 In view of the potential hazard from products of combustion, the exhaust system must be so designed and operated that the laboratory environment is protected from smoke and gas. The operator should be instructed to minimize his exposure to combustion products by following sound safety practice, e.g., insure exhaust system is working properly, wear appropriate clothing including gloves, et al.

7. SAMPLING

7.1 The samples selected for testing shall be representative of the product.

7.2 Standard ASTM sampling practice shall be followed where applicable, see ASTM Method E–122.

8. TEST SPECIMENS

8.1 The test specimen shall be attic floor insulation of sufficient size to fill the specimen tray to a depth of 5 cm (2 in).

8.2 Insofar as possible, the attic floor insulation specimen should simulate actual installation practice. Typical examples follow:

8.2.1 Loose-fill insulation blown in to fill the tray, then carefully screeded to provide a depth of 5 cm in the tray.

8.2.2 Loose-fill insulation poured in to fill the tray, then carefully screeded to provide a depth of 5 cm in the tray.

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[3] Thermocouples should be kept clean to insure accuracy of readout.
[4] Medtherm 64–2–20 will meet this requirement.

8.2.3 Insulation batts sliced to a depth of 5 cm and cut to fit into the tray.
8.2.4 Foam board insulation cut to fit into the tray to a deph of 5 cm.
8.3 A minimum of three specimens per sample shall be tested.
8.4 The density of the specimen tested shall be determined by weighing the specimen tray just prior to testing.

9. RADIANT HEAT ENERGY FLUX PROFILE STANDARDIZATION

9.1 In a continuing program of tests, the flux profile shall be determined not less than once a week. Where the time interval between tests is greater than one week, the flux profile shall be determined at the start of the test series.
9.2 Mount the dummy specimen in the mounting frame and attach the assembly to the sliding platform.
9.3 With the sliding platform out of the chamber, ignite the radiant panel. Allow the unit to heat for one hour. The pilot burner is off during this determination. Adjust the fuel mixture to give an air-rich flame. Make fuel flow settings to bring the panel to an apparent black body temperature as measured by the radiation pyrometer, of about 500°C (932°F), and the chamber temperature to about 180°C (356°F). When equilibrium has been established, move the specimen platform into the chamber.
9.4 Allow 0.5 hours for the closed chamber to equilibrate.
9.5 Measure the radiant heat energy flux level at the 40 cm point with the total flux meter instrumentation. This is done by inserting the flux meter in the opening so that its detecting plane is 0.16–0.32 cm (1/16–1/8 in) above and parallel to the plane of the dummy specimen and reading its output after 30± 10 seconds. If the level is within the limits specified in 9.6 the flux profile determination is started. If it is not, make the necessary adjustments in panel fuel flow. A suggested flux profile data log format is shown in Figure 7.
9.6 The test shall be run under chamber operating conditions which give a flux profile as shown in Figure 8. The radiant heat energy incident on the dummy specimen shall be between 0.87 and 0.95 W/cm^2 (0.77 and 0.83 Btu/ft^2 sec) at the 20 cm point, between 0.48 and 0.52 W/cm^2 (0.42 and 0.46 Btu/ft^2 sec) at the 40 cm point and between 0.22 and 0.26 W/cm^2 (0.19 and 0.23 Btu/ft^2 sec) at the 60 cm point.
9.7 Insert the flux meter in the 10 cm opening following the procedure given in 9.5 above. Read the m.v. output at 30 ± 10 seconds and proceed to the 20 cm point. Repeat the 10 cm procedure. The 30 — 90 cm flux levels are determined in the same manner. Following the 90 cm measurement, make a check reading at 40 cm. If this is within the limits set forth in 9.6, the test chamber is in calibration and the profile determination is completed. If not, carefully adjust fuel flow, allow 0.5 hours for equilibrium and repeat the procedure.
9.8 Plot the radiant heat energy flux data as a function of distance along the specimen plane on rectangular coordinate graph paper. Carefully, draw the best smooth curve through the data points. This curve will hereafter be referred to as the flux profile curve.
9.9 Determine the open chamber apparent black body and chamber temperatures that are identified with the standard flux profile by opening the door and moving the specimen platform out. Allow 0.5 hours for the chamber to equilibrate. Read the radiation pyrometer output and record the apparent black body temperature in °C. This is the temperature setting that can be used in subsequent test work in lieu of measuring the radiant flux at 20 cm, 40 cm, and 60 cm using the dummy specimen. The chamber temperature also should be determined again after 0.5 hours and is an added check on operating conditions.

10. CONDITIONING

10.1 Test speciments are to be conditioned to equilibrium or a minimum of 48 hours, whichever is greater, at 21 ± 3 °C (69.8 ± 5.4 °F) and a relative humidity of 50 ± 5 percent immediately prior to testing.

11. TEST PROCEDURE

11.1 With the sliding platform out of the chamber, ignite the radiant panel. Allow the unit to heat for one hour.[5] Read the panel apparent black body tempera-

[5] It is recommended that a sheet of inorganic millboard be used to cover the opening when the hinged portion of the front panel is open and the specimen platform is moved out of the chamber. The millboard is used to prevent heating of the specimen and to protect the operator.

ture and the chamber temperature. If these temperatures are in agreement to within ±5 °C with those determined in accordance with 9.9 above, the chamber is ready for use.

11.2 Mount the specimen tray on the sliding platform and position with stud bolts (see Figure 9).

11.3 Ignite the pilot burner, move the specimen into the chamber, and close the door. Start the timer. After 2 minutes preheat, with the pilot burner on and set so that the flame is horizontal and 5 cm above the specimen, bring the pilot burner into contact with the center of the specimen at the 0 cm mark. Leave the pilot burned flame in contact with the specimen for 5 minutes, then remove to a position 5 cm above the specimen and leave burning until the test is terminated.

11.4 If the specimen does not ignite within 5 minutes following pilot burner flame application, the test is terminated by extinguishing the pilot burner flame. For specimens that do ignite, the test is continued until the flame goes out. Observe and record significant phenomena, such as discoloration, charring, smoldering, etc.

11.5. When the test is completed, the door is opened, the specimen platform is pulled out.

11.6 Measure the distance burnd, i.e., the point of farthest advance of the flame front, to the nearest 0.1 cm. From the flux profile curve, convert the distance to watts/cm^2 critical radiant heat flux at flame out. Read to two significant figures. A suggested data log format is shown in Figure 10.

11.7 Remove the specimen tray from the moveable platform.

11.8 The succeeding test can begin as soon as the panel apparent black body temperature and chamber are verified (see 11.1). The specimen tray should be at room temperature prior to insertion of the next specimen.

12. REPORT

12.1 The report shall include the following:

12.1.1 Description of the attic floor insulation.

12.1.2 Description of the procedure used to prepare the floor insulation specimen.

12.1.3 Number of specimens tested, including critical radiant flux and density for each specimen as tested.

12.1.4 Observations of the burning characteristics of the specimen, such as discoloration, charring, smoldering, etc.

APPENDIX A—PROCEDURE FOR CALIBRATION OF RADIATION INSTRUMENTATION

A1. RADIATION PYROMETER

A1.1 Calibrate the radiation pyrometer by means of a conventional black body enclosure placed within a furnace and maintained at uniform temperatures of 490, 500, and 510 °C (914, 932, 950 °F). The black body enclosure may consist of a closed chrometal metal cylinder with a small sight hole in one end. Sight the radiation pyrometer upon the opposite end of the cylinder where a thermocouple indicates the black body temperature. Place the thermocouple within a drilled hole and in good thermal contact with the black body. When the black body enclosure has reached the appropriate temperature equilibrium, read the output of the radiation pyrometer. Repeat for each temperature.

A2. TOTAL HEAT FLUX METER.

A2.1 The total flux meter shall be calibrated by the National Bureau of Standards,[1] or alternatively, its calibration shall be developed by transfer calibration methods with an NBS calibrated flux meter. This latter calibration shall make use of the radiant panel tester as the heat source. Measurements shall be made at each of the nine dummy specimen positions and the mean value of these results shall constitute the final calibration.

A2.2 It is recommended that each laboratory maintain a dedicated calibrated reference flux meter against which one or more working flux meters can be compared as needed. The working flux meters should be calibrated according to the procedure of A2.1 at least once per year.

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[1] Direct requests for such calibration services to the: Optical Radiation Section, 232.04, National Bureau of Standards, Washington, D.C. 20243.

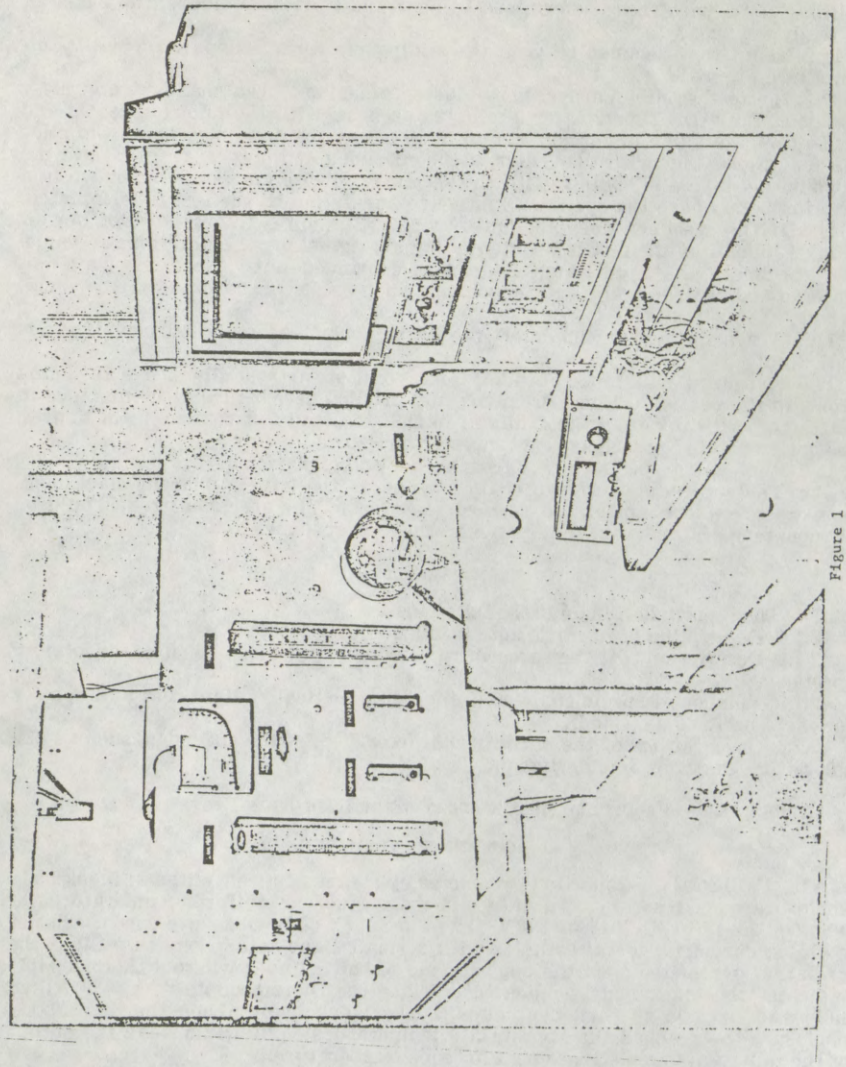


Figure 1

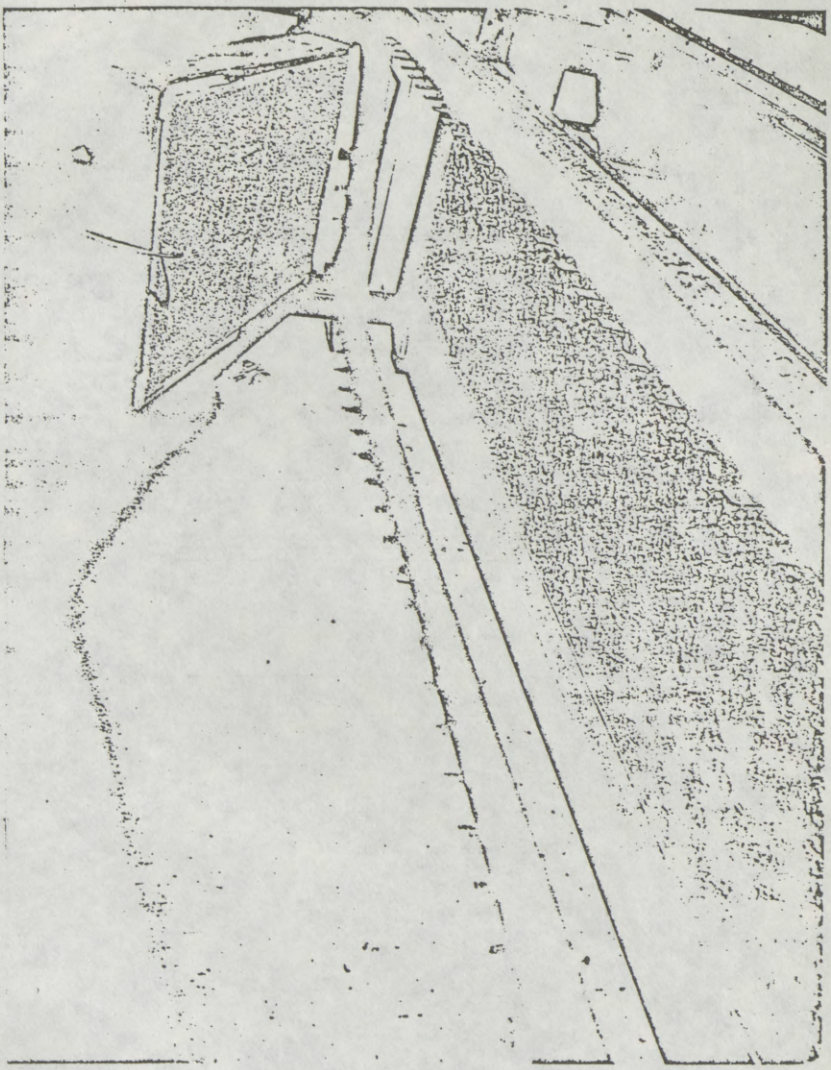
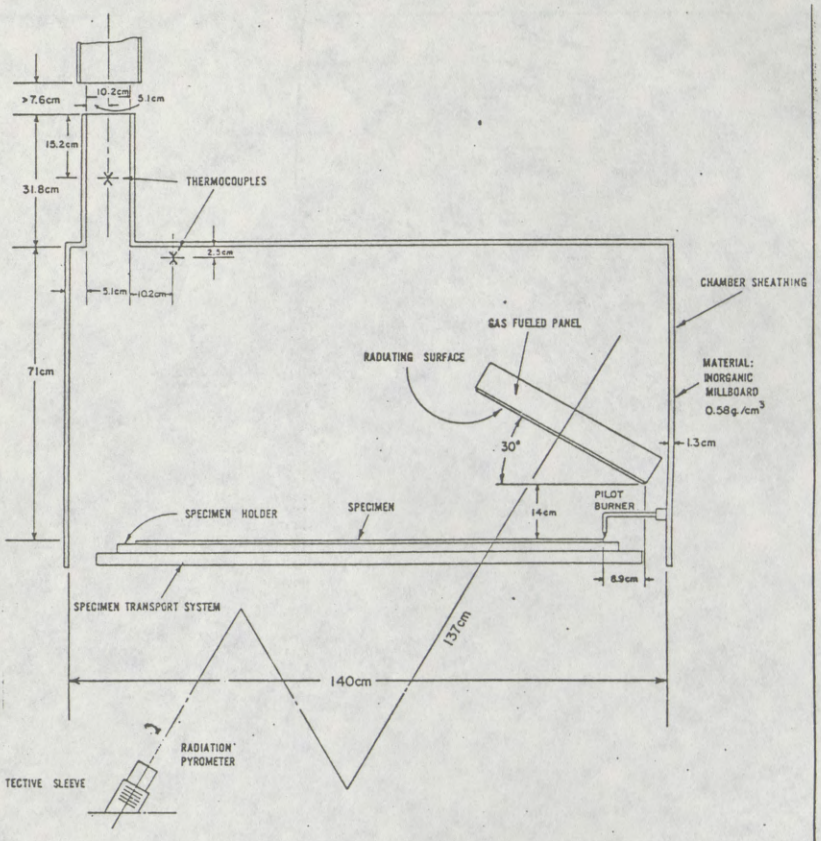
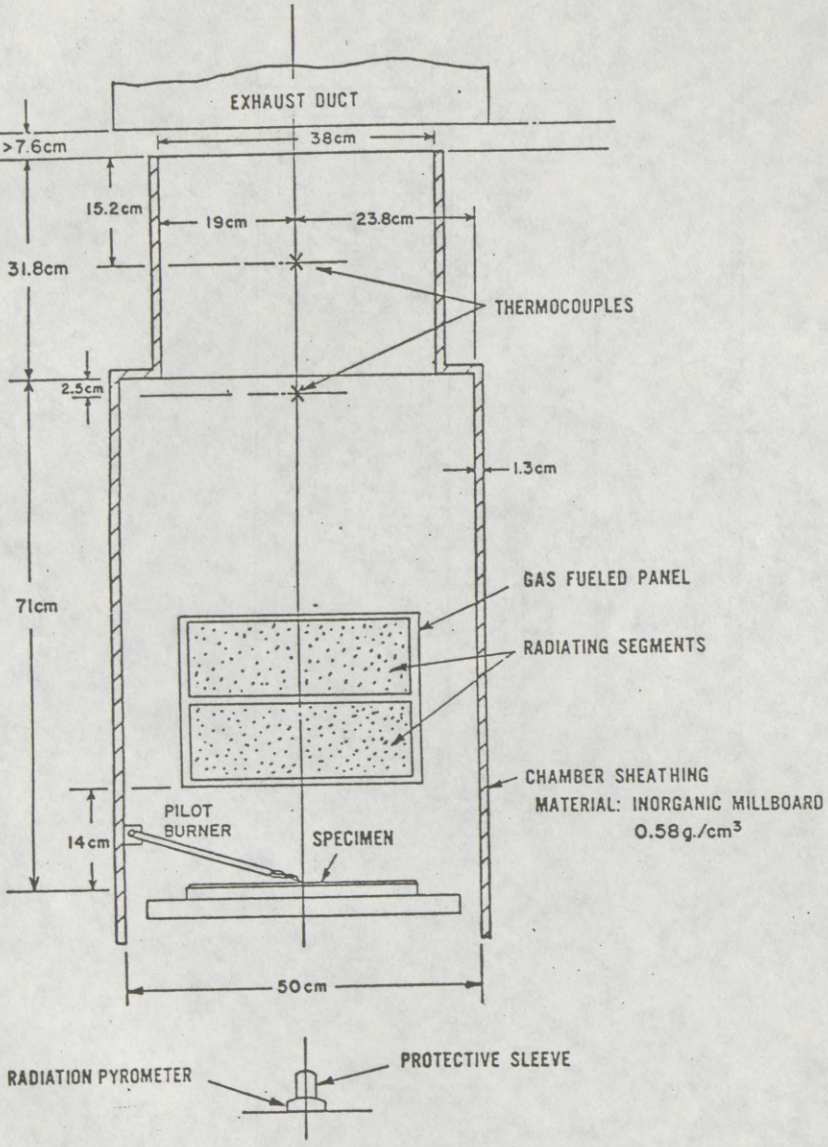


Figure 2



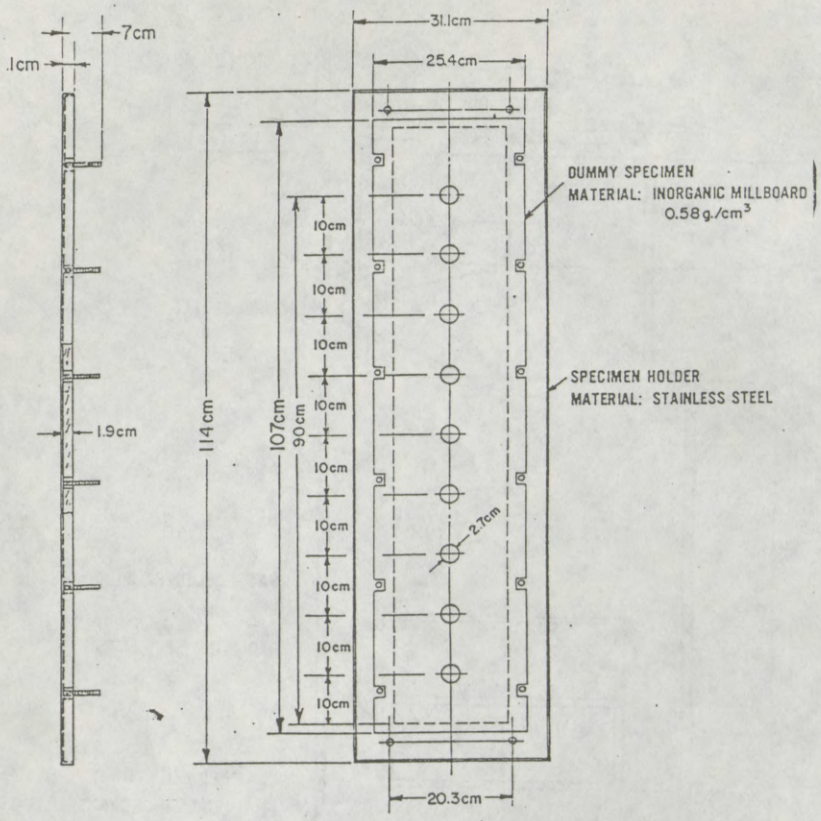
FLOORING RADIANT PANEL TESTER SCHEMATIC
SIDE ELEVATION

Figure 3



FLOORING RADIANT PANEL TESTER SCHEMATIC
LOW FLUX END, ELEVATION

Figure 4



DUMMY SPECIMEN IN SPECIMEN HOLDER

Figure 5

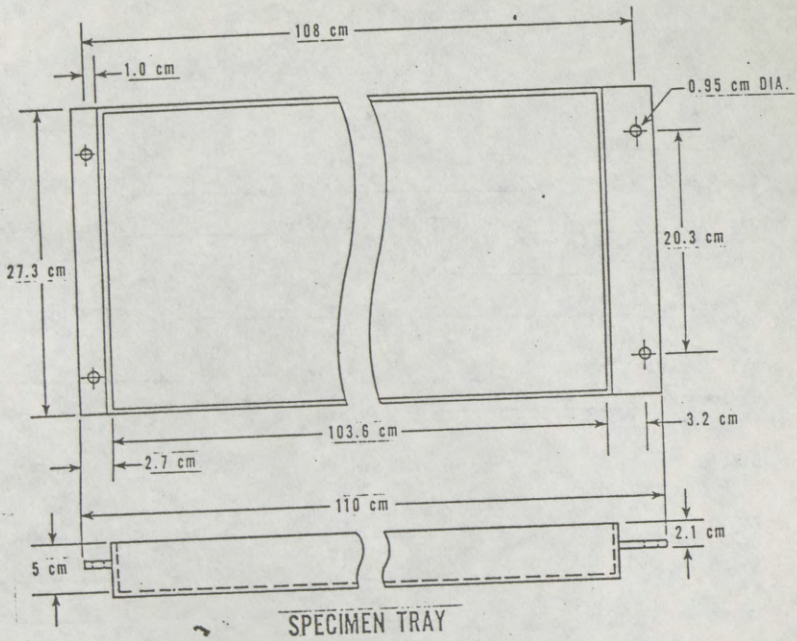

108 cm
1.0 cm
0.95 cm DIA.
27.3 cm
20.3 cm
3.2 cm
103.6 cm
2.7 cm
110 cm
2.1 cm
5 cm
SPECIMEN TRAY

Figure 6

RADIANT FLUX PROFILE

Date_____

Black Body Temperature_____m.v. _____°C (°F)

Gas Flow_____$NTPm^3H$ (SCFH) Air Flow_____$NTPm^3H$ (SCFH)

Room Temperature_____°C (°F)

Air Pressure _____ Gas_____cm (in) of H_2O

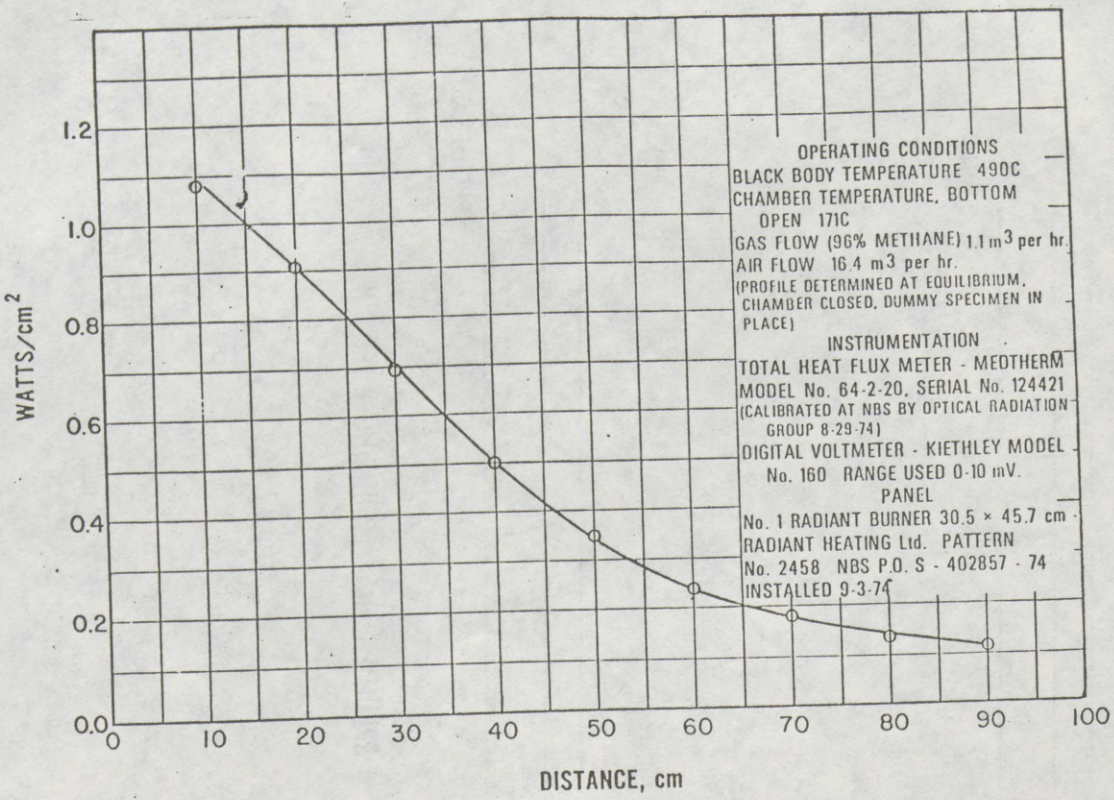
Flux Meter Conversion Factor_____

Radiometer No._____ from Calibration on_____

Distance (cm)	MV	Watts/cm^2
10	_____	_____
20	_____	_____
30	_____	_____
40	_____	_____
50	_____	_____
60	_____	_____
70	_____	_____
80	_____	_____
90	_____	_____

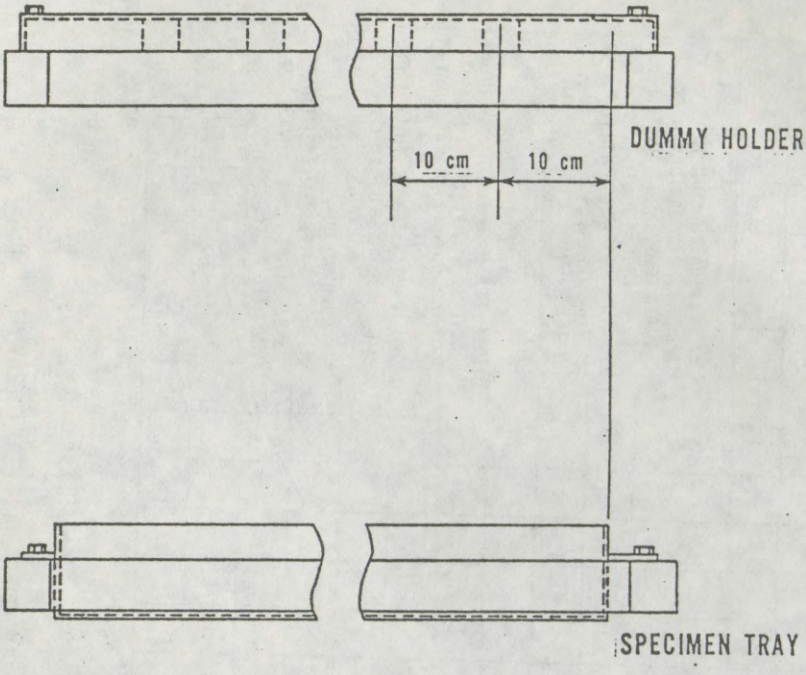
Signed _____

Figure 7. Flux Profile Data Log Format



STANDARD RADIANT HEAT ENERGY FLUX PROFILE

Figure 8



SPECIMEN TRAY MOUNTING POSITION

Figure 9

Test Number _____ Date _____ Time _____

Laboratory _____

Specimen Identification/Code No. _____

Test Assembly: _____

Panel: Angle _____° Temperature _____°C (°F)

Flow: Gas _____ $NTPm^3H$ (SCFH) Air _____ $NTPm^3H$

Pressure, cm (in) H_2O: Initial, Air _____ Gas _____

Chamber Temperature (Initial) _____°C (°F)

Room: Temperature _____°C (°F) Hood Draft _____cm (in) water

Flame Front Out _____ min.

All Flame Out _____ min.

Total Burn Length _____cm (in)

Critical Radiant Flux watts/cm^2 _____

Flux Profile Reference _____

Observations:

Signed _____

Figure 10. Insulation Radiant Panel Test Data Log Format

ATTACHMENT No. 2

APPENDIX C—STANDARD METHOD OF TEST FOR SMOLDERING COMBUSTION CHARACTERISTICS OF MATERIALS USED FOR THERMAL INSULATION

1. SCOPE

1.1 This method evaluates the tendency of thermal insulation in the form of loose fill, batts or blankets to support smoldering combustion. It is applicable to any insulation that is capable of being installed in the specimen holder at the density and in the physical state of the material in its intended use.

1.2 The purpose of this test is to determine the tendency of the material under test to support and propagate smoldering combustion subsequent to exposure to a standard ignition source.

2. SUMMARY OF METHOD

2.1 This method measures the extent and progression of smoldering from a lighted cigarette inserted vertically, with the lit end upward, into the center of an insulation material sample.

2.2 The extent of damage to the test specimen, as indicated by percent of specimen weight loss and by the extent of charring, are recorded in this test, as well as any other observable combustion behavior, such as progression to flaming combustion.

3. SIGNIFICANCE

3.1 This method of test is designed to provide a basis for evaluating the tendency of insulation to support smoldering combustion when subjected to a small ignition source. The lighted cigarette represents a typical ignition source which may make contact with insulation installed in residential buildings.

4. APPARATUS

4.1 Specimen holder.

4.1.1 The specimen holder shall be an open-top 20 ± 0.2 cm square box, 10 ± 0.2 cm in height, fabricated from a single piece of 0.61 ± 0.08 mm thick (24 U.S. Standard gauge) stainless steel sheet with the vertical edges of the box overlapped, not to exceed to 7 mm in seam width, and soldered so as to be watertight.

4.1.2 The specimen holder during test use shall rest upon a pad of inert insulation, such as of glass or ceramic fibers, of at least 1.5 cm in thickness and approximating the dimensions of the bottom of the specimen holder. The density of the insulation shall be 50 ± 15 Kg/m^3.

4.2 Ignition source.

4.2.1 The ignition source shall be a cigarette without filter tip made from natural tobacco, 85 ± 2 mm long with a tobacco packing density of 0.270 ± 0.020 g/cm^3 and a total weight of 1.1 ± 0.1 gm.

4.3 Balance.

4.3.1 A balance of 1 kg capacity, accurate at least to 0.1 g, and provided with a suitable pan is required.

4.4 Test area.

4.4.1 The test area shall be draft-protected and equipped with a suitable system for exhausting smoke and/or noxious gases produced by testing. Air velocities as measured by a hot wire anemometor in the vicinity of the surface of the sample shall not exceed 0.5 m/sec.

4.4.2 The test area shall be maintained at 23±5 °C and 50±5 percent relative humidity.

4.3 Sampling.

4.3.1 At least three samples shall be prepared of any material undergoing test. Samples shall be taken in a manner to encompass possible variations in material composition (for example, from the top, middle, and bottom of bagged insulation).

4.3.2 Samples of material to be tested shall be selected, prepared, and handled in a manner to avoid differences in the composition and condition of the sample from that of the sampled material in its intended use.

5. TEST PROCEDURE

5.1 Samples and cigarettes shall be conditioned in air at a temperature of 23±5 °C and a relative humidity of 50± percent for at least 12 hours piror to test. Samples and cigarettes shall be removed from any packaging and exposed in a

suitable manner to permit free movement of air around them during conditioning.

5.2 Sample material shall be loaded into specimen holders to uniformly and homogeneously fill the holders level and flush to the top edges of the holders. Specimen weight shall be measured, at least to the nearest 0.2 g, by weighing the holder before and after filling. The density of the specimen contained in a holder (volume 4 *l*, 0.14 ft^3) shall be calculated and shall be not less than the density recommended for the material in its intended use.

5.3 With the sample in the holder and placed on the insulated pad, a rod of 8 mm diameter with a pointed end shall be inserted vertically into the center of the material being tested and withdrawn to form an appropriate cavity for the ignition source. A well lit cigarette, burned not more than 8 mm (0.3 in), shall be inserted in the formed cavity, with the lit end upward and flush with the sample surface.

5.4 Burning of the cigarette and specimen shall be allowed to proceed undisturbed in the test area for at least 2 hours or until the smoldering is no longer progressing.

5.5 After completion of burning and after the holder has cooled down to 25 °C, the specimen holder with its material residue shall be weighed, at least to the nearest 0.2 g, and the percent weight loss of the original specimen calculated.[1]

5.6 After completion of burning, the minimum distance of charring or smoldering of the material from the edge of the holder shall be measured. In cases where the material tested has smoldered to some extent, the material residue shall be carefully removed by layers and the closest proximity of charred material to the vertical sides of the specimen holder determined to the nearest 0.5 cm.

6. CRITERIA

6.1 Materials tested by this method shall be judged in terms of the following criteria:

6.1.1 Weight loss of each specimen expressed as a percent of its initial weight.

6.1.2 Charring of specimen in terms of progression to within 4 cm of the sides of the specimen holder.

6.1.3 Evidence of flaming combusion of the specimen during testing.

7. REPORT

7.1 The report shall include the following:

7.1.1 Identification and/or description of the material being tested.

7.1.2 The original weight of specimens tested and their calculated density.

7.1.3 The final weight of specimens tested and the percent weight loss they have experienced during testing.

7.1.4 The closest distance that charring in specimens tested has approached the sides of the specimen holder during testing, when appreciable charring of a specimen has occurred.

7.1.5 Any observations of the burning characteristics of the specimens that could be pertinent to the material's performance in its intended use.

Mr. ECKHARDT. The GSA specification HH–I–515C states when applications are made requiring higher flame spread resistance it is recommended that class 25 loose fill thermal installation be used. Do you think that that application requiring higher flame spread resistance—do you think that that term would be applicable to residential attics?

Mr. MILLER. I would think so, yes, sir.

Mr. ECKHARDT. Then I gather from your statement that in your view 515C standards do not provide any measurable amount of safety to homeowners.

Mr. MILLER. 515C——

Mr. ECKHARDT. Or would not.

Mr. MILLER. 515C does require some measure of fire retardation in the product. However, we don't know just from the flame spread classification specifically how much protection this is inasmuch as that procedure does not simulate the actual attic conditions.

[1] The weight of the cigarette residue is ignored in this exercise and may, in some cases, result in a slight gain in sample weight.

Mr. ECKHARDT. At least with respect to the testing that provision was not reliable assurance of safety in a home?

Mr. MILLER. Inasmuch as it has not been correlated to what actually happens in the home.

Mr. ECKHARDT. Yes. When do you expect final 515D revision?

Mr. MILLER. We expect 515D to be finalized within 60 to 90 days.

Mr. ECKHARDT. You had earlier said it would be ready in March but there has been some slippage on that.

Mr. MILLER. There have been some additional requirements to come to conferences and things that have slipped it, yes.

Mr. ECKHARDT. Have any of the Federal agencies pressured GSA to delay the standard?

Mr. MILLER. When you say "pressured" I would say, no, we have not been pressured. They have made some requests that additional time be allowed.

Mr. ECKHARDT. Which ones and why?

Mr. MILLER. Specifically DOE had in their comments to us requested an extension of 6 months— this was back as of December, the first part of December—in order for, in their opinion, more data to be gathered or for more tests to be conducted, and more people become familiar with the procedures. I don't have the specific comments here with us but that is the only agency that specifically asked for an extension.

Mr. ECKHARDT. Why was the cigarette selected for use in the smoldering test?

Mr. MILLER. The idea of smoldering is that it is recognized that cellulose material under certain conditions is going to smolder. The point of the test is that the smoldering ignition does not propogate. The cigarette provides an ignition source. It is not specifically intended to simulate the fact that somebody drops a cigarette in the attic.

Mr. ECKHARDT. How many testing labs have the capacity of doing the Steiner tunnel test?

Mr. MILLER. How many testing labs? Are you talking about independent testing labs as opposed to those owned by companies?

Mr. ECKHARDT. Both.

Mr. MILLER. If you will wait a second, we might have that.

To our knowledge there are 14 tunnels in the country.

Mr. FREEMAN. The breakdown on that is there are eight independent and eight industry E–84 tunnels in the country that we know of today.

Mr. ECKHARDT. How many have the capability to do the radiant panel test?

Mr. MILLER. Well, some of those labs that have tunnels would not necessarily have the capability to run the radiant panel test. You want them to have both capabilities or just those that have the capability to perform the radiant panel test.

Mr. ECKHARDT. Just those that have the capability of running the radiant panel test at the moment. I gather it would be some of those labs and some additional ones, right?

Mr. FREEMAN. Well, what I would like to comment on there, Mr. Chairman, is that the flooring radiant panel configuration is not by any means a new test method, it has been used extensively in the carpet industry for the last 5 or 6 years.

A lot of the data base that goes with the radiant panel testing has been generated through the carpet industry. With that in mind we are

aware of 35 radiant panels in the United States today, not necessarily meaning that they are geared up for the modifications to run insulation but there are 35 radiant panels in the country.

Mr. ECKHARDT. But there would be no very substantial problem in gearing up to do that I gather; the equipment is not expensive.

Mr. MILLER. That is my understanding.

Mr. FREEMAN. Yes.

Mr. ECKHARDT. Earlier witnesses have criticized the 515D standard because of the inadequate substantiation of the test result. Do you think these criticisms are valid?

Mr. MILLER. We would say that in working with the Bureau of Standards, they have conducted tests showing that performance in the radiant panel does relate to performance on a full scale basis. To that extent we consider the radiant panel a more relevant procedure and one which correlates to actual attic conditions. This has not been shown for the tunnel, at least has not been shown to us.

Mr. ECKHARDT. Could you briefly describe the testing that has been done by you or the Bureau of Standards to validate the test methods required? I understand 515D——

Mr. MILLER. Briefly describe the procedures or the amount or—I am not sure what you are after.

Mr. ECKHARDT. Well, how much testing and what have been the results?

Mr. MILLER. We don't have all that specifically available but if you would hold the record open we could obtain that material.

Mr. ECKHARDT. Without objection, the record will be held open for that purpose.

[The information requested was not available to the subcommittee at the time of printing.]

Mr. FREEMAN. One comment on the radiant panel testing involving cellulose insulation and mineral fiber insulation. Back on September 15, 1977, there was a meeting held at the Bureau of Standards in the Fire Research Center with industry representatives, association representatives, proposing to them the findings that NBS has come up with and recommending at that time or substitution for the E–84 tunnel test in the Federal specifications. That for the record has been roughly 5 to 6 months now.

Mr. ECKHARDT. Thank you very much for your testimony here today.

Mr. MILLER. Thank you.

Mr. ECKHARDT. Mr. Philip Stern, Boulder district attorney's office.

STATEMENT OF PHILIP S. STERN, CONSULTING ENGINEER, METROPOLITAN DENVER DISTRICT ATTORNEY'S CONSUMER OFFICE

Mr. STERN. Mr. Chairman, members of the committee, I am Philip S. Stern, consulting engineer with the Metropolitan Denver District Attorney's Consumer Office where I serve as a consulting engineer under contract with the Boulder district attorney's office where I am directly employed. This statement today is delivered on behalf of the Metropolitan Denver Consumer Office, however.

I will just very briefly summarize the statement.

Basically our office has had 3 years worth of experience in dealing with consumer problems related to the home insulation industry. These

problems because of our inability to bring them under the control at a local level through various means of criminal and civil action resulted in our petitioning the Consumer Product Safety Commission in October of 1976 alleging a variety of health and safety problems related to all categories of home insulation—the fibrous glass, the cellulose material and the plastic foams. The comments I make today are confirmed strictly to those concerning cellulose which is the nature of the bill.

You are aware, I believe, of what has transpired in the interim with the Consumer Product Safety Commission—very little until recently. This bill, which our office totally supports, is what we consider the first attempt by any agency to begin the process of providing some rules and regulations for an industry that has been typically unregulated.

Approximately 2 years ago fires of the nature of 1 to 12—to this day I am not sure of the exact numbers that occurred—were in Denver by a particular company that was operating out of Broomfield, Colo., a suburb of the Denver metropolitan area. The company was a cellulosic manufacturer, it was manufacturing materials to no particular specifications, had basically no idea that standards existed at the time that would have been the HH–I–515B version, and this material was used in a Government sponsored low income winterization program and this is where these fires did occur.

In attempting to deal with the manufacturer we found ourselves in the sort of Catch 22 situation. We felt quite certain that there were some unsavory dealings that had gone on but found no way that we could really define what flammability meant or what a good quality of standard in the cellulosic industry really was.

Well, I would like to deal specifically with the bill and then leave time for questions.

Specifically I am concerned about flame resistance, flammability classification by type or class, and enforcement provisions.

The bill speaks directly to implementing those "requirements for flame resistance and corrosiveness set forth in the General Services Administration's specification for cellulose insulation . . ." as have been indicated here today which already include testing for low level burning or glowing or smoldering. We want to make certain that no confusion exists in the terminology in terms of flame resistance to not include smoldering. We want to make certain that in the future if this is the way the bill was going to be presented and future revisions were to be adopted that smoldering provisions in fact could be included.

Smoldering is something that we are seeing a major problem with cellulosic materials now. I know of at least two, perhaps three situations that have occurred where smoldering has been the cause of fires recently—at least that is what the indication would be.

These materials are supposedly materials that meet all of the specifications that the city and county of Denver and that Public Service Co. of Colorado have adopted and which I referred to in my text as basically adherence to the Federal specification, adherence to the ASTM C–739, third party testing through a independent testing laboratory; in this particular case Underwriters Laboratory and a manufacturer of class 1 type of material.

A case in Denver resulted in a fire. Five rafters burned in a residence shortly after the insulation was done. Within 6 hours anyway the fire department was called although it was determined that the smoldering began instantaneously. It would seem that that fire was caused by a cigarette butt accidentally tossed in the attic. We would not know but that would certainly seem to be the indication.

An electrical check showed there was no substandard wiring. There was no circuit box in the area. There were no flues or other devices that could have served as a source of ignition. The only probability was a cigarette butt.

Another case that has occurred in Stockton, Calif., during the summer last year was where an installer's warehouse burned down. Consideration of a $100,000 lawsuit is pending right now. I don't know whether it has been filed at this point. A truckload of material had been received and had just been unloaded into the warehouse prior to the fire beginning.

The fire department in Stockton, Calif., reported after that investigation that the incident was caused by spontaneous combustion. From my knowledge of chemistry and physics and the knowledge of fire retardancy, I can find no mechanism that I would recognize anyway where spontaneous combustion could occur with the material such as this. Most probably, and it was admitted that probably smoking was going on in the area, a cigarette butt was tossed and the cigarette butt served as a source of combustion. So it becomes very important that flame resistance not only look at hot flame, one that is visible, but cool flame, one that smolders.

I have felt that it is important with the existing Federal standards that only a type 1 or class 1 material be manufactured. This is the practice that has been maintained in the city and county of Denver. The proposed modification of the Federal specification, however, eliminates such terminology. This is because of inadequacies in the test method, including its inability to duplicate the "real world" fire conditions of the attic. This is referring to the fact that the tunnel is basically upside down.

I recognize that deficiency and believe in the case of the proposed legislation that no such restriction should be placed on it. Manufacturers may still use the designation by complying with the ASTM specifications. As the legislation is for an interim standard, future specifications by CPSC and the General Services Administration will help to eliminate this problem.

Third, enforcement may be the most critical area of concern. Currently, it would be done totally by CPSC. However, I do not believe that they can adequately police this measure. The CPSC "Policy of Enforcement" states that it "will enforce vigorously all the safety rules, regulations and orders, . . . (and) will use every appropriate remedy . . . as necessary to insure compliance . . ." However, this vigorous enforcement is unusual. Part of the problem may be in the laws they administer. No provision is made for civil penalties.

This is a correction to my text. In the case of the Consumer Product Safety Act I am told and I stand corrected that civil penalties do apply. However, the problems of proof in a criminal case are that it must show that the violator actually knew that he violated safety

requirements whereas in the civil case it should be shown that he should have known. We are not sure exactly how that would happen other than telling the Consumer Product Safety Commission that perhaps a violation has occurred. If the rule cannot be enforced, it will be counterproductive.

This is then a beginning. It is not flawless, nor is it sufficient, but it will aid in eliminating some of the bad material. It will begin a rulemaking process that should have started over a year ago.

In final comment, I believe that there are legitimate manufacturers of cellulose insulation that pose no risk to the consumer. Such products, however, may not be available nationwide or easy to recognize by the consumer. As a result, the situation is critical. I urge you to get on with the task and adopt this first piece of legislation.

[Mr. Stern's prepared statement follows:]

STATEMENT OF PHILIP S. STERN, CONSULTING ENGINEER, METROPOLITAN DENVER DISTRICT ATTONEY'S CONSUMER OFFICE

I am Philip S. Stern, Consulting Engineer with the Metropolitan Denver District Attorney's Consumer Office. The Metropolitan Consumer Office is a multi-county legal entity of government which receives consumer complaints from all over the Denver Metro Area. It mediates and investigates complaints, and if it believes that there is proof of violations of the state criminal code or Consumer Protection Act, it undertakes litigation. The office serves Denver, Boulder, Adams, Arapahoe and Jefferson counties with a population of one and a half million. The office works under the direction of a contract to the District Attorney's of the five counties. It handles over 1,000 consumer complaints per month.

I am employed as Investigator for Environmental Affairs for the Boulder District Attorney's Office and a consultant-engineer with the Colorado Office of Energy Conservation and the Metropolitan Consumer Office. It is in that latter capacity that I speak to you today.

The Metropolitan Consumer Office petitioned the Consumer Product Safety Commission in October, 1976 regarding potential health and safety problems. The petition had its roots in a phone inquiry that came into the office during the first part of 1975. The energy crisis was underway and the conscientious consumer began shopping for insulation. She had heard numerous sales pitches, claims and bids from contractors. She was confused because of conflicting claims; she didn't understand terms being used, and she got a very wide range of cost estimates. She wanted advice from our office about what she should do.

Interested, I undertook an in-depth investigation, posing as a consumer shopping for insulation. Bids ranging from $300 to $2,000 for the same job were received, as well as confusing statements about one product being better than another, etc.

I found that many potentially misleading claims were used. Additionally, unproved and misleading claims about fire retardency, toxicity and miracle properties bothered me. A proliferation of new, small manufacturing companies with management which had little knowledge of proper fireproofing techniques and quality control were evident.

Several fires occurred and attempts to prosecute the particular manufacturer of cellulose insulation proved fruitless, mainly because no product specifications existed which they had to meet and no requirement for quality control was recognized. Definition of fire retardent was also very loose. Although the material was used in low income housing in a federally financed project, no specifications had been placed on the quality of the material.

During March of 1976, I consulted with a variety of agencies here in Washington, D.C. and determined that there was little that we could do as a local agency. The Consumer Product Safety Commission (CPSC) was chosen as the obvious agency to address. In October, 1976, the Metro Consumer Office submitted a petition to CPSC alleging a variety of health and safety problems with all types of insulation. That included fibrous glass, cellulose and the plastic foams. The petition, as you are aware, asked for immediate rulemaking.

You now recognize the urgency to proceed with rulemaking about one type of insulation: cellulose. We acknowledge our total support for this legislation. We

urge you to act quickly before a disaster is implemented in the name of energy conservation. We firmly believe that the consumer is being deceived with material that may be so hazardous as to endanger their wellbeing.

Nothing much has changed in the interim for the manufacturer since I first experienced the difficulties that lead to the petition. Many new companies are manufacturing cellulose in much the same way as before, with no quality control and no specifications.

I am able to conclude only one thing from my three years experience with cellulose insulation: Unsafe insulation should not be allowed on the market regardless of the difficulties that it may cause individual manufacturers.

Through my experiences, I have become knowledgeable about the intricacies of manufacturing cellulose insulation, including manufacturing techniques, chemical formulation, economics and quality control. I am convinced that safe cellulose insulation can be manufactured, today, now, at a profit, that would be safe for the consumer.

Currently, to maintain credibility, I would urge compliance with the most current version of the Federal Specification, HH–I–515, third party testing by a recognized laboratory to include labeling and follow-on service, compliance with American Society of Testing and Methods (ASTM) C–739 test requirements for cellulose insulation, agreement to manufacture only a Class 1 loose-fill cellulose product, and the maintenance of a full-time laboratory technician in a quality control lab to assure reproducible quality.

Some manufacturers do comply with the above recommendations. In the City-County of Denver, the building code requires such compliance. Additionally, the Public Service Company of Colorado's insulation program qualifies potential manufacturers in a similar way. One fairly new manufacturer's group, the Society of International Cellulose Insulation Manufacturers (SICIM) has adopted such standards. I like to encourage manufacturers to voluntary adopt such standards, but it has been insufficient to eliminate the problem.

Questions are usually asked about fire retardant chemicals and the so-called shortage of boric acid, if these stricter regulations are to be adopted. Many substances are used to impart fire retardency and anti-corrosive properties to the insulation. Boric acid, in particular, seems to be the most comprehensive and forgiving of all the chemicals used. It also acts as a fungicide and an anti-corrosion compound when formulated in neutral state. The mere presence of boric acid does not, however, make the insulation safe. The quantity used, other chemicals used, the fineness of grind and the application technique all are involved. Boric acid, in my estimation, is not in short supply. It is in limited supply from domestic producers at prices which would allow manufacturers to reap major profits. However, it is available from importers in abundant quantities. Turnkey manufacturers typically have come to expect that they can amortize their equipment in six months to a year. Using the more expensive imported chemicals reduces the profit margin and extends the amortization time.

Now, I will comment specifically on H.R. 10637. I am concerned about three major areas: flame resistance, flammibility classification by type or class, and enforcement provisions.

The bill speaks directly to implementing those "requirements for flame resistance and corrosiveness set forth in the General Service Administration's specification for cellulose insulation . . ." Additional provision is made for "amendment to such requirements promulgated by the General Services Administration . . ." Proposed Federal specifications may well include additional tests for low-level burning or glowing or smoldering. Should there be any confusion, such tests are a valuable addition of information and any interpretation of "flame resistance" should be broad enough to include all such testing methods.

I have felt that it is important with the existing Federal standards that only a Type 1 or Class 1 material be manufactured. (This refers to its flame spread in the ASTM E–84 tunnel test.) The proposed modification of the Federal specification, however, eliminates such terminology. This is because of inadequacies in the test method, including its inability to duplicate the "real-world" fire conditions of the attic. I recognize that deficiency and believe in the case of the proposed legislation that no such restriction should be placed on it. Manufacturers may still use that designation by complying with the ASTM specifications. As the legislation is for an interim standard future specifications by CPSC and the General Services Administration will help to eliminate this problem.

Enforcement may be the most critical area of concern. Currently, it would be done totally by CPSC. However, I do not believe that they can adequately police

this measure. The CPSC "Policy of Enforcement" states that it "will enforce vigorously all the safety rules, regulations and orders, . . . (and) will use every appropriate remedy . . . as necesary to ensure compliance . . ." However, this vigorous enforcement is unusual. Part of the problem may be in the laws they administer. No provision is made for civil penalties. In criminal cases, it must be shown that the violator actually knew that he had violated safety requirements, where as in civil cases it is necessary only to show that he should have known. We would wish that our agency, or any other, might enforce the ruling. If the rule cannot be enforced, it would be counter productive.

This is then a beginning. It is not flawless, nor is it sufficient. But it will aid in eliminating some of the bad material. It will begin a rulemaking process that should have started over one year ago.

In final comment, I believe that there are legitimate manufacturers of cellulose insulation that pose no risk to the consumer. Such products, however, may not be available nationwide or easy to recognize. As a result, the situation is critical. I urge you to get on with the task and adopt this first piece of legislation.

Mr. ECKHARDT. I could not help but feel, hearing your testimony, that there is something very, very wrong about our giving so much attention to other causes of fire without doing anything about the dangers of cigarettes. As you know, the Consumer Product Safety Act excludes tobacco products, I think wrongly.

Mr. STERN. Yes.

Mr. ECKHARDT. I just mention this aside, it has nothing to do with the need for providing safe insulation but your reference here to cigarettes as the cause of fires raises the question in my mind. I suppose you have had other experience as to causes of fires from cigarettes in your area other than with respect to insulation.

Mr. STERN. Yes; that is true.

Mr. ECKHARDT. You mentioned several fires occurring caused by insulation. You said somewhere between 1 and 12. Can't you get a little closer?

Mr. STERN. It depends on who you believe. Part of the difficulty is the reporting system as you are well aware.

Mr. ECKHARDT. Can't you be more specific on the number of fires where insulation played a part.

Mr. STERN. Insulation played a part in all the cases. However, as to whether the insulation was the material that first combusted, that is another question.

Mr. ECKHARDT. I see.

Mr. STERN. If one looks into the records, it becomes somewhere between one and three fires that actually the insulation material was the cause of the fire and in the other cases it is just not clear, and this relates to this one particular project.

Now there have been others. Denver seems to be running about 10 or 11 fires a year for the last 2 or 3 years that are insulation related.

Mr. ECKHARDT. In your opinion does 515C provide any meaningful protection to consumers?

Mr. STERN. If I answer the question straight, I have to say no.

Mr. ECKHARDT. Well, that is the way we want it answered.

Mr. STERN. All right. Now I have to explain why I said let's adopt it anyway if I have that opportunity.

Mr. ECKHARDT. All right.

Mr. STERN. OK. Thank you.

It is something that under the current situation we have nothing, and quite truthfully our office is very anxious that we have something and we are willing to go with anything if you really want to know the

truth. We have been living with this particular standard now a year, a year and a half. We would much rather see it implemented short term immediately than wait around for something that is better. Let's start with something and let's work it out.

Part of the difficulty as I see it is that there are a certain number of manufacturers that abide to nothing. Now I admit the sins of this particular one but at least it is a beginning.

Mr. ECKHARDT. Well, is there a possibility though that if we put into effect a standard, it will not do any good, that we may lull people into a feeling of security? You know, I sometimes feel that is one of the reasons for the very low esteem that Government has in the eyes of the public. We seem to make a lot of motion but sometimes that motion does not seem to the public to be effectual.

Mr. STERN. Yes; what you say is true. However, there is a revision coming down the pike of this particular standard and if I read the specification correctly or the legislation correctly it says that very shortly thereafter those additional procedures will be amended to it and so it is not something that is cast. Now if it were something that you were saying as an interim procedure to adopt HH–I–515C period, then my answer obviously would be to you, don't do it.

Mr. ECKHARDT. But if we do it, and if we know that we have nevertheless not assured a real fireproof material, we are doing this on very large scale. Should we not somehow require notification to the consumer that he or she is not safe as a result of compliance with the standard?

Mr. STERN. May not be safe.

Mr. ECKHARDT. Or may not be safe. In other words, this insulation may be dangerous to your safety.

Mr. STERN. Yes, I would say that if in fact there were going to be a long delay in implementing anything. If we had to wait until the Consumer Product Safety Commission under their section 7 rulemaking finally gets around to proposing what the standard is going to be, maybe we ought to place a temporary moratorium on the selling of cellulosic insulation in this country. I personally think there is a major problem.

There is a major problem. It is something that we need something today. There is an awful lot of junk that is being put into attics. Now the problem is that you as a consumer or I as a consumer, maybe we are entitled, I don't know—I am not sure I can tell the difference in many of the cases. There are situations where the bag labeling tells us now. It says the material has been manufactured to meet all Federal specifications but it never says what it is or what the results are, there is no third party testing. So I have no idea whether it is consistently occurring that way or not.

Mr. ECKHARDT. We will undoubtedly get some publicity if we ultimately pass such a bill. All Members of Congress are anxious to get credit for good things. The public will say, well, we've now got protection from danger from insulation, and we also are strongly being urged through tax credits and so forth to apply insulation in our homes.

The bag says that this product meets all standards. It would seem to me that some persons will choose to use insulation of an inferior quality when they would have been better off not to insulate their

homes at all. On balance their protection from fire may be more important than the saving of the electric or gas bill.

So should there not be some requirement with respect to, No. 1, the degree of safety afforded by the tests and, No. 2, precautions with respect to the manner of installation of the insulation?

Mr. STERN. Yes to both of those.

Mr. ECKHARDT. What kinds of authorities are necessary to adequately endorse a mandatory standard; that is, criminal penalties, third party testing, certification, things of that nature?

Mr. STERN. Well, we have various levels that we can work on. If it is under the Consumer Protection Act of the State of Colorado, we can deal with misrepresentations. If somebody says that the material is safe and it does meet the standards and it does not and we know it does not, then we have a civil action. If we can show intent of the manufacturer to intentionally not meet those Federal standards, they are saying that they are and that becomes very difficult. Then we have a criminal provision but it is something that most of these things fall into the misrepresentational area and it is something that what we are looking for is something that we can say is a standard that we can compare against.

Mr. ECKHARDT. Should there be private enforcement of the standard?

Mr. STERN. By private enforcement——

Mr. ECKHARDT. Private suits.

Mr. STERN. Yes.

Mr. ECKHARDT. I want to compliment you and also your department for participating in this hearing and giving us the valuable information and the expertise that you have developed through your work in Denver and the Denver area.

Thank you very much.

Mr. STERN. Thank you very much.

Mr. ECKHARDT. I also want to compliment the GSA for affording us some basis for standards in this very, very important area. All the witnesses have indicated its importance and only GSA has moved quickly in the field and given us some basis for technological support of the statutory action in this field.

This completes our hearings on oversight of the Product Safety Commission and also hearings pursuant to marking up the Moffett bill.

The hearings are hereby adjourned.

[The following statement and letters were received for the record:]

STATEMENT OF SAI CORP.

These comments are presented on behalf of SAI Corp. to the Subcommittee on Consumer Protection and Finance of the House Committee on Interstate and Foreign Commerce in connection with the Subcommittee's consideration of H.R. 10637, standards for cellulose insulation for homes. SAI Corp. is a manufacturer and distributor of several types of homes insulation and has its corporate headquarters in Mt. Pleasant, Iowa. Its subsidiary, Icon Industries, began manufacturing and distributing cellulose this past fall; construction of another Icon plant in Springhill, Louisiana is now underway. Although SAI Corp. is not a large company by home insulation industry standards, it is a significant factor in several submarkets of the industry.

H.R. 10637 would mandate the adoption of the present GSA cellulose insulation specification, HH–I–515C, as a consumer product safety requirement for all cellulose sold in the U.S. It also establishes provisions for the adoption

of amendments to GSA's requirements by the Consumer Product Safety Commission. SAI strongly endorses the principle of adopting such a standard since this would be the most effective method, in the circumstances, of assuring adequate protection to the American consumer.

At the same time, great care must be taken in promulgating a standard in order to assure that it is adequately protective of the consumer and does not create excessive compliance difficulties for the manufacturer. If the standard is not sufficiently stringent, it would, at best, only give the consumer a false sense of security. A standard that is unnecessarily strict would effectively drive all but perhaps a few firms out of the market, while providing the consumer with no additional safety protection. Homes are made of many flammable materials, including wood, carpets, and furniture. Insulation must be less flammable than such materials in order to avoid contributing to a fire, but a point is reached where additional fire protection is useless because the home will collapse before the insulation burns significantly. Thus, any standard should provide the necessary level of fire retardancy without depriving the consumer of the energy saving benefits of inexpensive and environmentally beneficial cellulose insulation.

Turning now to the specific standards under consideration, the present GSA Standard, HH–I–515C, appears relatively good and should present no significant difficulties if it were promulgated as a consumer protection standard. GSA is currently developing another version of this standard, HH–I–515D, about which there is more doubt.

The reason for this arises from the fact that proposed Standard 515D would require the utilization of the radiant panel test. We understand that only six or seven testing laboratories are currently capable of conducting this test although others are obtaining the necessary equipment. Two substantial difficulties arise from this shortage of test facilities. First, it is extremely difficult to have tests conducted to determine whether the radiant panel test is a valid means of testing the flammability characteristics of cellulose. Second, should this test be required for all cellulose sold in the United States, a significant test backlog could develop. This might force manufacturers to cease production until they can have the necessary tests performed.

The radiant panel test may prove to be an excellent method of testing the flammability characteristics of cellulose. However, until there are sufficient test facilities to enable tests to be conducted in a relatively prompt fashion, it is impossible for most parties to comment on the validity of this test.

As a consequence, the Subcommittee may want to consider an interim step before the adoption of Standard 515D is required. The greatest weakness in the existing standard, 515C, is that its requirements are satisfied by cellulose having either a Class I or Class II flammability rating. If this standard were modified so that only cellulose having a Class I rating would be acceptable, Standard 515C would be greatly improved. The result would be that the need for mandating Standard 515D as a consumer protection requirement would be lessened. Accordingly, adoption of 515D as a consumer protection requirement could be delayed until adequate radiant panel testing equipment is available.

If there are any questions concerning these comments SAI would be happy to respond. We hope that these comments are of use to the Subcommittee.

AMERICAN HOME ECONOMICS ASSOCIATION,
Washington, D.C., April 21, 1978.

Hon. BOB ECKHARDT,
Chairman, Subcommittee on Consumer Protection, and Finance,
Rayburn House Office Building,
Washington, D.C.

DEAR MR. CHAIRMAN: Since 1909 the American Home Economics Association has been in the forefront of consumer advocacy. Over the years we have supported legislation designed to encourage responsibility among producers and consumers alike. And in many instances we have supplied expert witnesses to provide testimony needed in creating such legislation.

We now wish to support the continuance of the Consumer Product Safety Commission. In the few years of its existence, the Commission has made a noticeable impact in the markets of the "dangerous wares", many of which would not appear particularly dangerous to the uninformed eye but which have been causing injury or death, sometimes due to an inherent characteristic, some-

times due to misunderstood use. We particularly commend their work relating to children's sleepwear and toys. We look forward to seeing the final standards on bathtubs and showers and the work on smoke detectors.

We believe the work of the commission to be effective not only in itself but in the ways it can teach industry to monitor itself. We commend the Commission for the work done and work in progress. We also support continued research, continued promulgation of safety standards and rules, and the continued dissemination of information to the public.

The presence of citizens—both as experts and consumers—on panels and advisory councils provides both an important point of view and an important body of knowledge.

Mr. Chairman, we hope you will include this letter in the subcommittee report as evidence of our position. And we thank you for the opportunity to make our feelings known.

Sincerely,

BEVERLY CRABTREE,
President.

CONSUMER UNION/A NONPROFIT ORGANIZATION,
PUBLISHER OF CONSUMER REPORTS,
Washington, D.C., March 10, 1978.

Hon. BOB ECKHARDT,
Chairman, Subcommittee on Consumer Protection and Finance, Committee on Interstate and Foreign Commerce, U.S. House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: Consumers Union [1] appreciates this opportunity to comment on H.R. 10819, a bill to reauthorize appropriations to the Consumer Product Safety Commission (CPSC) for the fiscal year 1979 and which would amend the offeror procedures of Section 7 of the Consumer Product Safety Act (the Act) by authorizing the CPSC, in specified situations, to develop its own proposed consumer product safety standards.

Consumers Union endorses reauthorization of CPSC appropriations for FY 1979 and endorses the proposed change in the product safety standard offeror system. At the same time, we believe that the Congress must put CPSC on notice that its performance in protecting the public by carrying out its statutory responsibilities must improve promptly and significantly.

I

REAUTHORIZATION OF APPROPRIATIONS

An obvious question in view of CPSC documented poor performance is, why continue to have a Consumer Product Safety Commission? The answer is that, while the Commission's level of performance clearly has been unacceptable, the function it is charged by law with performing is greatly needed because of the number and variety of unsafe products in the marketplace. The public is *entitled* to government protection in the area of health and safety, and poor performance by the responsible agency is not dispositive of the question whether or not the government should perform this function. A look at the performance of the agency demonstrates that the problem is not inherent in the concept of a Consumer Product Safety Commission. Rather, the record shows that there is ample room for improvement of its performance within the bounds of the existing statute.

The hearings of Committees of both Houses of the Congress document almost universal agreement that the CPSC's performance to date has been unacceptable, and the record supports the conclusion that much of CPSC's problem has been

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[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, its other publications and films. Expenses of occasional public service efforts may be met, in part, by nonrestrictive, noncommercial grants and fees. In addition to reports on Consumers Union's own product testing, Consumer Reports, with more than 1.8 million circulation, 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.

lack of effective management. It reveals areas in which CPSC might perform much better than it has, if it has effective management.[2]

The first Chairman of the Commission served from May, 1973 to June, 1976, a period of more than four years, without complying with the requirement of Section 4(g)(1) of the Act to appoint an Executive Director of the Commission. It is difficult to imagine any federal agency being able to function properly without an Executive Director to oversee the day-to-day functions of staff.

The second, and current, Chairman, while espousing a commitment to management and while having appointed an Executive Director and effect some reorganization within the agency, has raised other doubts about his own ability to lead the agency, doubts so serious that the mounting criticism of his conduct has resulted in his early resignation.

Under these two Chairman, CPSC has, in a period of almost five years, developed only three final consumer product safety standards under Section 7 of the Act. The three standards required an average of 834 days to develop and become final. The issuance of these standards—for swimming pool slides, architectural glazing, and matchbooks—took two and one half times the time schedule provided for by Congress in Sections 7 and 9 of the Act.[3]

The General Accounting Office has documented weaknesses in the Commission's management of standards development which creates delay in the development process. Among those weaknesses are lack of adequate guidance to offeror,[4] lack of an established process for evaluation of the offeror's recommendations,[5] and insufficiency of the product-related injury data maintained by CPSC.[6]

Consumers Union's own experience as the offeror in development of the pending proposed standard on outdoor power equipment (lawnmowers) corroborates GAO's findings. As offeror, we believe that CPSC could have provided substantially more guidance and assistance than the fact was rendered. We believe that CPSC took longer than necessary to evaluate our recommended proposed standard. And we found that the lack of available injury data as to some kinds of lawnmover-related injuries was a cause of delay in development of a proposed standard.

The timeliness of the Commission's response to citizen petitions for product safety standards has been similarly lackadaisical. Although the situation recently has improved, as of October, 1977, 87 percent of all product safety standard petitions field with CPSC had not been disposed of by the Commission within the 120 days required by Section 10 of the Act.[7] Such treatment of citizen petitions from the federal "watchdog" for product safety can only contribute to citizen cynicism about government responsiveness in general, and about CPSC's intentions, specifically.

One outrageous example of CPSC mismanagement is that this Subcommittee even need to consider H.R. 10637, Representative Moffett's Bill to establish cellulose insulation safety standards. CPSC's own Denver field office, in June, 1975, called the Commission's attention to the cellulose insulation safety problem. A subsequent citizen petition was filed in October, 1976 and, finally, the subject became the matter of a Congressional inquiry in October, 1977.[8] Although the

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[2] Hearings before the Subcommittee on Oversight and investigations of the Committee on Interstate and Foreign Commerce, United States House of Representatives, on the Consumer Product Safety Commission, 94th Cong., 2d sess., Serial No. 94–83, 1976. Hearings before the Subcommittee on Oversight and Investigations and the Subcommittee on Consumer Protection and Finance of the Committee on Interstate and Foreign Commerce, House of Representatives, on the Degree to which the Consumer Product Safety Commission is Fulfilling its Mandate to Protect Consumers from Unreasonable Risks of Death, Injury, or Serious or Frequent Illness Associated with the Use or Exposure to Consumer Products, 95th Cong., 2d sess., Serial No. 95–42 (1977). Hearings on S. 644 and S. 1000 before the Subcommittee for Consumers of the Committee on Commerce, United States Senate, 94th Cong., 1st sess., Serial No. 94–12 (1975). Oversight Hearings on the Implementation of the Consumer Product Safety Act Before the Subcommittee for Consumers of the Committee on Commerce, Science and Transportation, United States Senate, 95th Cong., 1st sess., Serial No. 95–19 (April, 1977). Hearing on Implementation of the Consumer Product Safety Act before the Subcommittee for Consumers, Committee on Commerce, Science and Transportation, United States Senate, 95th Cong., 1st Sess., Serial No. 95–48 (October, 1977), hereafter referred to as Senate October Hearings.

[3] GAO Report to the Congress, The Consumer Product Safety Commission Needs to Issue Safety Standards Faster, December 12, 1977.

[4] GAO Report, p. 9.

[5] GAO Report, p. 11.

[6] GAO Report, pp. 23–25.

[7] GAO report, p. 11.

[8] GAO Report, pp. 23–25.

Commission had held a public meeting on the flammability problem associated with cellulose home insulation in August, 1977, as of September, 1977, cellulose insulation still was not included on the CPSC Federal Register notice of priority rankings of consumer products requiring Commission attention.[9] Considering that window bars and rust removers were included in that priority list, the exclusion of cellulose insulation indicates either bad judgment or bad management.

Similarly, CPSC staff preparation of guidelines on toxic substance chronic hazards appears to have resulted only because of Congressional and public pressure.[10] Indeed, since the CPSC's inception, it has not been properly staffed to deal with chronic hazards.[11] This situation clearly is due to inadequate management.

All of these and the many other considerations regarding the CPSC's nonfeasance of duty tend to show not that a Consumer Product Safety Commission is unneeded but, rather that the Commission has not had the qualified managerial leadership which it must have in order to function effectively. What is necessary now is for President Carter to appoint a Chairperson to succeed Mr. Byington on July 1, 1978, who is dedicated to accomplishment of the goals of the Consumer Product Safety Act through effective organizational management of the agency.

A one-year reauthorization of appropriations, which will be effective through September 30, 1979, will give the new Chairperson time to take significant steps toward reordering the Commission's direction—or lack thereof—so that CPSC can begin to fulfill its obligation to consumers and to meet the expectations written into the law by Congress.

The renewed authorization level for FY 1979 provided by H.R. 10819, $55 million, represents a substantial cut from that of FY 1978. Since the amount actually appropriated to the Commission always has remained substantially below the authorized level, this $13 million reduction should not hamper efforts to breathe life into the CPSC. At the same time, it serves as a symbolic vote of no-confidence by the Congress, and serves notice on the new Chairperson and the Commissioners of the CPSC that significantly better performance is required of the Commission.

Amendments to the Offeror Process Requirements

We agree with the proposed provision in H.R. 10819, authorizing CPSC development of a proposed consumer product safety standard under certain limited conditions, without use of the offeror process normally required under the Act. This will permit expedited development of product standards where there is a need for greater speed in developing a particular standard, as well as where there is no particular benefit to development of the standard by an outside offeror. At the same time, we believe that, in order to prevent routine use of this provision in place of the offeror process, the standards in proposed Section 7(b)(2)(A) should be revised and clarified, and additional safeguards should be included. The intent of the Congress in establishing an offeror process in the original Act was to assure maximum participation in safety standards development. H.R. 10819 should not diminish public participation in the development process except in those limited circumstances where some need is shown. It is for this reason that we believe that such additional safeguards in H.R. 10819 are necessary.

First, it should be required that before the Commission actually invokes proposed Section 7(b)(2), it publish in the Federal Register notice of its intent to develop a standard for the specific product involved, and that it provide no less than fifteen days within which interested persons may comment as to whether it is appropriate for the Commission to proceed under Section 7(b)(2) in the circumstances involved. This will asure that any party which believes it or another party would be a likely and appropriate offeror with respect to development of a standard for the product involved will have the opportunity to inform the CPSC of the basis for its belief. Thus, the Commission would, where such was the case, have specific, relevant information which it would be required to consider in making final determination that invoking Section 7(b)(2) is appropriate.

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[9] 42 Fed. Reg. 47859 (Sept. 22, 1977).

[10] See April Senate Oversight Hearing, *supra*, testimony of Robert Harris, Environmental Defense Fund at pp. 2–13, Linda Hudak, Consumer Federation of America at pp. 31–38, and colloquy between Sen. Durkin and CPSC Commissioners at pp. 172–177.

[11] October Senate Oversight Hearings, *supra*, p. 8.

Second, the findings which would be required in order for CPSC to invoke Section 7(b)(2) are less than clear and, in some respects, incomplete. As they now read, these provisions may not require of CPSC findings sufficiently specific to admit of meaningful judicial review.[12]

Clauses (i) and (ii) of Section 7(b)(2)(A) appear to be directed at the situation where it is in the public interest for CPSC to develop the proposed product safety standard because it has existing expertise with respect to the risk of injury involved, which makes it likely to be the most qualified party to develop the standard. The language should be clarified to so provide, and should include the additional requirement of a finding that the Commission is likely to be more qualified to develop the standard, based upon this expertise, than any likely offeror. The Commission can utilize the public comment period, which we recommend to be included in the requirement for utilizing Section 7(b)(2), as a means of determining whether there are likely offerors with greater expertise than the Commission with respect to the specific risks of injury involved.

Section 7(b)(2)(A)(iii) is partially subsumed in clause (iv). To the extent it is not, it should be eliminated.

The Commission presently has no expertise in developing consumer product safety standards. This basis could not be used as grounds for use of Section 7(b)(2) until the Commission has utilized this new Section on other grounds often enough to claim such expertise. And, after the Commission had utilized the new provision sufficiently to claim such expertise, this subsection would appear to justify the Commission's use thereof in any—even every—proposed standards development, without even a showing of any special need to do so.

The argument for CPSC development of a proposed standard based upon its expertise in the standards development process is really one of expeditiousness. That is provided for in clause (iv). The apparent purpose of the proposed new Section is to permit CPSC to develop the proposed standard upon a showing of exceptional circumstances. Proposed clause (iii), once the Commission has had sufficient experience in developing standards, would authorize the Commission to develop standards without regard to the existence of exceptional circumstances. Thus, the provision should be eliminated.

Clause (iv) should require not only the proposed finding that it is necessary to expedite development of the proposed standard but, also, that it is likely that the Commission can do so more expeditiously than any proposed offeror. This requirement, also, can be met in part by use of the suggested brief notice and public comment period to determine which outside parties would be likely offerors if Section 7(b)(2) were not to be invoked. The Commission could then assess whether any likely offerors were likely to develop the proposed standard as rapidly or more so than the Commission itself. Given the Commission's resources—and assuming better management than it has had to date—it may well be that in most cases the Commission could perform more quickly than an outside offeror, given the commitment to do so. However, it is not possible to foresee all circumstances. It is entirely conceivable that in some instance in the future an outside party may, at the crucial time, be substantially further along than the CPSC in developing a proposed standard and able to complete a proposed standard more rapidly than the Commission. The provision we propose should not foreclose that possibility, and the addition of a requirement to find that such is not the case should not prove so burdensome as to forego the option to preserve such an oportunity.

Additionally, whether CPSC bases its determination to develop the proposed standard upon time considerations or considerations of its own expertise respecting the risk of injury involved, it should be required to find, based upon rational demonstration, that the difference between its own performance and the anticipated performance of a likely outside offeror is likely to be substantial. The offeror process should not be foregone where the public benefit is marginal.

With these changes, we believe that the proposed standards development process can be substantially improved in situations where CPSC is better qualified than likely outside offerors to develop a proposed standard expeditiously or to apply its greater expertise to a specific risk of injury.

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[12] A party may have a cause of action, challenging CPSC action under the proposed Section 7(b)(2), on the grounds that the Commission allegedly has not made the requisite statutory finding and that plaintiff would have submitted an offer to develop a proposed standard, resting jusisdiction on 5 U.S.C. §§ 702–704.

III

SUMMARY

We urge adoption of these recommended amendments to H.R. 10819 and its favorable consideration by the Committee and the House.

Sincerely,

MARK SILBERGELD,
Director.
SHARON NELSON,
Attorney, Washington Office.

[Whereupon, at 1 :23 p.m., the hearing adjourned.]

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